

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

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MEMBERS OF THE FEDERAL TRADE COMMISSION
AS OF MAY 31, 1939

ROBERT E. FREER, *Chairman.*

Took oath of office August 26, 1935.¹

GARLAND S. FERGUSON.

Took oath of office November 14, 1927, January 9, 1928,² September 26, 1934,³ and February 9, 1935.⁴

CHARLES H. MARCH.

Took oath of office February 1, 1929, and August 27, 1935.²

EWIN L. DAVIS.

Took oath of office May 26, 1933.

WILLIAM A. AYRES.

Took oath of office August 23, 1934.

OTIS B. JOHNSON, *Secretary.*

Took oath of office August 7, 1922.

¹ First term. Confirmed for second on January 28, 1939.

² Second term.

³ Recess appointment.

⁴ Third term.

ACKNOWLEDGMENT

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¹ Said decision disposes also of petition for review of Brown & Haley, Canterbury Candy Makers, Inc., Imperial Candy Co., and Rogers Candy Co., respondents in four cases before the Commission.

² Injunctive order under sec. 13.

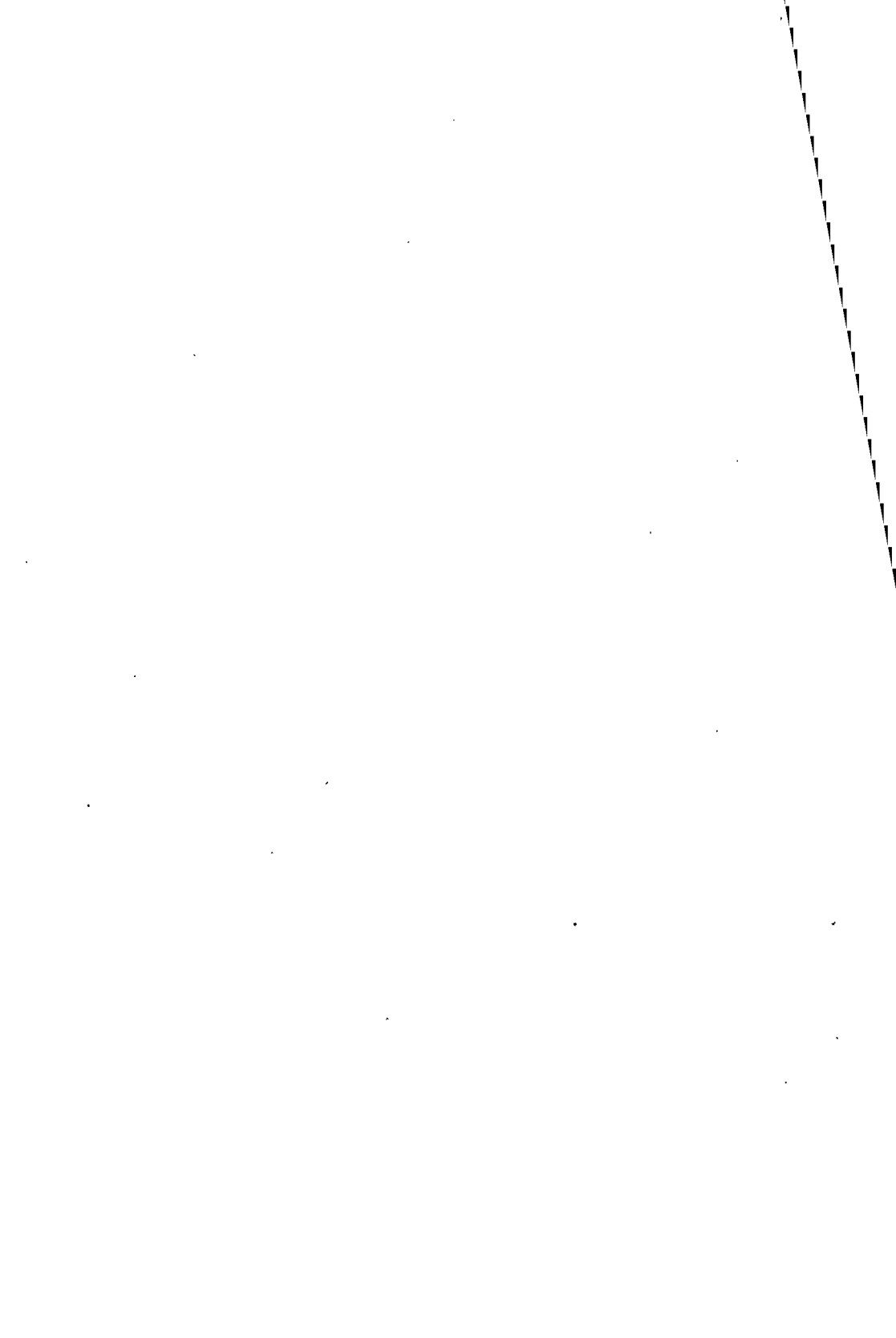


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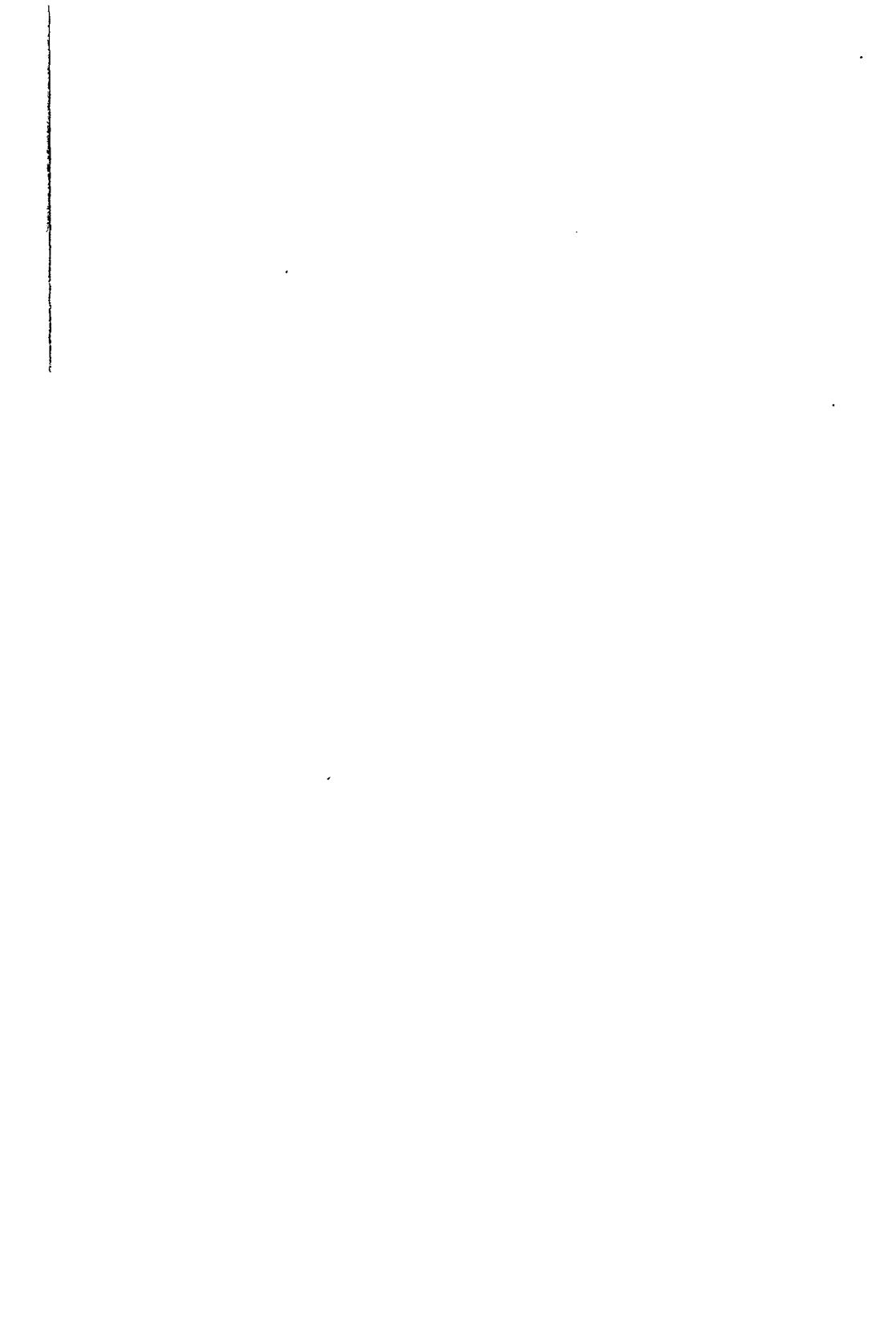


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| Petition for review filed in Circuit Court of Appeals for the Second Circuit on April 6, 1939. | | |
| EL MORO CIGAR CO..... | 28 | 639 |
| Petition for review filed in Circuit Court of Appeals for the Fourth Circuit on April 22, 1939. Commission's order affirmed November 6, 1939. 107 F. (2d) 429. | | |
| DR. W. B. CALDWELL, INC..... | 28 | 934 |
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[Abbreviations: S. C.—U. S. Supreme Court; C. C. A.—Circuit Court of Appeals; S. C. of D. C.—Supreme Court of the District of Columbia (changed on June 25, 1936, to District Court of the U. S. for the District of Columbia, and identified by abbreviation D. C. of D. C.); C. A. of (or for) D. C.—U. S. Court of Appeals for the District of Columbia (prior to June 7, 1933, Court of Appeals of the District of Columbia); D. C.—District Court. Hyphenated numbers refer to volume and page of the F. T. C. Reports, the number preceding the hyphen denoting the volume, the numbers following referring to the page]

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| American Candy Co..... | (C. C. A.) 27-1683. 97 F. (2d) 1001. |
| American Snuff Co..... | (C. C. A.) 13-607. 38 F. (2d) 547. |
| American Tobacco Co..... | (D. C.) 5-558; (S. C.) 7-599; 283 Fed. 999; 264 U. S. 298; (44 S. Ct. 336); (C. C. A.) 9-653; (S. C.) 9 F. (2d) 570; 274 U. S. 543 (47 S. Ct. 11-668. 663). |
| Ardelle, Inc., Helen..... | (C. C. A.) 28-1894. 101 F. (2d) 718. |
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| Armour & Co. ³ | (C. C. A.), "Memoranda" 20-745. |

¹ Interlineal citations are to the reports of the National Reporter System and to the official United States Supreme Court Reports in those cases in which the proceeding, or proceedings, as the case may be, have been there reported. Such cases do not include the decisions of the Supreme Court of the District of Columbia, nor, in all cases, some of the other proceedings set forth in the above table, and described or reported in the Commission's Decisions and the Commission publications entitled "Statutes and Decisions—1914-1929," and "Statutes and Decisions—1930-1938," which also include cases here involved, for their respective periods.

Said publications also include 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. "S. & D." refers to earlier publication, reference to later being "1938 S. & D." For "Memorandum of Court Action on Miscellaneous Interlocutory Motions" during the period covered by the second compilation, namely, 1930-1938, see said compilation at page 485 et seq.

² For interlocutory order of lower court, see "Memoranda," 28-1966 or 1938 S. & D. 487.

³ Interlocutory order. See also S. & D. 721.

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⁴ For interlocutory order, see "Memoranda," 28-1965 or 1938 S. & D. 485.

⁵ For interlocutory matter, see "Memoranda," 28-1968 or 1938 S. & D. 489.

⁶ For interlocutory order, see "Memoranda," 20-744 or S. & D. 720.

⁷ For order of Circuit Court of Appeals on mandate, see "Memoranda," 20-741 or S. & D. 189.

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⁸ Interlocutory order. See S. & D. 722.

⁹ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

¹⁰ For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

¹¹ For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.

¹² For final decree of Supreme Court of the District of Columbia, see footnote, 3-542 et seq., S. & D. 190.

¹³ For interlocutory order, see "Memoranda," 28-1966 or 1938 S. & D. 485.

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¹⁴ For interlocutory order, see "Memoranda," 20-744, or S. & D. 720.

¹⁵ For interlocutory matter, see "Memoranda," 28-1954 or 1938 S. & D. 485.

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¹⁶ For interlocutory order, see "Memoranda," 20-746, or S. & D. 724.

¹⁷ For interlocutory order, see "Memoranda," 28-1968 or 1938 S. & D. 489.

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¹⁸ For certain prior interlocutory proceedings, see also "Memoranda," 28-1967 or 1938 S. & D. 488.

¹⁹ For interlocutory order, see "Memoranda," 20-745 or S. & D. 722.

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

²¹ For interlocutory order, see "Memoranda," 20-745 or S. & D. 721.

²² For interlocutory order, see "Memoranda," 20-744 or S. & D. 721.

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| Moir, John, et al. (Chase & Sanborn) ²⁷ | (C. C. A.) 10-674. 12 F. (2d) 22. |

²³ 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.

²⁴ 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.

²⁵ For interlocutory order, see "Memoranda," 20-743 or S. & D. 715.

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

²⁷ For interlocutory order, see "Memoranda," 20-744 or S. & D. 714.

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| National Biscuit Co. ²⁸ ----- | (C. C. A.) 7-603; (D. C.) 24-1618. 299 Fed. 733; 18 F. Supp. 667. |
| National Biscuit Co., U. S. v----- | (D. C.) 27-1697. 25 F. Supp. 329. |
| National Harness Mfrs. Assn----- | (C. C. A.) 4-539, 3-570. 261 Fed. 170; 268 Fed. 705. |
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| National Optical Stores Co., et al----- | (D. C.), "Memoranda" 28-1970. |
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| Non-Plate Engraving Co. ²⁹ ----- | (C. C. A.) 15-597. 49 F. (2d) 766. |
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| Ohio Leather Co. ³⁰ ----- | (C. C. A.) 4-699. 45 F. (2d) 39. |
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| Philip Carey Mfg. Co. et al----- | (C. C. A.) 12-726. 29 F. (2d) 49. |
| Powe Lumber Co., Thos. E----- | (C. C. A.), footnote, 16-684; "Memoranda," 20-739. |

²⁸ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

²⁹ For interlocutory order, see "Memoranda," 28-1965 or 1938 S. & D. 485.

³⁰ For interlocutory order, see "Memoranda," 20-745 or S. & D. 724.

³¹ For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

³² For interlocutory order, see "Memoranda," 20-744 or S. & D. 720.

³³ For interlocutory order, see "Memoranda," 28-1967 or 1938 S. & D. 487.

³⁴ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

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³⁵ For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

³⁶ For interlocutory order of lower court see "Memoranda," 28-1966 or 1938 S. & D. 486.

³⁷ For interlocutory order in proceeding terminating in decision in 281 Fed. 744 (4-614), see "Memoranda," 20-743 or S. & D. 715.

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

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

³⁸ For interlocutory order of lower court, see "Memoranda," 28-1966 or 1938 S. & D. 486.

³⁹ For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

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⁴⁰ For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

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⁴¹ For interlocutory order, see "Memoranda," 28-1968 or 1938 S. & D. 490.

⁴² For interlocutory order, see "Memoranda," 20-742 or S. & D. 715.

⁴³ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.



FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JANUARY 1, 1939, TO MAY 31, 1939

IN THE MATTER OF

WILLARD TABLET COMPANY, INC.

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

Docket 3100. Complaint, Apr. 8, 1937—Decision, Jan. 5, 1939¹

Where a corporation engaged in sale and distribution of certain medicinal tablets, together with printed matter containing advice of a dietary and hygienic nature, together referred to as the "Willard Treatment," and sold to retail druggists and, to a relatively small extent, by mail direct to ultimate purchasers at price of \$5 a bottle, along with which was included, as aforesaid, such printed matter with directions for diet, rest, and other hygienic measures, in competition with others engaged in sale and distribution of medicinal and other preparations and products designed and intended for use in treatment of same ailments and conditions as those for which it recommended its aforesaid tablets and treatment, and including many who do not in any manner misrepresent their said preparations and products or therapeutic properties thereof or make any false statements in connection with sale and distribution of such preparations and products; in advertising its said preparation and treatment in newspapers and other publications circulated between and among the various States and in bulletins distributed from its place of business to prospective purchasers in other States and in broadcasts from radio stations which conveyed programs emanating therefrom to listeners in various States—

Represented, through statements there made and reproductions therein of purported testimonials, that its said tablets and aforesaid printed material sold together therewith, or treatment, constituted a competent and adequate cure or remedy for, and had substantial therapeutic value in the treatment of, stomach and duodenal ulcers due to hyperacidity, poor digestion, acid dyspepsia, sour or upset stomach, gaseousness, bloating, heartburn, constipation, bad breath, sleeplessness, headaches, and jaded appetite, when such conditions were due to or persisted because of excess acid, and that said tablets were compounded pursuant to an unique formula and that said treatment was a remarkable or marvelous one for aforesaid ailments and conditions and was more dependable than any other for correcting the same, through such statements as "This *unique* formula has brought definite relief to hundreds," etc.,

¹ For original findings and order, see 27 F. T. C. 1076.

"* * * This marvelous treatment has brought amazing relief to such stomach sufferers everywhere," "There is probably no treatment more dependable for correcting those conditions AT ONCE than the WILLARD TREATMENT," and "The reports sent to us by those who have been seeking desperately to find relief from ulcers, and who finally found that prayed-for help in the WILLARD TREATMENT should prove an inspiration to every person so afflicted," and such purported testimonial quotations, among others, as "* * * can eat anything now and work hard every day * * * had ulcers of the stomach for fourteen years," etc.;

Facts being said tablets and literature or treatment were not a competent and effective remedy or cure for stomach or duodenal ulcers due to hyperacidity or to any other cause; therapeutic value of tablets concerned was limited to neutralizing excess acid in stomach and producing soothing effect on irritations therein caused by such excess acid, and to temporarily relieving symptoms of distress due to said condition; any benefit obtained other than relief which said preparation, used with such treatment, might provide from symptoms of distress caused by said condition and by stomach and duodenal ulcers due thereto or persisting by reason thereof, would be variable, depending on individual's reaction to said preparation and to such standardized treatment, which was neither remarkable nor marvelous and did not involve unique formula, insofar as concerned said tablets, ingredients of which were commonplace in medical literature and had been used for years, singly and in combination; usual and ordinary treatment for stomach and duodenal ulcers, due to or persisting because of excess acid, consists as a rule in administering or prescribing alkalis to neutralize excess acid and bland diet, along with rest and relaxation, in varying proportions from day to day in accordance with patient's reaction, and it is not equipped to and does not give advice to purchasers relative to varying alkalis and diet and amounts in accordance with such reaction, and ordinary purchaser of its said preparation is incapable of determining whether or not his particular ailment or condition is due to or persists because of such acid; and said standardized treatment with its prescription of same alkalis and diet and amounts for all users, irrespective of individual's reaction thereto, is not the most dependable one for correcting such ailments and conditions at once or during any period of time;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that its said preparation and treatment possessed properties claimed and represented and would accomplish results indicated, and of causing substantial portion of such public, by reason of such erroneous and mistaken belief, to purchase substantial quantities of its said preparations, and of thereby diverting trade unfairly to it from its said competitors in commerce who truthfully advertise the effectiveness and use of their respective preparations and products:

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

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

Mr. T. H. Kennedy and *Mr. John N. Wheelock* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

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Complaint

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the Willard Tablet Co., 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 to the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The Willard Tablet Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and its principal place of business and legal address is 215 West Randolph Street, Chicago, Ill.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of a medicinal preparation designated as "Willard Tablets" which is recommended for various and sundry diseases and ailments as will be more fully set out hereinafter. Respondent causes said product, when sold, to be shipped and transported in interstate commerce from its place of business, located in Chicago, Ill., to purchasers thereof located in various States of the United States other than the State of Illinois. It now maintains, and has at all times mentioned herein maintained a constant current of trade in said product in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, is now, and at all times herein referred to has been, in active substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution in commerce among and between the various States of the United States of other preparations prepared, manufactured, advertised, recommended, and sold for substantially the same purpose and use for which respondent's product is advertised and sold.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, and for the purpose of inducing individuals to purchase said preparation, Willard Tablets, has advertised through radio broadcasts and has caused advertisements to be inserted in newspapers and other periodicals of general circulation throughout the United States, and has printed and circulated throughout the several States of the United States by United States mail and otherwise, to

customers and prospective customers, certain advertising, folders and literature, and other advertising matter, in all of which the respondent has caused its corporate name and the name of said product to be prominently and conspicuously displayed, and in which the following statements are made:

This unique formula has brought definite relief to hundreds of such stomach sufferers everywhere.

It explains the remarkable Willard Treatment for stomach distress, such as heartburn, poor digestion, acid dyspepsia, and stomach ulcers, due to excessive acid. This marvelous treatment has brought amazing relief to such stomach sufferers everywhere.

The Willard Treatment is intended for the relief of stomach and duodenal ulcers due to hyperacidity—poor digestion, acid dyspepsia—sour or upset stomach—gasiness—bloating—heartburn—constipation—bad breath—sleeplessness—headaches—jaded appetite, when these conditions are due to or persist because of excess acid.

The reports sent to us by those who have been seeking desperately to find relief from ulcers, and who finally found that prayed-for help in the Willard Treatment should prove an inspiration to every person so afflicted.

There is probably no treatment more dependable for correcting these conditions At Once than the Willard Treatment.

By way of quoting purported testimonials, the respondent states:

I have started on my second treatment of Willard's, and highly recommend it for stomach ulcers. I have been bothered with my stomach for about six years.

I took about four bottles of the Willard Treatment, and I can eat anything now and work hard every day. I was in an awfully bad condition, but I believe I am entirely relieved. I had ulcers of the stomach for fourteen years.

It is with great pleasure that I write you and thank you for what your wonderful Treatment has done for me. I have suffered with ulcers of the stomach for the past eighteen years. I have taken many different kinds of medicine.

Before taking your Treatment, I suffered for five years with ulcers and gas. In fact, I suffered so much that I did not care to live any longer.

PAR. 5. All of the above statements, together with many other similar statements appearing in respondent's advertising and literature, purport to be descriptive of respondent's product, Willard Tablets. In all of the respondent's advertising matter and literature, the respondent represents, through the statements as above set out and through other statements of like import and effect, that said product is a competent treatment and an effective remedy for stomach and duodenal ulcers; that said preparation is a competent treatment for all stomach disorders; that said preparation is a competent treatment for hyperacidity; and that said preparation will correct an abnormal acid condition at once.

PAR. 6. The claims and representations made by the respondent with respect to the efficacy and therapeutic value of the preparation,

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Complaint

Willard Tablets, are grossly exaggerated, false, and misleading. In truth and in fact, respondent's product, Willard Tablets, is not a competent treatment for stomach and duodenal ulcers. Neither will it relieve the discomforts caused therefrom. Said preparation is not a competent treatment for stomach troubles or stomach disorders. Said preparation will not correct an abnormal acid condition at once or in any stipulated length of time. Said preparation is not a treatment for the physical ailments above mentioned, nor is it a competent treatment for any physical ailment. Said preparation is no more than a remedy, and its value as a remedy is limited to cases of simple gastric hyperacidity.

PAR. 7. There are among respondent's competitors many who manufacture and prepare medicines for stomach troubles, stomach disorders, stomach and duodenal ulcers, hyperacidity, hypoacidity, and abnormal acid conditions, and sell and distribute said preparations to the purchasing public in commerce among and between the various States of the United States, and who in no way misrepresent the quality, efficacy, or therapeutic value of their product.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondent in designating and describing its product, Willard Tablets, and the effectiveness thereof as hereinabove set out, in offering for sale and selling said product, were and are calculated to, and had and now have the tendency and capacity to mislead and deceive and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true. As a direct consequence of said mistaken and erroneous beliefs induced by respondent's acts and representations as hereinabove set out, members of the purchasing public have purchased respondent's product and thereby trade has been unfairly diverted to the respondent from those competitors referred to in paragraph 7 hereof. As a result of the aforesaid false and misleading representations, injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 9. The above and foregoing acts, practices, and representations of the respondent have been and are all to the injury and prejudice of the public and respondent's competitors, and have been and are unfair methods of 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, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 8th day of April 1937, issued and served its complaint in this proceeding upon respondent, Willard Tablet Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Thomas H. Kennedy, attorney for the Commission, and in opposition to the allegations of the complaint by John A. Nash, attorney for the respondent, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final 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 John N. Wheelock, attorney for the Commission, and John A. Nash, attorney for respondent; and the Commission, having duly considered the matter, and being fully advised in the premises, and finding that the proceeding was in the interest of the public, on the 15th day of October 1938, made and issued its findings as to the facts and conclusion based thereon and issued its order to cease and desist from the practices charged. Subsequently respondent filed a motion to modify the findings as to the facts and order to cease and desist, and the Commission having duly considered said motion and the record herein, and being now fully advised in the premises, makes this its modified findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Willard Tablet Co., is a corporation organized, existing, and doing business under the laws of the State of Delaware, and having its office and principal place of business at 215 West Randolph Street, in the city of Chicago, State of Illinois. Respondent was incorporated in 1932. Respondent has been engaged for three years last past in the sale and distribution of a medicinal preparation designated as "Willard Tablets." Respondent also distributes to the purchasers of such tablets certain literature containing advice of a dietary and hygienic nature. Respondent refers to the said preparation and such literature as the "Willard Treatment." Respondent sells said preparation to members of the pur-

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Findings

chasing public situated in various States of the United States, and causes the said preparation, when sold by it, to be transported from its aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Illinois. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States.

PAR. 2. Respondent is engaged in substantial competition in commerce among and between the various States of the United States, with other corporations and with partnerships, firms, and individuals selling and distributing medicinal and other preparations and products designed and intended for use in the treatment of the same ailments and conditions of the human body for which respondent recommends the use of its said preparation. Among such competitors in said commerce are many who do not, in any manner, misrepresent their said preparations and products or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution of their respective preparations and products.

PAR. 3. The said preparation "Willard Tablets" contains the following ingredients:

| | |
|-------------------------|---------|
| Sodium Bicarbonate..... | 10 grs. |
| Magnesium Oxide..... | 10 " |
| Bismuth Subnitrate..... | 10 " |
| Pancreatin..... | 1 gr. |

To the above ingredients, respondent adds flavoring of peppermint and saccharin and a sweetening or filler of starch and talc which are without therapeutic value. The average dose recommended by the respondent is one tablet immediately after each meal three times a day. The tablets are 37 gr. tablets. The "Willard Tablets" are not manufactured by the respondent, but are compounded for the respondent by a laboratory pursuant to respondent's special formula. Respondent bottles, packs, and distributes the said preparation. Approximately seven-eighths of respondent's aforesaid business is with retail drug stores, and approximately one-eighth of such business is done by mail direct to the ultimate purchaser. For the past three years the gross dollar value of respondent's business has been approximately \$400,000 per annum. The said preparation is packed 100 tablets to the bottle, and sells for \$5 per bottle. Respondent distributes to every purchaser of such tablets the aforesaid literature containing directions for diet, rest, and other hygienic measures.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said preparation, the respondent has caused advertisements containing representations and claims with respect to the properties of said preparation and treatment, and the results that may be expected to be obtained from the use thereof, to be disseminated in newspapers and other publications having a circulation between and among the various States of the United States, in bulletins distributed from respondent's aforesaid place of business to prospective purchasers of said preparation located in other States, and in continuities broadcast from radio stations which convey the programs emanating therefrom to the listeners thereto located in various States of the United States. The following statements and representations are typical of those made in the aforesaid advertisements:

This *unique* formula has brought definite relief to hundreds of such stomach sufferers everywhere.

It explains the remarkable Willard Treatment for stomach distress, such as heart-burn, poor digestion, acid dyspepsia, and stomach ulcers, due to excessive acid. This marvelous treatment has brought amazing relief to such stomach sufferers everywhere.

The reports sent to us by those who have been seeking desperately to find relief from ulcers, and who finally found that prayed-for help in the Willard Treatment should prove an inspiration to every person so afflicted.

There is probably no treatment more dependable for correcting these conditions At Once than the Willard Treatment.

By way of quoting purported testimonials, the respondent represented:

I have started on my second treatment of Willard's, and highly recommend it for stomach ulcers. I have been bothered with my stomach for about six years.

I took about four bottles of the Willard Treatment, and I can eat anything now and work every day. I was in an awfully bad condition, but I believe I am entirely relieved. I had ulcers of the stomach for fourteen years.

It is with great pleasure that I write you and thank you for what your wonderful Treatment has done for me. I have suffered with ulcers of the stomach for the past eighteen years. I have taken many different kinds of medicine.

Before taking your treatment, I suffered for five years with ulcers and gas. In fact, I suffered so much that I did not care to live any longer.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and treatment and its effectiveness in the treatment of various ailments and conditions of the human body and the causes thereof, the respondent has represented, directly and by implication, that the Willard Tablets and the aforesaid literature containing certain dietary and hygienic advice, which is referred to by the respondent, jointly, with such

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tablets as the "Willard Treatment," are a competent and adequate cure or remedy for, and have substantial therapeutic value in the treatment of stomach and duodenal ulcers due to hyperacidity, poor digestion, acid dyspepsia, sour or upset stomach, gaseousness, bloating, heartburn, constipation, bad breath, sleeplessness, headaches and jaded appetite, when such conditions are due to or persist because of excess acid; that the Willard Treatment is a remarkable or marvelous treatment for the said ailments and conditions of the human body; that the Willard Tablets are compounded pursuant to a unique formula; that the Willard Treatment has brought definite relief to hundreds of persons suffering from the aforesaid ailments and conditions of the human body; that there is no treatment more dependable for correcting the aforesaid ailments and conditions at once than the Willard Treatment.

PAR. 6. In truth and in fact, the Willard Tablets and the aforesaid literature of respondent jointly referred to by respondent as the Willard Treatment are not a competent and effective remedy or cure for stomach or duodenal ulcers due to hyperacidity or to any other causes.

PAR. 7. The therapeutic value of the Willard Tablets is limited to neutralizing excess acid in the stomach and producing a soothing effect on the irritations in the stomach caused thereby and temporarily relieving the symptoms of distress due to an excess acid condition. Such preparation when used with such treatment may provide relief from the symptoms of distress caused by an excess acid condition and by stomach and duodenal ulcers which are due to or persist because of excess acid, but any benefit obtained other than such relief will be variable depending on the individual's reaction to such preparation and such standardized treatment.

PAR. 8. The Willard Treatment is not a remarkable or marvelous treatment. The Willard Tablets are not compounded from an unique formula. The drugs employed in the Willard Tablets are commonplace in medical literature and have been used for many years singly and in combination.

PAR. 9. The Willard Treatment is not the most dependable treatment for correcting the aforesaid ailments and conditions of the human body, at once, or during any period of time. The usual and ordinary treatment for stomach and duodenal ulcers, which are due to or persist because of excess acid, does not generally include, except in surgical cases, a direct treatment for the ulcer itself but consists of administering or prescribing of alkalis to neutralize the excess acid and the prescribing of a bland diet together with rest and relaxation by the patient, the alkalis and the diet, and the amounts thereof, being varied from day to day in accordance with the reaction of the patient. The

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Willard Treatment is a standardized treatment which prescribes the same alkalis and diet, and the same amounts thereof, for all users of such treatment, irrespective of the reaction to such treatment of the individual user. The respondent is not equipped for and does not give advice to the purchasers of its treatment relative to varying the alkalis and the diet, and the amounts thereof, in accordance with the reaction of the patient.

The aforesaid ailments and conditions may be caused by reasons other than an excess acid condition and the ordinary purchaser of respondent's preparation is incapable of determining whether or not his particular ailment or condition is due to or persists because of excess acid.

PAR. 10. The use by the respondent of the foregoing false and misleading statements, representations and advertisements, disseminated as aforesaid with respect to the Willard Tablets and Treatment, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true and that respondent's said preparation and treatment possess the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

As a result trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations and products.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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 the Federal Trade Commission Act.

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 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, briefs filed herein, and oral arguments by John N. Wheelock, counsel for the Commission, and by John A. Nash, counsel for the respondent,

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and the Commission, on the 15th day of October 1938, having made its findings as to the facts and its conclusion that said respondent had violated the provisions of the Federal Trade Commission Act, and having issued its order to cease and desist on the 15th day of October 1938, and the Commission having on the 5th day of January 1939, modified its said findings of facts and conclusion, now modifies its said order to cease and desist so as to conform with its said modified findings of facts and conclusion, and being fully advised in the premises.

It is ordered, That the said order to cease and desist be, and the same hereby is, modified to read as follows:

It is ordered, That the respondent, Willard Tablet Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a medicinal preparation designated as "Willard Tablets," and literature containing certain standardized dietary and hygienic advice referred to jointly with such preparation as the "Willard Treatment," or any other preparation or treatment of substantially the same composition and ingredients, sold under the above-mentioned names or any other names, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

(a) That such preparation and treatment constitute a competent and adequate remedy or cure for stomach and duodenal ulcers which are due to or persist because of an excess acid condition.

(b) That such preparation will do more than neutralize excess acid in the stomach and produce a soothing effect on the irritations in the stomach caused thereby and temporarily relieve the symptoms of distress due to an excess acid condition.

(c) That such preparation when used with such treatment will do more than provide relief from the symptoms of distress caused by an excess acid condition and by stomach and duodenal ulcers, which are due to or persist because of excess acid, unless such representation also states that any benefit obtained other than such relief will be variable depending on the individual's reaction to such preparation and such standardized treatment.

(d) That such preparation and treatment will provide "definite relief," unless such statement is qualified by the phrase "from symptoms of distress" in equally conspicuous terms indirect connection with such representation.

(e) That such preparation and treatment are "remarkable" or "marvelous."

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(f) That such preparation is compounded from an "unique" formula.

(g) That such treatment is more dependable than any other treatment for correcting the aforesaid ailments and conditions of the human body.

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

LEOPOLD LEVOY AND NATHAN C. BLACHER TRADING
AS SUNBEAM LABORATORIES

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

Docket 3267. Complaint, Nov. 16, 1937—Decision, Jan. 5, 1939 .

Where two individuals engaged in sale of a cosmetic designated "Nailife" and composed of about 90 percent lanolin and 10 percent wax, along with very small amount of coloring and perfuming matter, and in distribution of said product to retail dealers for resale to members of the purchasing public, directly and through its brokers or agents, in substantial competition with others engaged in sale and distribution of preparations designed and intended for and used for same general purposes, and including those who do not, in any manner, misrepresent their preparations or properties thereof and do not make any other false statements in connection with sale and distribution thereof; in advertising their said products on display cards distributed to retailer dealer purchasers in various States—

Represented, through use of "Before" and "After" pictures and statements thereon made, that said "Nailife" was a scientific preparation which would transform irregular, broken nails into well-formed, symmetrical ones, and was beneficial for dry or splitting nails and the perfect nail food, and would make nails strong and healthy, facts being nails of the fingers cannot be fed by an external application such as preparation aforesaid, which was not a scientific one, use thereof would not make nails strong and healthy, value thereof was limited to forming a protective coating for the nails, and said various claims were grossly exaggerated, false, and misleading and greatly exceeded any claims as to the efficacy of said product which might truthfully be made;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that said preparation possessed the properties claimed and represented, and would accomplish the results indicated, and of causing substantial portion of such public, because of such erroneous and mistaken belief, to purchase substantial quantities of its said preparation, and with result of thereby diverting unfairly trade to them from competitors who truthfully advertise the effectiveness in use of their respective products; to the injury of competition in commerce:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. S. Brogdyne Teu, II and *Mr. Clarence T. Sadler* for the Commission.

Mr. A. Frederick Lamken, of Los Angeles, Calif., for respondents.

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COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Leopold Levoy and Nathan C. Blacher, individually and trading under the trade name "Sunbeam Laboratories," 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, Leopold Levoy and Nathan C. Blacher, are individuals trading under the trade name Sunbeam Laboratories, and having their principal place of business in the city of Los Angeles, State of California. They are now, and for more than 1 year last past have been, engaged in the manufacture, sale, and distribution of a certain cosmetic commodity known as "Nailife" 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 Los Angeles, State of California, 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 partnerships, and with individuals, firms, and corporations likewise engaged in the business of manufacturing, selling, and distributing like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business, and for the purpose of inducing the purchase of their product, respondents have caused to be printed and circulated through the United States mails, and by other means, to their customers and prospective customers in the various States of the United States price lists and other printed matter.

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The respondents have caused, and still cause, advertisements to be inserted in newspapers and magazines having a general interstate circulation. And further, they have caused, and still cause, to be imprinted on their display cards and on the containers in which said product is sold, words and phrases purporting to be descriptive of the said product. Among the statements made in the aforesaid catalogs, price lists, and newspaper and magazine advertisements, and among the words and phrases imprinted on respondents' display cards and the containers in which said product is sold, the following are representative:

FOR DRY BRITTLE
SPLITTING NAILS USE
Nailife
THE PERFECT
NAIL FOOD

BEFORE

AFTER

(Pictorial representation of
hand showing condition of
nails before and after the
use of Nailife)

BE PROUD OF YOUR NAILS
NAILIFE, A SCIENTIFIC
PREPARATION WILL TRANSFORM
IRREGULAR BROKEN NAILS INTO
WELL FORMED SYMMETRICAL ONES.
MAKE YOUR NAILS
STRONG AND HEALTHY

(C) 1936 by

SUNBEAM LABORATORIES LOS ANGELES, CALIFORNIA.

The foregoing statements and representations made by the respondents are false and misleading. They serve as representations to customers and prospective customers:

That respondents' said product constitutes a competent and effective treatment for dry, brittle, and splitting nails; that Nailife is the perfect nail food and is actually a food for nails and nourishes nails; that Nailife is a scientific preparation; that Nailife will transform irregular, broken nails into well-formed symmetrical ones; and that Nailife will make nails strong and healthy.

In truth and in fact the respondents' product has no value whatever in the treatment of dry, brittle, and splitting nails, and does not constitute a competent and effective treatment for nails. Said product is not the perfect nail food, and has no value as a nail food. It is not a scientific preparation, and it will not transform irregular broken nails into well-formed symmetrical ones. Said product does

not make nails strong and healthy or have any value other than a protective covering for nails or as a nail polish.

PAR. 5. There are among the competitors of respondents as herein set out manufacturers and distributors of like and similar products who truthfully advertise and represent the nature and merit 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 nature and merit that it does not have.

PAR. 6. Each and all of the false and misleading statements made by the respondents in designating or describing their product, and in offering for sale and selling the same, were and are calculated to, and had, and now have, a tendency and capacity to, and do mislead a substantial part of the consuming public into the erroneous belief that all of the said representations are true, and into the purchase of respondents' said product on account of said erroneous belief.

PAR. 7. As a result thereof trade has been unfairly diverted from those competitors of respondents engaged in similar businesses herein referred to. 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 and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 16th day of November 1937, issued and subsequently served its complaint in this proceeding upon respondents, Leopold Levoy and Nathan C. Blacher, individually and trading as Sunbeam Laboratories, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Clarence T. Sadler, attorney for the Commission, and in opposition to the allegations of the complaint by A. Frederick Lamken, attorney for the

respondents, before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint, respondents not having filed brief, and oral argument not having been requested; and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Leopold Levoy and Nathan C. Blacher, are individuals trading as Sunbeam Laboratories and having their principal place of business in the city of Los Angeles, State of California.

PAR. 2. Respondents are now and have been for more than 1 year last past engaged in the business of selling and distributing a cosmetic designated as "Nailife." Respondents sell said preparation direct to retail dealers for ultimate resale to members of the purchasing public and also cause said preparation to be sold to such retail dealers by respondents' brokers located in Chicago, Ill., and New York City, N. Y. Respondents cause said preparation, when sold by them, to be transported from their aforesaid place of business in the State of California or from the State of origin of shipment thereof to the purchasers thereof at their respective points of location in various States of the United States other than the State of the origin of the shipment thereof.

PAR. 3. Respondents are engaged in substantial competition in commerce among and between the various States of the United States with other individuals and with corporations, firms, and partnerships engaged in the business of selling and distributing preparations designed and intended for, and used for, the same general purposes for which respondents recommend the use of their said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their preparations or the properties thereof and who do not make any other false statements in connection with the sale and distribution of their respective preparations.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their said preparation, respondents cause advertisements containing representations and

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claims with respect to the properties of said preparation and the results which may be expected to be obtained from the use thereof to be inserted on display cards which the respondents distribute to retail dealers, purchasers of said preparation, situated in various states of the United States, for the use of such retail dealers in inducing members of the public to purchase such preparation. Among and typical of the representations contained in said advertisements so used and disseminated as aforesaid are the following:

Use Nailife. The perfect nail food for dry brittle splitting or soft nails.

For dry brittle splitting nails use Nailife the perfect nail food. Be proud of your nails. Nailife, a scientific preparation, will transform irregular broken nails into well formed symmetrical ones.

Use Nailife. The perfect nail food for dry brittle splitting or soft nails.

On various of the aforesaid display cards used and disseminated as aforesaid, the respondents caused to be pictorially represented two human hands. On one of such hands the nails of the fingers are irregular and under which appears the word "Before." On the other of such hands the nails of the fingers are perfectly regular and under which appears the word "After."

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondents' preparation and its effectiveness in use, the respondents have represented directly and by implication, among other things, that the use of said preparation constitutes a competent and effective treatment for dry, brittle, and splitting nails; that such preparation is the perfect nail food and nourishes the nails; that such preparation is a scientific preparation; that such preparation will transform irregular, broken nails into well-formed, symmetrical nails; and that such preparation will make nails strong and healthy.

PAR. 6. "Nailife" is the trade name for respondents' preparation which is a liquid paste composed of lanolin, wax, perfume, and coloring. Such preparation contains approximately 90 percent lanolin, 10 percent wax, and a very small amount of coloring and perfuming matter.

PAR. 7. The aforesaid representations, used and disseminated by the respondents in the manner above described, are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact, the use of such preparation is not a competent and effective treatment for dry, brittle, and splitting nails. Such preparation is not the perfect nail food. Such preparation has no value as a nail food. The nails of the fingers cannot be fed by an external application such as respondents' preparation. Such preparation is

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not a scientific preparation. The use of such preparation will not transform irregular, broken nails into well-formed, symmetrical nails. The use of such preparation does not make nails strong and healthy. The value of the use of such preparation is limited to forming a protective covering for nails. The claims of the respondents as to the efficacy in use of the said preparation are grossly exaggerated, false, and misleading and greatly exceed any claims as to the efficacy of said preparation which might truthfully be made.

PAR. 8. The use by the respondents of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparation has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondents' said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondents' said preparation. As a result, trade has been diverted unfairly to the respondents from their competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations. In consequence thereof, injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

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It is ordered, That respondents, Leopold Levoy and Nathan C. Blacher, individually and trading as Sunbeam Laboratories, or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a cosmetic preparation for use on finger nails now known as "Nailife," whether sold under that name or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said preparation is beneficial for dry or splitting nails.
2. Representing that said preparation is the perfect nail food.
3. Representing that "Nailife" is a scientific preparation which will transform irregular, broken nails into well-formed, symmetrical ones.
4. Representing that said preparation will make nails strong and healthy.

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
AL DUNLAP, TRADING AS THE DETECTIVE PUBLISHING
COMPANY

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

Docket 3402. Complaint, May 5, 1938—Decision, Jan. 5, 1939

Where an individual engaged in the manufacture of a shield or vest designated by him "Durite Bullet Proof Vest," and in sale and distribution thereof to purchasers in other States and in the District of Columbia, and in competition with those engaged in offer and sale of similar products, who truthfully describe or designate the same; in advertising his said vests in periodicals of general circulation throughout the United States—

Represented that said "new Durite Bullet Proof Vest," had "stood the highest Government test of *All Bullet Proof Vests*," facts being his said product did not, upon tests thereof by Government agencies, stand the highest test of all such products, and never had stood the highest Government test;

With effect of misleading and deceiving a substantial portion of purchasing public into erroneous belief that all said claims and representations were true, and with the result, as a direct consequence of such mistaken and erroneous belief thus induced, that a substantial number of such public bought substantial quantity of his said products and trade was diverted unfairly to him from competitors engaged in manufacture and sale of so-called bullet proof vests and who do not misrepresent quality or efficacy 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. Robert S. Hall*, trial examiner.

Mr. Floyd O. Collins for the Commission.

Smith, Marx & Smith, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Al Dunlap, trading as The Detective Publishing Co., hereinafter referred to as respondent, has violated the provisions of said act, 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, Al Dunlap, is an individual trading as The Detective Publishing Co. The principal place of business of the said respondent is 1029 South Wabash Avenue, Chicago, Ill. Re-

spondent is now, and has been for the past several years, engaged in the manufacture, sale, and distribution of a shield or vest which he designates "Dunrite Bullet Proof Vest." Respondent causes said vest when sold to be shipped and transported from his place of business in the city of Chicago, Ill., to purchasers thereof, located at various points in States of the United States other than the State of Illinois, and in the District of Columbia. Respondent maintains, and has at all times herein mentioned maintained, a course of trade in said product in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. Respondent in the course and conduct of his business, as aforesaid, is now, and at all times herein referred to has been, in substantial competition with other individuals and with firms, partnerships, and corporations also engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of other articles which are advertised and sold for the same and similar purposes and uses for which respondent's product is advertised and sold.

PAR. 3. In the course and conduct of his business and for the purpose of inducing members of the purchasing public to purchase his said product, respondent has caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States. In all of said advertising matters, as hereinabove alleged, respondent has caused his trade name and the name of said product to be prominently and conspicuously displayed, together with the following statements:

This new Dunrite Bullet Proof Vest has stood the highest Government test of All Bullet Proof Vests.

From our laboratories has come a new invention which gives this new Dunrite Bullet Proof Vest 20% more resistance, and yet It Is Lighter, Better-Fitting and More Comfortable than any other vest.

PAR. 4. All of said statements, as above set out, together with many other similar statements appearing in the respondent's advertising and literature, purport to be descriptive of respondent's product, Dunrite Bullet Proof Vest. In all of the respondent's advertising matter and literature, the respondent represents, through the statements herein set out and other statements of like import and effect, (a) that said vest is bulletproof; (b) that said vest will effectively deflect bullets fired by or from all makes of revolvers and rifles now in use; (c) that said vest will pass all Government tests for bulletproof vests; (d) that said vest has been submitted to and has withstood the highest Government tests; (e) that the said Al Dunlap maintains a labora-

tory or laboratories for testing said product as to its efficacy and quality.

PAR. 5. All of the claims and representations made by the respondent with respect to the quality and efficacy of his said product are grossly exaggerated, false, and misleading. In truth and in fact, said vest is not bulletproof, for it will not effectively deflect bullets fired from all makes of rifles, pistols, or revolvers now in use. There are many makes of rifles, pistols, and revolvers which, when fired, propel a bullet with sufficient force to perforate said vest. Said product is not now, and never has been, capable of withstanding the highest Government test for like articles. Respondent does not now maintain, and never has maintained, a laboratory or laboratories for testing said article or similar articles. Said product is not bulletproof and never has been bulletproof.

PAR. 6. The various statements and representations made by the respondent in describing his product, Dunrite Bullet Proof Vest, and the quality and efficacy of said product when used, as hereinabove set out, were and are calculated to, and had, and now have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true. As a direct consequence of said mistaken and erroneous beliefs induced by the acts and representations of respondent, as hereinabove set out, a substantial number of the purchasing public has purchased a substantial number of respondent's products, with the result that trade has been diverted unfairly to the respondent from competitors who are likewise engaged in manufacturing and selling so-called bulletproof vests, and who do not misrepresent the quality or efficacy of their respective products. As a direct result of the aforesaid unfair acts, and false and misleading representations of the respondent, 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 aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

mission, to define its power and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon respondent, Al Dunlap, an individual trading as the Detective Publishing Co., charging respondent with the use of unfair methods of competition in interstate commerce in violation of section 5 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 F. O. Collins, an attorney for the Commission, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and opposition to the allegations of the complaint by Emory J. Smith, 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, 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 an individual, Al Dunlap, trading as Detective Publishing Co. His principal place of business is 1029 South Wabash Avenue, Chicago, Ill. He now is and has been for several years past engaged in the manufacture, sale, and distribution of a shield or vest which respondent designates "Durite Bullet Proof Vest." Respondent causes said vest, when sold, to be shipped and transported from his place of business in the city of Chicago, Ill., to purchasers thereof located at various points in States in the United States other than the State of Illinois, and in the District of Columbia. He has during such time maintained a course of trade in such product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. The respondent in the course and conduct of his business and for the purpose of inducing members of the purchasing public to purchase his product aforesaid, has caused advertisements to be inserted in periodicals of general circulation, throughout the United States. In such advertising method, respondent has caused his trade name and the name of said product to be prominently and conspicuously displayed with the following statement:

This new Durite Bullet Proof Vest has stood the highest Government test of All Bullet Proof Vests.

PAR. 3. Respondent manufactures two types of vests and designates them bulletproof vests. These types are manufactured alike. They are termed "super model" and "standard model." The latter has fewer plates than the former. They are constructed with thin layers of steel about the thickness of a razor blade. These plates are placed in overlapping pockets, then laminated together in order to conform to the shape of the body. Such compose a complete coverage of the body and are worn like unto a corset. They are calculated to repel bullets discharged from small firearms such as pistols.

PAR. 4. The Federal Bureau of Investigation of the Department of Justice requested the National Bureau of Standards to make tests of the respondent's product, and also tests of similar products manufactured and sold by competitors, and such tests disclosed the respondent's product did not stand the highest Government test of all bulletproof vests, and has never stood the highest Government test.

PAR. 5. There have been and are individuals, partnerships, and corporations, offering for sale and selling in competition with respondent in interstate commerce, bulletproof vests and such other competitors of respondent offering for sale and selling in like commerce such product truthfully describe or designate such in their course of commerce of such product.

PAR. 6. The statements and representations made by respondent in describing his product as hereinabove set out were and are calculated to, and now have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true. As a direct consequence of said mistaken and erroneous beliefs induced by the acts and representations of respondent, as hereinabove set out, a substantial number of the purchasing public has purchased a substantial number of respondent's products, with the result that trade has been diverted unfairly to the respondent from competitors who are likewise engaged in manufacturing and selling so-called bulletproof vests, and who do not misrepresent the quality or efficacy of their respective products. As a direct result of the aforesaid unfair acts; and false and misleading representations of the respondent, injury has been, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of the respondent, Al Dunlap, trading as The Detective Publishing Co., are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein (oral arguments having been waived), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Al Dunlap, individually and trading as The Detective Publishing Co., or trading in any other manner, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of armored vests in interstate commerce or in the District of Columbia, do forthwith cease and desist:

Representing, directly or otherwise, that said armored vests have successfully stood the highest Government test of all bulletproof vests.

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
FREDERICK LOESER & 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 3502. Complaint, July 20, 1938—Decision, Jan. 5, 1939

Where a corporation engaged in sale of garments of various kinds, ladies' wearing apparel, fabrics, and other like articles of merchandise, to members of the purchasing and consuming public in various States and in the District of Columbia, including certain products not composed entirely of silk, product of cocoon of the silkworm, as long definitely understood in minds of purchasing and consuming public from said word, and held in high esteem and confidence for its preeminent qualities in products made thereof, but composed in part of chemical fiber or fabric rayon, which simulates other in appearance and feel and is practically indistinguishable therefrom by purchasing and consuming public, and, as thus engaged, in substantial competition with others engaged in sale and distribution of garments of various kinds, ladies' wearing apparel, fabrics, and other like products, in commerce and in said District, and including those who do not misrepresent, in any manner, the nature, character, or quality of the products offered and sold by them; in advertising its said merchandise in newspapers and other publications of general circulation among the various States—

- (a) Made use of such words as "Satin," "Taffeta," and "Crepe," and of such words as "Acetate," "Celanese," "Bemberg," "Seraceta," and "Mallinson's" in connection therewith, through such statements as "Mallinson's Pure Dye Washable Sheer Bembergs," "Acetate Crepe," "H. R. Mallinson's Washable Bemberg Printed Triple Sheers," "Seraceta Taffeta," "Silky Acetate," and "Celanese Jersey," in describing and referring, as the case might be, to various dresses, frocks, and dress fabrics, and to certain blouses and bathing suits, and thereby represented that products thus referred to were composed entirely of silk, product of cocoon of silkworm, as long associated in the public mind with dress goods and other items of wearing apparel designated, described and referred to as "satin," "taffeta," and "crepe," and, through long and favorable association on the part of a substantial portion of the purchasing and consuming public of name "Mallinson's," as standing for manufacturer of silk, facts being they were composed entirely of rayon, and words "Celanese," "Acetate," "Bemberg," and "Seraceta," used separately or in combination with other words aforesaid, were not sufficiently well-known and understood by purchasing and consuming public to inform them that merchandise thus described, designated and referred to, was made in whole or in part of rayon, and not silk;
- (b) Made use of words "Silk" and "Pure Dye," through such statements under caption "Pure Dye Silks," as "Pure Dye Woven Sport Stripes," with word "Acetate" in parentheses in small letters immediately thereafter, and words "Chalk White Plain and Novelty Sharkskin Suiting" in large type, followed immediately by word "Acetate" in parentheses and in small letters, and thereby represented that fabrics thus described were composed wholly of

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unweighted silk, product of cocoon of silkworm, as long understood from word "Silk" as aforesaid, and from words "Pure Dye," by substantial portion of purchasing and consuming public, as meaning silk, product of cocoon of silkworm, not subjected to metallic bath resulting in the impregnating of the silk fiber by the metallic substance or substances, facts being they were composed of rayon entirely; and

- (c) Represented certain product as composed of silk, as aforesaid, through use of words "Frosted Shan—The Soft Washable Shantung Weave Acetate," and other fabric as part silk through words "Frosted Crepe (Silk and Acetate)," and certain slips as combination weave of various silks through phrase "Crys-Glo—a certain fabric that is 50% silk and 50% Bemberg," facts being fabrics aforesaid were respectively composed of rayon and spun silk, and of rayon entirely, and slip fabric was made of silk and rayon; and
- (d) Made use of words "Linen Silks" to describe certain hats, and of word "silk" to refer to certain ties, facts being hats thus represented were composed neither of linen nor silk, nor ties of unweighted silk as aforesaid, but hats in question were made entirely of rayon, and ties of said substance and weighted silk;

With capacity and tendency, through failure to describe fabrics and garments aforesaid as composed in whole or in part of rayon, or to use word "rayon" in immediate connection and conjunction with descriptive words or phrases aforesaid, and use of word "silk" to describe garments made of weighted silk, and use of words "Linen Silks" to designate those containing neither linen nor silk, to mislead and deceive substantial portion of purchasing and consuming public into erroneous and mistaken belief that such representations were true, and with result that substantial portion of such public, on account of such mistaken and erroneous beliefs, was induced to purchase fabrics, garments, and other articles of merchandise from it, and trade was thereby diverted unfairly to it from competitors in commerce as aforesaid:

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

Mr. George W. Williams for the Commission.

Cullen & Dykman, of Brooklyn, N. Y., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Frederick Loeser & Co., Inc., a body corporate, hereinafter referred to as respondent, has violated the provisions of 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, Frederick Loeser & Co., Inc., 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 Fulton and Bond Streets, Brooklyn, N. Y., is

now, and for many years last past has been, engaged in the business of operating a department store, and in selling and delivering therefrom garments of various kinds, ladies' wearing apparel, fabrics, and other articles of merchandise. It sells, and has sold and distributed, such articles of merchandise to members of the purchasing and consuming public located in the 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 to be shipped from its place of business in Brooklyn, State aforesaid, to the various purchasers thereof located in the various States of the United States, other than the said State of New York, and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by said respondent in said merchandise sold by it in commerce between and among the various States of the United States, and in the District of Columbia.

Respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations and with individuals, 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 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, such merchandise, caused, and now causes, advertising matter to be inserted in newspapers and other publications having an interstate circulation. In certain of said advertisements respondent has made various statements purported to be descriptive of the nature, quality, and character of its merchandise, among which are the following:

- Dresses and hats as "Linen Silks";
- Dresses as "Silk Jersey";
- Men's neckties as "Silk" (the same being in fact composed of weighted silk and rayon);
- Certain Couturier's Blouses as "in silk pique";
- Women's slips as "Crys-Glo—a satin fabric that is 50% silk and 50% bemberg" (the same being in fact composed of silk and rayon);
- Women's slips as "Seraceta Taffeta";
- Said advertisement covering preceding two items is headed by a large caption featuring "Pure Dye Silks";
- Fabrics as "Pure Dye Woven Sports Stripes" in large caps with "acetate" in parentheses in small lettering immediately following same;
- "Chalk White Plain and Novelty Sharkskin Suiting" in large caps immediately followed by the word "acetate" in parentheses and small lettering. (The last two items being contained in one advertisement captioned in display form by the words "Pure Dye Silks");
- Dresses as "Frosted Shan—The soft washable Shantung-weave acetate" (a fabric in fact composed of rayon and spun silk);

Swimming suits as "silky acetate";
Dresses as "Mallinson's Pure Dye Washable Sheer Bembergs";
Frocks as "Acetate Crepe";
Bathing suits as "Celanese Jersey";
Dresses as "frost-crepe (silk and acetate)";
Summer dress fabrics as "H. R. Mallinson's Washable Bemberg Printed Triple Sheers."

The use by the respondent of the descriptive words above set out, and as above set out, had, and has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous belief, except where otherwise specifically indicated herein, that such products were, and are, made entirely of unweighted silk or some fiber or fabric other than rayon, or unweighted silk and linen or of materials other than rayon, when, in truth and in fact, said products were made wholly of rayon, except where otherwise specifically indicated herein.

The representations above set forth were, and are, false and misleading in that said garments and fabrics so represented, designated and referred to are not described as being composed in whole or in part of rayon, as the case may be, in that the word "rayon" was not used in immediate connection and conjunction with such descriptive words and phrases, and such representations had, and have, the tendency and effect of concealing the fact that such fabrics and garments were, and are, made in whole or in part of rayon, as the case may be, when it was, and is, the duty of respondent to make disclosure of the fact that such fabrics and garments were, and are, composed in whole or in part of rayon, by using the word "rayon" in immediate connection and conjunction with such descriptive words or phrases except the term "Pure Dye," which may not be used in connection with any such articles but those composed of unweighted silk, in such a way and manner as to apprise and inform the purchasing public that such fabrics and garments were, and are, composed in whole or in part of rayon, as the case may be, and in that certain of said garments were, and are, designated and described as being made of "silk" when they were, and are, in fact made of weighted silk, but were not designated or described in such a way as to indicate that the same were, and are, made of weighed silk, and in that certain of said garments were designated as "linen silks" when, in truth and in fact, the same were not composed, in any part, of either linen or silk.

PAR. 3. The word "Silk" for many years last past has had, and still has, in the minds of the purchasing and consuming public generally, 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 fiber has long been woven into a variety of fabrics, and a number of distinctive terms have been applied to the fabrics resulting from the different types of treatment and weaves of silk fiber. Dress goods and other similar products, designated, described or referred to as "Satin," "Taffeta," "Crepe," and words of similar import and meaning, when used alone, and until qualified, designate or describe the materials from which the fabric or garment is made, and have been for a long time, and at the present time still are, associated in the public mind with materials made from the product of the cocoon of the silk worm, commonly known and understood by the purchasing and consuming public as silk.

"Rayon" is the name of a chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk and is, by the purchasing and consuming public, practically indistinguishable from silk.

The words "Celanese," "Acetate," "Bemberg," and "Seraceta," when used either separately or in combination or conjunction with the words "Crepe," "Satin," "Taffeta," or other words or phrases of similar import or meaning, are not sufficiently well known and understood by the purchasing and consuming public to indicate to, or inform them, that the merchandise so described, designated or referred to is made in whole or in part of a material other than silk, to wit, rayon.

"Linen" is the name of a thread, yarn, fabric, or article made wholly of fiber or flax.

The words "Pure Dye" have been for a long time, and at the present time still are, associated in the minds of a substantial portion of the purchasing and consuming public, with and as designating or meaning, unweighted silk, the product of the cocoon of the silk worm, and also with garments made therefrom; that is to say, said words are understood by a substantial portion of said public to refer to silk that has not been subjected to a metallic bath, resulting in the metallic substance or substances being absorbed by the silk fiber.

The use of the word "Mallison's," a name long and favorably known to at least a substantial portion of the purchasing and consuming public as a manufacturer of silk and as being associated with silk exclusively, in connection with the word "Bemberg" (as above used) and without qualifying the same by the word "rayon," creates the implication that the article of merchandise referred to is silk, which implication is emphasized by the further use of the words "Pure Dye," a term synonymous with silk.

PAR. 4. There are now, and have been at all times mentioned herein, competitors of respondent engaged in selling and distributing silk, rayon, and other fabrics and garments and other articles of merchandise made therefrom, in commerce between and among the various States of the United States and in the District of Columbia, who do not misrepresent in any manner the nature, character, or quality of the products offered for sale and sold by them.

PAR. 5. The use by the respondent of the representations set forth hereinabove, and as used, has had, and has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that such representations were, and are, true. On account of such mistaken and erroneous beliefs a substantial portion of the purchasing and consuming public has been, and is being, induced to purchase fabrics, garments, and other articles of merchandise from respondent, and thereby trade has been, and is being, diverted unfairly to respondent from competitors named in paragraph 1 hereof. As a result thereof injury has been, and is now being, done, by respondent, to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 20, 1938, issued and served its complaint in this proceeding upon respondent, Frederick Loeser & Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 20, 1938, respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. 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 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, Frederick Loeser & 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 office and principal place of business located at Fulton and Bond Streets, Brooklyn, N. Y. It is now, and for many years last past has been, engaged in the business of selling garments of various kinds, ladies' wearing apparel, fabrics, and other like articles of merchandise. It sells and has sold and distributed such articles of merchandise to members of the purchasing and consuming public located in the 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 Brooklyn, N. Y., to the various 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 course of trade in said merchandise sold by respondent in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of garments of various kinds, ladies' wearing apparel, fabrics, and other like 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 and in soliciting the sale of and selling such merchandise, the respondent caused certain advertising matter to be inserted in newspapers and other publications having a general circulation between and among the various States of the United States. Certain of these advertisements purporting to be descriptive of the nature, quality, and character of respondent's merchandise were in fact false and misleading.

In respondent's advertising with reference to various dresses, frocks, and dress fabrics, the respondent, among others, used the following descriptive words or phrases: "Linen Silks," "Silk Jersey," "Mallinson's Pure Dye Washable Sheer Bembergs," "Acetate Crepe," and "H. R. Mallinson's Washable Bemberg Printed Triple Sheers." In other descriptive advertising the respondent represented hats as "Linen Silks"; certain couturier blouses as "In Silk Pique" and "Seraceta Taffeta"; and bathing suits as "Silky Acetate" and "Celanese Jersey."

By means of the above descriptive words and phrases and others of similar import, the respondent represented that said articles of

merchandise were composed entirely of silk, the product of the cocoon of the silk worm, while in truth and in fact the products so described were composed entirely of rayon.

In its advertising under the caption "Pure Dye Silks" the respondent made the following representations: "Pure Dye Woven Sport Stripes" with "Acetate" in parentheses in small letters immediately following same and "Chalk White Plain and Novelty Sharkskin Suiting" in large type immediately followed by the word "Acetate" in parentheses in small letters.

By this means the respondent represented that the fabrics so described were composed wholly of unweighted silk, the product of the cocoon of the silk worm, while in truth and in fact said fabrics were entirely composed of rayon.

In certain advertising the respondent, by use of the words "Frosted Shan—The Soft Washable Shantung Weave Acetate," represented said fabric to be composed of silk, the product of the cocoon of the silk worm, when in truth and in fact said fabric was instead composed of rayon and spun silk. In the same manner, by the use of the words "Frosted Crepe (Silk and Acetate)," respondent represented said fabric to be composed of part silk, while in fact said fabric was composed entirely of rayon. Also, in describing women's slips the respondent by use of the phrase "Crys-Glo—a certain fabric that is 50% silk and 50% Bemberg" represented said fabric to be a combination weave of various silks when in fact said fabric was composed of silk and rayon. In connection with describing men's neckties, respondent represented by the use of the word "silk" that the fabric in said ties was composed of unweighted silk, the product of the cocoon of the silk worm, when in fact said ties were made of weighted silk and rayon.

PAR. 3. By reason of the fact that "rayon" is a chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk and is by the purchasing and consuming public, practically indistinguishable from silk, the use by this respondent of the various descriptive words and phrases above set out, as well as others of similar import and meaning, has had and does have a capacity and tendency to mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous belief that such products were and are made entirely of unweighted silk or unweighted silk in combination with some fiber or fabric other than rayon.

Furthermore, the respondent in connection with the garments and fabrics so designated has not described them as being composed in whole or in part of "rayon," nor has the respondent used the word

rayon in immediate connection and conjunction with such descriptive words and phrases which has the result of concealing that such garments and fabrics are in fact composed in whole or in part of rayon. Furthermore, certain of said garments and fabrics are designated as being made of "silk" when they were and are made of weighted silk. Certain other garments and fabrics were designated "Linen Silks" when in truth and in fact they were not composed in any part of linen or silk.

PAR. 4. The word "silk" for many years last past has had and still has in the minds of the purchasing and consuming public generally 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 fiber has long been woven into a variety of fabrics and a number of distinctive terms have been applied to the fabrics resulting from the different types of weaving of silk fiber. Dress goods and other items of women's apparel designated, described and referred to as "Satin," "Taffeta," and "Crepe," have been for a long time and at the present time still are associated in the public mind with fabrics made from silk, the product of the cocoon of the silk worm.

The words "Celanese," "Acetate," "Bemberg," and "Seraceta," when used either separately or in combination or conjunction with the words "Crepe," "Satin," "Taffeta," or other words or phrases of similar import or meaning, to designate or describe rayon, are not sufficiently well known and understood by the purchasing and consuming public to indicate to, or inform, them that the merchandise so described, designated or referred to is made in whole or in part of a material other than silk, to wit, rayon.

The words "Pure Dye" have been for a long time, and still are, associated in the minds of a substantial portion of the purchasing and consuming public, with and as designating or meaning, unweighted silk, the product of the cocoon of the silk worm, and also with garments made therefrom; that is to say, said words are understood by a substantial portion of said public to refer to silk that has not been subjected to a metallic bath, resulting in the metallic substance or substances impregnating the silk fiber.

The name "Mallinson's" is a name long and favorably known to a substantial portion of the purchasing and consuming public as a manufacturer of silk and as being associated with silk exclusively, and when used in connection with the word "Bemberg" (as above used) to designate or describe rayon and without qualifying the same by the word "rayon," creates the implication that the article of merchandise

referred to is silk, which implication is further emphasized by respondent by the use in conjunction therewith of the words "Pure Dye," a term synonymous with silk.

PAR 5: There are now, and have been at all times mentioned herein, competitors of respondent engaged in selling and distributing silk, rayon, and other fabrics and garments and other articles of merchandise made therefrom, in commerce between and among the various States of the United States and in the District of Columbia, who do not misrepresent in any manner the nature, character or quality of the products offered for sale and sold by them.

PAR. 6. The use by the respondent of the representations as hereinabove set forth, and as used, have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that such representations were, and are, true. On account of such mistaken and erroneous beliefs a substantial portion of the purchasing and consuming public has been, and is being, induced to purchase fabrics, garments, and other articles of merchandise from respondent, and thereby trade has been, and is now being, diverted unfairly to respondent from its competitors in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice and injury of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Frederick Loeser & Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fabrics, ladies' wearing apparel, and garments and other like articles of merchandise in

interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Using the words "Satin," "Taffeta," "Crepe," or any other word or words of similar import or meaning, to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silk worm, unless said descriptive word or words are used to designate the type of weave or construction, in which case such words shall be qualified by using in immediate connection and conjunction therewith, in letters of at least equal size and conspicuousness, a word or words clearly naming or describing the fiber or material from which said fabric or product is made.

2. Using the word "silk," or the term "pure dye," or any other word or words of similar import or meaning, to designate or describe fabrics which are not composed wholly of unweighted silk, the product of the cocoon of the silk worm, provided that, in the case of a fabric or product composed in part of unweighted silk and in part of rayon or a material or materials other than unweighted silk, there is used in immediate connection or conjunction therewith, in letters of equal size and conspicuousness, a word or words accurately describing and designating each constituent fiber or material thereof in the order of its predominance by weight, beginning with the largest single constituent.

3. Using the words "Acetate," "Celanese," "Bemberg," "Seraceta," or "Mallinson," either alone or in combination with any other word or words, as descriptive of garments, fabrics, or material not composed wholly of silk, the product of the cocoon of the silk worm, unless such words are immediately accompanied by a word or words designating the substance, fiber or material other than silk of which said garments, fabrics, or material are composed with designation of each constituent fiber or material thereof in the order of its predominance by weight beginning with the largest single constituent.

It is further ordered, That the respondent, Frederick Loeser & Co., 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 this order.

IN THE MATTER OF

HARRY GOROV TRADING AS ISABELLA LABORATORIES,
HARTMAN WHOLESALE DRUG CO., INC., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3609. Complaint, Sept. 28, 1938—Decision, Jan. 7, 1939*

Where an individual, corporate wholesale drug concern, and eight retail drug companies located in Chicago, and engaged in sale and distribution, under trade name "281," of medical preparation for reducing, active ingredient in which was a powerful stimulator of body metabolism which resulted, through accelerated rate thereof, in the more rapid destruction of body tissues and particularly fat, and also in marked toxic effect, causing, in some cases, direct degenerative changes in the vital organs and formation of bilateral cataracts on the eyes of users—

Caused to be disseminated false advertisements which contained, as typical, such representations as that said compound was recognized and widely prescribed by practicing physicians as aid in weight reduction, requiring no change in diet or normal mode of living or exercising, and that voluntary letters received during the past 4 years testified to the effect that no ill effects were experienced, and thereby disseminated, or caused to be disseminated, false advertisements in commerce which induced, or were likely to induce, purchase of aforesaid drug and were intended so to do;

Facts being preparation in question was not widely prescribed as aforesaid, many ill effects were often experienced from use thereof, and such use, under conditions prescribed in said advertisements and under such conditions as were customary and usual, was injurious to the health of the users and caused loss or serious impairment of eyesight, and injured and impaired other functions of the body;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that their said representations were true, and with result that public, acting under mistaken and erroneous belief induced by such false and misleading statements and representations, purchased substantial volume of said preparation:

Held, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Gerard A. Rault for the Commission.

Waller & Nedow, of Chicago, Ill., for respondents, with the exception of Harry Gorov, who was represented by *Mr. Eugene Bernstein*, of Chicago, Ill.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Harry Gorov, an individual trading as Isabella Laboratories, and Hartman Wholesale

Drug Co., Inc., Hartman Wabash Drug Co., Hartman Drug Co., Hartman North Shore Drug Co., Hartman Pharmacy, Inc., Hartman Medinah Drug Co., Hartman LaSalle Drug Co., Hartman Stony Island Drug Co., and Hartman Sheridan Drug Co., corporations, hereinafter referred to as respondents, have violated the provisions of the 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 Harry Gorov is an individual trading and doing business under the name of Isabella Laboratories with his principal place of business located at 220 South State Street, Chicago, Ill.

Hartman Wholesale Drug Co., Inc., is a corporation created and existing under the laws of the State of Illinois with its office and principal place of business located at 59 East Van Buren Street, Chicago, Ill.

Hartman Wabash Drug Co. is a corporation created and existing under the laws of the State of Illinois with its office and principal place of business located at 401 South Wabash Avenue, Chicago, Ill.

Hartman Drug Co. is a corporation created and existing under the laws of the State of Illinois with its office and principal place of business located at 338 South Clark Street, Chicago, Ill.

Hartman North Shore Drug Co. is a corporation created and existing under the laws of the State of Illinois with its office and principal place of business located at 4600 Broadway, Chicago, Ill.

Hartman Pharmacy, Inc., is a corporation created and existing under the laws of the State of Illinois with its office and principal place of business located at 2059 West Madison Street, Chicago, Ill.

Hartman Medinah Drug Co. is a corporation created and existing under the laws of the State of Illinois with its office and principal place of business located at 507 North Michigan Avenue, Chicago, Ill.

Hartman LaSalle Drug Co. is a corporation created and existing under the laws of the State of Illinois with its office and principal place of business located at 41 South LaSalle Street, Chicago, Ill.

Hartman Stony Island Drug Co. is a corporation created and existing under the laws of the State of Illinois with its office and principal place of business located at 6701 Stony Island Avenue, Chicago, Ill.

Hartman Sheridan Drug Co. is a corporation created and existing under the laws of the State of Illinois with its office and principal place of business located at 701 Sheridan Road, Chicago, Ill.

PAR. 2. The individual respondent and corporate respondents, hereinabove named, have acted together and in cooperation with each other in carrying out the acts and practices herein alleged.

PAR. 3. The individual respondent, Harry Gorov, trading and doing business as Isabella Laboratories, is engaged in distributing a medical preparation sold under the trade name of "281."

Corporate respondent Hartman Wholesale Drug Co., Inc., is engaged in wholesaling drugs to the other corporate respondents named herein. Included among the drugs so sold to the other corporate respondents is the preparation known as "281." All of said other corporate respondents are engaged in the retail drug business and sell among other drugs the preparation known as "281."

PAR. 4. In the course and conduct of their said businesses, and for the purpose of inducing the purchase of the preparation known as "281," respondents have caused false advertisements containing representations as to the safety with which said medicine product "281" may be used to be disseminated by means of the United States mails, by means of circulars and other advertising material distributed between and among the various States of the United States, and by means of advertisements inserted in newspapers and other publications distributed and circulated between and among the various States of the United States and in the District of Columbia. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

A SIMPLE METHOD FOR
REDUCING WEIGHT

"2 8 1"

"281" is a compound recognized and widely prescribed by practicing physicians as aids in weight reduction. No change in diet or the normal mode of living or exercising is necessary. Voluntary letters received during the past 4 years testify to the fact that no ill effects are experienced.

The representations contained in the advertisement hereinabove set out, and in other advertisements similar thereto but not set out herein, are false, misleading, and untrue. This preparation is not widely prescribed by practicing physicians, as an aid in reducing weight. Many ill effects are often experienced from its use. Said advertisements of respondents are also false in that they fail to reveal that the use of this product under the conditions prescribed in said advertisements, and under such conditions as are customary and usual, may be injurious to the health of the user thereof by causing loss or serious impairment of eyesight and in other ways injuring or impairing the functions of the human body.

The true facts are that the active agent contained in said preparation "281" is the drug dinitrocresol. This drug is a powerful stimulator of body metabolism. Through the accelerated metabolism rate

caused by the use of this drug body tissues, particularly fat, are more rapidly destroyed. This drug, however, has a marked toxic effect, causing, in some cases, direct degenerative changes in the vital organs and the formation of bilateral cataracts on the eyes of the persons subjected to its use.

PAR. 5. The aforesaid false advertisements disseminated in commerce in the manner above described induce, or are likely to induce, directly or indirectly, the purchase of a drug, to wit: the preparation known as "281."

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the product "281" disseminated as aforesaid has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of respondent's said medical preparation as a result of such erroneous and mistaken beliefs.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 28, 1938, issued and served its complaint in this proceeding upon respondents charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 19, 1938, respondent Harry Gorov, trading as Isabella Laboratories, filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. On November 18, 1938, all of the other respondents named herein filed their answer, in which answer they also admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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 Harry Gorov is an individual trading and doing business under the name of Isabella Laboratories with his principal place of business located at 220 South State Street, Chicago, Ill. Respondent Hartman Wholesale Drug Co., Inc., is a corporation created and existing under the laws of the State of Illinois, with its office and principal place of business located at 59 East Van Buren Street, Chicago, Ill. Respondent Hartman Wabash Drug Co. is a corporation created and existing under the laws of the State of Illinois, with its office and principal place of business located at 401 South Wabash Avenue, Chicago, Ill. Respondent Hartman Drug Co. is a corporation created and existing under the laws of the State of Illinois, with its office and principal place of business located at 338 South Clark Street, Chicago, Ill. Respondent Hartman North Shore Drug Co. is a corporation created and existing under the laws of the State of Illinois, with its office and principal place of business located at 4600 Broadway, Chicago, Ill. Respondent Hartman Pharmacy, Inc., is a corporation created and existing under the laws of the State of Illinois, with its office and principal place of business located at 2059 West Madison Street, Chicago, Ill. Respondent Hartman Medinah Drug Co. is a corporation created and existing under the laws of the State of Illinois, with its office and principal place of business located at 507 North Michigan Avenue, Chicago, Ill. Respondent Hartman LaSalle Drug Co. is a corporation created and existing under the laws of the State of Illinois, with its office and principal place of business located at 41 South LaSalle Street, Chicago, Ill. Respondent Hartman Stony Island Drug Co. is a corporation created and existing under the laws of the State of Illinois with its office and principal place of business located at 6701 Stony Island Avenue, Chicago, Ill. Respondent Hartman Sheridan Drug Co. is a corporation created and existing under the laws of the State of Illinois, with its office and principal place of business located at 701 Sheridan Road, Chicago, Ill.

PAR. 2. The individual respondent and corporate respondents, named in paragraph 1, have acted together and in cooperation with each other in carrying out the acts and practices herein found.

PAR. 3. The individual respondent, Harry Gorov, trading and doing business as Isabella Laboratories, is engaged in distributing a medical preparation sold under the trade name of "281."

Corporate respondent Hartman Wholesale Drug Co., Inc., is engaged in wholesaling drugs to the other corporate respondents named herein.

Included among the drugs so sold to the other corporate respondents is the preparation known as "281." All of said other corporate respondents are engaged in the retail drug business and sell among other drugs the preparation known as "281."

PAR. 4. For the purpose of inducing the purchase of the preparation known as "281," all respondents have caused false advertisements containing representations as to the safety with which said medicinal product "281" may be used to be disseminated by means of the United States mails, by means of circulars and other advertising material distributed between and among the various States of the United States, and by means of advertisements inserted in newspapers and other publications distributed and circulated between and among the various States of the United States and in the District of Columbia.

Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

A SIMPLE METHOD FOR
REDUCING WEIGHT

"281"

"281" is a compound recognized and widely prescribed by practicing physicians as aids in weight reduction. No change in diet or the normal mode of living or exercising is necessary. Voluntary letters received during the past 4 years testify to the fact that no ill effects are experienced.

The Commission finds that the representations contained in the advertisement hereinabove set out, and in other advertisements similar thereto but not set out herein, are false, misleading, and untrue. In truth and in fact the preparation designated "281" is not widely prescribed by practicing physicians as an aid in reducing weight. The Commission finds that many ill effects are often experienced from its use. The Commission further finds that the use of said product under the conditions prescribed in said advertisements, and under such conditions as are customary and usual, is injurious to the health of the users thereof. Use of the product causes loss or serious impairment of eyesight. Use of the product also injures and impairs other functions of the human body.

The Commission finds that the active agent contained in said preparation "281" is the drug dinitrocresol, which drug is a powerful stimulator of body metabolism. Through the accelerated metabolism rate caused by the use of this drug body tissues, particularly fat, are more rapidly destroyed. This drug, however, has a marked toxic effect, causing, in some cases, direct degenerative changes in the vital

organs and the formation of bilateral cataracts on the eyes of the persons subjected to its use.

PAR. 5. The aforesaid false advertisements disseminated in commerce in the manner above described induce, or are likely to induce, directly or indirectly, the purchase of a drug, to wit: the preparation known as "281."

PAR. 6. Each and all of the false and misleading statements and representations made by respondents in their advertising in newspapers and other publications and by means of circulars and other advertising material, in offering for sale and selling the product "281," had, and now has, the capacity and tendency to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true. Acting under the mistaken and erroneous beliefs induced by the false and misleading statements and representations, herein above found, the public has purchased a substantial volume of the medicinal preparation designated "281."

CONCLUSION

The above acts and practices of the respondents as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Harry Gorov, trading as Isabella Laboratories, or under any other trade name, and respondents Hartman Wholesale Drug Co., Inc., Hartman Wabash Drug Co., Hartman Drug Co., Hartman North Shore Drug Co., Hartman Pharmacy, Inc., Hartman Medinah Drug Co., Hartman LaSalle Drug Co., Hartman Stony Island Drug Co., and Hartman Sheridan Drug Co., their officers and their respective representatives, agents, and employees do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce by any means for

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the purpose of inducing or which is likely to induce directly or indirectly the purchase of the drug known as "281" whether sold under the same name or under any other trade name, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce directly or indirectly the purchase in commerce of said preparation "281" which advertisements represent that the preparation "281" is prescribed by practicing physicians as an aid in reducing weight and that no ill effects are experienced from its use, and which advertisements fail to state that the use of this preparation under the conditions prescribed in said advertisements or under such conditions as are customary and usual may be injurious to the health of the user thereof by causing loss or serious impairment of eyesight and in other ways injuring and impairing the functions of the human body.

It is further ordered, That respondents shall within 10 days after service upon them of this order file with the Commission an interim report in writing stating whether they intend to comply with this order and if so, setting forth in detail the manner and form in which they intend to comply; and that within 60 days after service upon them of this order said respondents shall 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
SINNOCK & SHERRILL, INC.

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

Docket 3421. Complaint, May 12, 1938—Decision, Jan. 10, 1939

Where a corporation engaged in manufacture of emblem jewelry and of penknives which were made in such a manner as to cause a thin gold shell or covering to be placed upon or over, and to conceal completely, a base metal filling, so that in completed product entire casing or covering or handle of the knife, with exception of skeleton holding blades, appeared to be of gold, as marked thereon as below indicated, and in sale and distribution of said knives in commerce among other States, along with other manufacturers of gold penknives who advertise and sell their products in commerce as aforesaid and in the District of Columbia, and who do not in any manner misrepresent their products, and with others who make penknives of part gold and part base metal mountings and sell and ship their products in commerce as aforesaid and disclose the true composition and character of their said products, and all of whom suffer loss in trade as result of its methods of doing business as below set forth, and, as thus engaged, in competition with others engaged in sale and distribution of like or similar products—

Caused figures and letters 10K and 14K to be stamped, branded, or imprinted upon the bails of its aforesaid penknives, manufactured as above set forth, and thereby represented to members of purchasing public and purchasers that entire casing or mountings thereof were composed wholly of gold of the fineness in quality represented thereon, facts being they were not thus composed as above set forth, in accordance with practice of jewelry manufacturers generally and, more specifically, manufacturers of solid gold penknives, of using such figures and letters to indicate mountings consisting solely of gold of 10K or 14K fineness respectively, nor in accordance with the significance of said figures and letters, as understood by substantial portion of retail dealers and members of purchasing public, as descriptive of the process of manufacture of solid gold knives, and as designating the quality, quantity, character, and fineness of the gold thereon, and as serving as representations to the general purchasing public that the mountings of said knives thus marked or branded consisted of gold of the fineness indicated;

With result that substantial portion of such dealers and members of such public were misled by its said methods and representations into erroneous and mistaken belief that its said knives were solid gold of the thickness, fineness, and character indicated by the mounting or handle thereof, and including the brass or other base metal filler, and of thereby placing in the hands of unscrupulous retailers instrument and means whereby they might perpetrate fraud upon substantial portion of such public through enabling them falsely to represent, offer, and sell its said products as superior or equal to other manufacturers' penknives properly branded as to gold content and fineness, and with tendency and capacity to mislead

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and deceive substantial portion of said public into erroneous belief that said representations were true, and with result, as direct consequence of such mistaken and erroneous belief induced as aforesaid, that number thereof bought substantial quantity of said knives and trade was unfairly diverted from others engaged in sale of similar products among the States, and who truthfully advertise and represent the same:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Morton Nesmith for the Commission.

Goldman & Frier, of New York City, for trustee of respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Sinnock & Sherrill, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Sinnock & Sherrill, Inc., 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 stockroom located at 15 Maiden Lane in the city of New York, State of New York. Respondent owns, operates, and controls a manufacturing plant located in the city of Newark, State of New Jersey. Respondent is now, and for more than 1 year last past has been, engaged in the business of manufacturing emblem jewelry and penknives and in selling and distributing such products in commerce as hereinafter set out principally to the retail trade.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said emblem jewelry and penknives, when sold, to be transported from its principal place of business in New York and from its factory in New Jersey to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said emblem jewelry and penknives so sold and distributed by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, the respondent is now, and has been in substantial competition with other indi-

viduals, firms, and corporations engaged in the business of manufacturing emblem jewelry and penknives and in selling and distributing such products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The respondent, Sinnock & Sherrill, Inc., in the manufacture of its penknives first purchases from cutlery manufacturers or others, the skeletons. A completed knife consists of the skeleton, together with the mountings. The skeleton of a knife consists of the blades with the brass or steel sides riveted to and enclosing them. The mounting of a knife is that part which is attached to the sides of the skeleton to make the completed knife. The respondent, in its manufacture of mountings for its penknives, causes a thin gold shell or covering to be placed upon and over a base metal filling (usually brass) and then causes the thin gold shell or covering, together with the filling, to be attached to or riveted upon the skeleton of the knife. The thin gold shell or covering is so folded over the entire metal or brass filling, including the edges thereof, that in the finished product of respondent the metal or brass filling is completely concealed.

PAR. 5. Jewelry manufacturers generally, and more specifically, the manufacturers of solid gold penknives, have generally adopted the use of certain terms in describing solid gold penknives and the figures and letters 10K and 14K when used as a designation on penknives indicate that the mountings thereof consist solely of gold of 10K or 14K fineness respectively. The figures and letters 10K and 14K so used are descriptive of the process of manufacture of solid gold knives and designate the quality, quantity, and character of the gold thereon and serve as representations to the general purchasing public that the mountings of said knives so branded consist of gold of the fineness indicated. The purchasing public so understand said custom and representations made thereby.

As a means of inducing individuals, firms and corporations to purchase its knives the respondent caused and still causes the figures and letter 10K and 14K to be stamped, branded or imprinted upon the bails of said knives. Respondent thus represents to members of the purchasing public that the mountings of its said penknives are composed wholly of gold of the fineness and quality represented.

PAR. 6. In truth and in fact the respondent's penknives so marked, branded, or designated as 10K or 14K do not have mountings composed wholly of gold of the character and quantity indicated. The only gold therein consists of the thin outer shell or covering which is placed over and which conceals the metal or brass filling.

PAR. 7. There are a number of competitors of respondent who manufacture and sell in commerce as herein described penknives, the mountings of which are marked or stamped with the symbols "10K or 14K" respectively, and which said mountings are in fact composed wholly of the required number of parts or proportions of gold as indicated by said brands, stamps, or symbols used generally in the jewelry trade to denote or designate the percentage of gold or number of parts or proportions of gold in said product.

PAR. 8. Respondent's acts and practices in stamping or imprinting the figures and letters 10K and 14K on the bail of its product and the representations made thereby, have a tendency and capacity to mislead and deceive, and were intended and calculated to, and do, mislead and deceive the retail trade and the purchasing public into the erroneous belief that the complete or entire mounting of respondent's knives consists solely of 10K or 14K gold respectively and into the purchase of respondent's products on account of such beliefs so induced. Said practices of respondent also place in the hands of unscrupulous retailers an instrument and means whereby said retailers may perpetrate a fraud upon a substantial portion of the purchasing public by enabling them to falsely represent, offer for sale and sell respondent's said penknives as being superior to other articles not so branded and as being equal to penknives properly so branded as to gold content and fineness.

PAR. 9. The aforesaid acts and practices of respondent have a tendency and capacity to, and do, cause trade to be diverted unfairly to respondent and the dealers in its products from those competitors of respondent referred to in paragraph 7 who do not misrepresent the character, quality or value of their respective products. As a consequence thereof, 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. 10. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 12, 1938, issued, and on May 31, 1938, served its complaint in this proceeding upon respondent, Sinnock & Sherrill, Inc., charging it with the use of unfair methods

of competition and unfair and deceptive practices and acts in commerce in violation of the provisions of said act. After the issuance of said complaint, respondent filed its answer thereto admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Sinnock & Sherrill, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its principal office, storeroom, and place of business at No. 15 Maiden Lane, New York City, State of New York. It maintains a factory or manufacturing plant at 120 South Street, Newark, N. J. Respondent has been for more than 3 years last past engaged in the business of manufacturing and selling emblem jewelry and penknives, which said emblem jewelry and penknives have been manufactured at its manufacturing plant located in the city of Newark, State of New Jersey, during all of which time it has been selling and distributing such products in commerce among and between various States of the United States other than the States of New York and New Jersey, in which the respondent's principal office and manufacturing plant are located and from both of which shipments are made. In the course and conduct of its business respondent has been in competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business respondent, in the sale of its products and for the purpose of inducing the public to purchase said products, has used, caused, and still causes, the figures and letters 10K and 14K, indicating the fineness of the gold, to be stamped, branded or imprinted upon the bails of said penknives, which penknives have been manufactured in such manner as to cause a thin gold shell or covering to be placed upon or over a base metal filling (usually brass) and then causes the thin gold shell or covering, together with the filling, to be attached to or riveted upon the skeleton of the knife. The said gold shell or covering is so folded and

impressed over the entire metal or brass filling including the edges thereof, that in the finished products of respondent the metal or brass filling is completely concealed, in such manner as to make it appear that the entire casing or covering or handle of the penknife with the exception of the skeleton holding the blades is of the 10K or 14K gold which is stamped, branded or imprinted upon the bails of the said knives as set forth above. Respondent thus represents to the members of the purchasing public and purchasers that the entire case or mountings of its said penknives are composed wholly of gold of the fineness and quality represented thereon.

Jewelry manufacturers generally and more specifically the manufacturers of solid gold penknives, have generally adopted the use of certain terms in describing solid gold penknives, and the figures and letters 10K and 14K when used as a designation on penknives indicate that the mountings thereof consist solely of gold of 10K and 14K fineness, respectively. The figures and letters 10K and 14K so used are descriptive of the process of manufacture of solid gold knives and designate the quality, quantity, character, and fineness of the gold thereon and serve as representations to the general purchasing public that the mountings of said knives, so marked or branded, consist of gold of the fineness indicated. The representations by the respondent are similar to those generally used in the trade.

PAR. 3. A substantial portion of retail dealers and members of the purchasing public in conformity with the custom of the manufacturers and jewelry trade in general, understand and believe that penknives offered for sale and sold by the jewelry trade and other stores, on the mountings or bails of which are stamped or imprinted the letters and figures 10K and 14K to be a representation that the said mountings consisting of the entire encasing of the skeleton of said penknives is of 10K or 14K gold and so understanding said custom, and based upon the method of manufacture and the representations of respondent to import and indicate that the penknives manufactured and sold by it were (except the skeleton and blades) solid gold penknives of the fineness and character indicated by the markings 10K and 14K on the mountings or bails, a substantial portion of said retail dealers and members of the purchasing public were misled by the methods and representations of respondent into the erroneous and mistaken belief that respondent's penknives were solid gold of the thickness, fineness, and character indicated by the mounting or handle of same including the brass or other base metal filler.

The respondent's method and manner of manufacturing, representing, and selling said penknives is false, misleading, and untrue. The

said penknives or the mountings thereof are not gold of 10 or 14 karat fineness or quality as indicated, but consist of a mounting composed for the most part of a base metal and so constructed as to appear as solid gold when in fact only a very small part of said mounting is solid gold.

PAR. 4. There are other manufacturers of gold penknives who advertise and sell and ship their products and are now selling and shipping their products in commerce among and between various States of the United States and the District of Columbia, who do not in any manner misrepresent their products and there are other manufacturers who make penknives of part gold and part base metal mountings, who sell and ship their products in commerce as above who disclose the true composition and character of their penknives, all of whom suffer a loss in trade as a result of respondent's methods of doing business.

The acts, practices, and representations of the respondent place in the hands of unscrupulous retailers an instrument and means whereby said retailers may perpetrate a fraud upon a substantial portion of the purchasing public enabling them to falsely represent, offer for sale and sell respondent's said penknives as superior or equal to other manufacturers' penknives properly branded as to the gold content and fineness.

PAR. 5. The respondent's acts and practices in stamping or imprinting the figures and letters 10K and 14K on the bail of its penknives and the representations made thereby in offering for sale and selling its penknives 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 said representations are true. Further as a direct consequence of such mistaken and erroneous belief, induced by said representations of respondent, as aforesaid, a number of the purchasing public have purchased a substantial quantity of said penknives with the result that trade has been unfairly diverted from other corporations, individuals, firms, and partnerships likewise engaged in the sale of penknives, who ship their said penknives from the States where manufactured into and among other States of the United States and who truthfully advertise and represent their products.

CONCLUSION

The aforesaid acts, representations, and practices of respondent, Sinnock & Sherrill, Inc., have been and are, 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 the Federal Trade Commission Act.

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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Sinnock & Sherrill, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate, or other device, in connection with the manufacture, offering for sale, sale, and distribution of its penknives in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Marking or branding its penknives having an outer shell or covering of gold and an inner concealed sheet or filling of base metal with any word, marks or figures indicating gold fineness so as to import or imply that the entire filling and shell of the handle of said penknives with the exception of the skeleton are gold.

2. Marking or stamping any marks or figures on its penknives indicating the fineness of gold of which any part or parts of said penknives are made without correctly indicating the specific part or parts that are so composed.

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

LA PERLA VINEYARD COMPANY AND HARRY EX,
DOING BUSINESS AS S. GOLDENBURG & COMPANY,
RAMSHEAD PRODUCTS COMPANY AND RAMSHEAD
DISTILLING COMPANY, AND AS PRESIDENT OF LA
PERLA VINEYARD COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3433. Complaint, May 21, 1938—Decision, Jan. 10, 1939*

Where a corporation engaged in purchasing, processing, bottling, and distributing wines at wholesale to purchasers in other States, and in substantial competition with others engaged in purchasing, processing, and bottling wines, and also with those who own, operate, and control vineyards and manufacture wines from grapes grown therein and sell and distribute their said products in commerce among the States and in said District, and including among competitors aforesaid, thus owning, operating, and controlling vineyards and manufacturing wines from grapes therein, those who use term "vineyard" in their corporate or trade name and in their advertising literature, and those likewise engaged only as bottlers and wholesalers of wine who do not in any way misrepresent the character or nature of their business—

- (a) Represented to vendees and ultimate consuming public, through use of word "vineyard" in its corporate name, on letterheads, invoices, and labels attached to bottles in which its wines were offered and sold, and in various other ways, that it was the producer and manufacturer of such products, facts being it neither owned, operated, nor controlled any vineyard, nor made any wine, but purchased its said products in the open market and bottled same on its premises; and
- (b) Represented, through statements appearing upon its stationery and in various other ways, that it owned and operated the famous La Perla Vineyards at St. Helena, Calif., facts being it never at any time owned, operated, or controlled said long well-known vineyard with its 200 acres in grapes and winery thereon;

With effect of misleading and deceiving purchasers of its said wines into the erroneous and mistaken belief that in buying products from it they were dealing with a concern which owned and operated its own vineyards and made therefrom wines which it offered and sold, and were dealing with owners and operators of aforesaid La Perla Vineyards, and that in thus buying its said wine, as from supposed owners and operators, they were gaining saving in middleman's cost, and other benefits, as commonly believed among wholesalers, retailers, and purchasing public, which associate with such direct purchase superior grade of product, considerable saving in price, and other advantages; and

Where an individual engaged as wholesaler and retailer of wines and liquors, and president of aforesaid corporation, as of second company, and in direct control of the business policies and practices of both; and said second

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corporation, engaged as aforesaid in sale of their alcoholic beverages to purchasers in various States and in the aforesaid District, and in substantial competition with others engaged in alcoholic beverage industry as manufacturers or as rectifiers, blenders, and bottlers, and with wholesalers only, who sell and distribute their products in commerce among the various States and in said District, and including those who truthfully represent themselves as distillers, and rectifiers, blenders, bottlers, and wholesalers only, who in no way misrepresent the nature and character of their business—

- (c) Represented, through use of word "distilling" in the corporate name of said company last referred to, in written agreements, newspaper advertising, and on the labels attached to the bottles in which they offered their products for sale, and in various other ways, to their customers and furnished same with means of representing to said customers' vendees and to ultimate consuming public that the alcoholic beverages thus offered were made by said second company through process of distillation from mash, wort, or wash, facts being it was not a distilling company and did not own, operate or control any place or places where such beverages were made by process of distillation from mash, wort, or wash;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true, and into substantial purchase of their said alcoholic beverages by reason thereof, and with result that trade was thereby diverted unfairly to them from their competitors aforesaid:

Held, That such acts and practices were all to the injury and 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.

Pam, Hurd & Reichmann, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that La Perla Vineyard Co., a corporation, and Harry Ex, an individual doing business as S. Goldenburg & Co., Ramshead Products Co., and Ramshead Distilling Co., and also as president of the La Perla Vineyard Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, La Perla Vineyard Co., is an Illinois corporation, organized in 1922. Its principal office and place of business are at 1404-1406 South Canal Street, Chicago, Ill. Said respondent maintains a branch office and distribution center at San Francisco, Calif. It is now, and for several years last past has been, engaged in purchasing, processing, bottling, and distributing wines at wholesale.

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The respondent, Harry Ex, is an individual doing business as S. Goldenburg & Co., Ramshead Products Co., and Ramshead Distilling Co., at 1404-1406 South Canal Street, Chicago, Ill. He is a wholesaler and retailer of wines and liquors. S. Goldenburg & Co. was organized as a partnership in 1902. Respondent Ex is the surviving partner and sole owner of the business. Ramshead Products Co. and Ramshead Distilling Co. are trade names used by respondent Ex in the conduct of his aforesaid business. Respondent Ex is also president of the respondent corporation, La Perla Vineyard Co., and as such directs and controls its business policies and practices. Both respondents have acted and now act in cooperation in carrying out the acts and practices herein charged.

The respondents now cause, and for several years last past have caused, their intoxicating beverages, when sold by them, to be shipped from their place of business in Chicago, Ill., or from the distribution center at San Francisco, Calif., to the purchasers thereof located in the various States of the United States, other than the States of Illinois and California, and in the District of Columbia. There is now, and for several years last past has been, a course of trade in said alcoholic beverages so sold and distributed by the respondents in commerce between and among the various States of the United States and in the District of Columbia.

Respondent, La Perla Vineyard Co., is, and for several years last past has been, in substantial competition with corporations, partnerships, and individuals engaged in purchasing, processing, and bottling wines. Said respondent is also in substantial competition with corporations, partnerships, and individuals that own, operate, and control vineyards and manufacture wine from the grapes grown therein. Said competitors sell and distribute their said wines in commerce between and among the various States of the United States and in the District of Columbia.

Respondent Ex, doing business as S. Goldenburg & Co., Ramshead Products Co., and Ramshead Distilling Co., is, and for several years last past has been, in substantial competition with individuals, corporations, and partnerships engaged in the alcoholic beverage industry as manufacturers or as rectifiers, blenders, and bottlers, and with wholesalers only, that sell and distribute their products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time, the word "distilling" when used in connection with the liquor industry and with the products thereof, has had and still has a definite significance and meaning to the minds

of distillers, rectifiers, 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 his business as aforesaid, by the use of the word "distilling" in his trade name which appears in written agreements, in newspaper advertising, on the labels attached to bottles in which he offers his products for sale, and in various other ways, the respondent Ex represents to his customers and furnishes them with the means of representing to their vendees and to the ultimate consuming public that the alcoholic beverages thus offered for sale are manufactured by the said respondent through the process of distillation from mash, wort, or wash. In truth and in fact, the respondent Ex is not a distiller and does not own and operate or control any place or places where alcoholic beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. Among respondent Ex's aforesaid competitors, there are individuals, partnerships, and corporations engaged in the manufacture of alcoholic liquors who truthfully represent themselves as distillers. There are also among the aforesaid competitors of respondent Ex rectifiers, blenders, and bottlers, and wholesalers only, who in no way misrepresent the nature or character of the business they are engaged in.

PAR. 5. The use by respondent Ex 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 respondent's alcoholic beverages on account of such erroneous belief. As a result of the representations aforesaid, trade is being, and has been, diverted unfairly to respondent Ex from his aforesaid competitors and 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.

PAR. 6. In the course and conduct of its business as aforesaid, the respondent, La Perla Vineyard Co., has represented, and now represents to its vendees and to the ultimate consuming public, through the use of the word "vineyard" in its corporate name, which appears on its letterheads, invoices, and the labels attached to bottles in which its wines are offered for sale and sold, and in various other ways, that it is the producer and manufacturer of said wines. In truth and in

fact, the respondent does not own and operate or control any vineyard or manufacture any wine, but its wines are purchased in the open market and bottled on its premises in Chicago, Ill.

PAR. 7. In the course and conduct of its business as aforesaid, respondent, La Perla Vineyard Co., through statements appearing upon its stationery and in various other ways represents that it owns and operates the famous La Perla Vineyard at St. Helena, Calif. The said La Perla Vineyard, which consists of about 200 acres planted in grapes and on which is located a winery, has been a very well known vineyard since about 1880. A California corporation organized in 1903 as the La Perla Vineyard Co. owned and operated the La Perla Vineyard until it was purchased by the Windsor Vineyard Co. about 1935. The respondent, La Perla Vineyard Co., has never at any time owned, operated, or controlled the said La Perla Vineyard.

PAR. 8. It is the common belief among wholesalers, retailers, and the purchasing public that a superior grade of wine can be purchased direct from the owners and operators of vineyards who manufacture wine from the grapes grown therein and that a considerable saving in price and other advantages can be secured by dealing direct with such manufacturers. The representations made by the respondent, as alleged in paragraphs 6 and 7 hereof, have the capacity and tendency to and do mislead and deceive purchasers of respondent's wines into the erroneous and mistaken belief that when they purchase said wines from the respondent they are dealing with a concern that owns and operates its own vineyards and manufactures therefrom the wines which it offers for sale and sells, and that they are dealing with the company which owns and operates the aforesaid La Perla Vineyards. Said purchasers are thus led to believe that when they purchase respondents' wine, they are gaining an advantage in price by saving the middleman's cost and are also gaining other advantages.

PAR. 9. There are among the competitors of respondent, La Perla Vineyard Co., as mentioned in paragraph 1 hereof, corporations, partnerships, and individuals that own, operate, and control vineyards and manufacture wine from the grapes grown therein who use the term "vineyard" in their corporate or trade names and in their advertising literature. There are also among respondent's said competitors, corporations, partnerships, and individuals likewise engaged in business only as bottlers and wholesalers of wine who do not in any way misrepresent the character or nature of their business.

PAR. 10. The use by respondent, La Perla Vineyard Co., 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

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substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's said alcoholic beverages on account of such erroneous belief. As a result of the representations aforesaid, trade is diverted unfairly to respondent from its aforesaid competitors and 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.

PAR. 11. The aforesaid acts and practices of the respondents as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 21, 1938, issued, and served its complaint in this proceeding upon the respondents, La Perla Vineyard Co., a corporation, and Harry Ex, an individual doing business as S. Goldenburg & Co., Ramshead Products Co., and Ramshead Distilling Co., a corporation, and also as president of the La Perla Vineyard 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 respondent's answer on June 11, 1938, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor answer dated October 17, 1938, admitting all the material allegations of facts set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, the substitute answer and the record herein, 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, La Perla Vineyard Co., is an Illinois corporation, organized in 1922. Its principal office and place of business are at 1404-1406 South Canal Street, Chicago, Ill. Said respondent maintains a branch office and distribution center at San

Francisco, Calif. It is now, and for several years last past has been, engaged in purchasing, processing, bottling, and distributing wines at wholesale.

The respondent, Harry Ex, is an individual doing business as S. Goldenburg & Co. and Ramshead Products Co. at 1404-1406 South Canal Street, Chicago, Ill. He is a wholesaler and retailer of wines and liquors. S. Goldenburg & Co. was organized as a partnership in 1902 and respondent Ex is the surviving partner and sole owner of the business. Respondent Ramshead Distilling Co. is an Illinois corporation organized in 1932. Its principal office and place of business are also at 1404-1406 South Canal Street, Chicago, Ill. Respondent Ex is president of both respondent corporations and as such directs and controls their business policies and practices. All respondents have acted and now act in cooperation in carrying out the acts and practices herein charged.

The respondents now cause, and for several years last past have caused, their alcoholic beverages, when sold by them, to be shipped from their place of business in Chicago, Ill., or from the distribution center at San Francisco, Calif., to the purchasers thereof located in the various States of the United States, other than the States of Illinois and California, and in the District of Columbia. There is now, and for several years last past has been, a course of trade in said alcoholic beverages so sold and distributed by the respondents in commerce between and among the various States of the United States and in the District of Columbia.

Respondent, La Perla Vineyard Co., is, and for several years last past has been, in substantial competition with corporations, partnerships, and individuals engaged in purchasing, processing, and bottling wines. Said respondent is also in substantial competition with corporations, partnerships, and individuals that own, operate, and control vineyards and manufacture wine from the grapes grown therein. Said competitors sell and distribute their said wines in commerce between and among the various States of the United States and in the District of Columbia.

Respondent Ex, doing business as S. Goldenburg & Co. and as Ramshead Products Co., and the respondent Ramshead Distilling Co., are, and for several years last past have been, in substantial competition with individuals, corporations, and partnerships engaged in the alcoholic beverage industry as manufacturers or as rectifiers, blenders, and bottlers, and with wholesalers only, that sell and distribute their products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, the respondent, La Perla Vineyard Co., has represented, and now represents to its vendees and to the ultimate consuming public, through the use of the word "vineyard" in its corporate name, which appears on its letterheads, invoices, and the labels attached to bottles in which its wines are offered for sale and sold, and in various other ways, that it is the producer and manufacturer of said wines. In truth and in fact, the respondent does not own and operate or control any vineyard or manufacture any wine, but its wines are purchased in the open market and bottled on its premises in Chicago, Ill.

PAR. 3. In the course and conduct of its business as aforesaid, respondent, La Perla Vineyard Co. through statements appearing upon its stationery and in various other ways represents that it owns and operates the famous La Perla Vineyard at St. Helena, Calif. The said La Perla Vineyard, which consists of about 200 acres planted in grapes and on which is located a winery, has been a very well known vineyard since about 1880. A California corporation organized in 1903 as the La Perla Vineyard Co. owned and operated the La Perla Vineyard until it was purchased by the Windsor Vineyard Co. about 1935. The respondent, La Perla Vineyard Co., has never at any time owned, operated, or controlled the said La Perla Vineyard.

PAR. 4. It is the common belief among wholesalers, retailers, and the purchasing public that a superior grade of wine can be purchased direct from the owners and operators of vineyards who manufacture wine from the grapes grown therein and that a considerable saving in price and other advantages can be secured by dealing direct with such manufacturers. The representations made by the respondent, as alleged in paragraphs 2 and 3 hereof, have the capacity and tendency to and do mislead and deceive purchasers of respondent's wines into the erroneous and mistaken belief that when they purchase said wines from the respondent they are dealing with a concern that owns and operates its own vineyards and manufactures therefrom the wines which it offers for sale and sells, and that they are dealing with the company which owns and operates the aforesaid La Perla Vineyards. Said purchasers are thus led to believe that when they purchase respondent's wine, they are gaining an advantage in price by saving the middleman's cost and are also gaining other advantages.

PAR. 5. There are among the competitors of respondent, La Perla Vineyard Co., as mentioned in paragraph 1 hereof, corporations, partnerships, and individuals that own, operate, and control vineyards and manufacture wine from the grapes grown therein who use the term "vineyard" in their corporate or trade names and in

their advertising literature. There are also among respondent's said competitors, corporations, partnerships, and individuals likewise engaged in business only as bottlers and wholesalers of wine who do not in any way misrepresent the character or nature of their business.

PAR. 6. 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 distillers, rectifiers, 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 spiritous liquors bottled by the actual distillers and manufacturers thereof.

PAR. 7. In the course and conduct of their business as aforesaid, by the use of the word "distilling" in the corporate name which appears in written agreements, in newspaper advertising, on the labels attached to bottles in which they offer their products for sale, and in various other ways, the respondents, Ramshead Distilling Co. and Harry Ex, represent to their customers and furnish them with the means of representing to their vendees and to the ultimate consuming public that the alcoholic beverages thus offered for sale are manufactured by the said Ramshead Distilling Co. through the process of distillation from mash, wort, or wash. In truth and in fact, the respondent Ramshead Distilling Co. is not a distilling company and does not own and operate or control any place or places where alcoholic beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 8. Among the competitors of respondents Ramshead Distilling Co. and Harry Ex, as set out in paragraph 1 hereof, there are individuals, partnerships, and corporations engaged in the manufacture of alcoholic liquors who truthfully represent themselves as distillers. There are also among the aforesaid competitors rectifiers, blenders, and bottlers, and wholesalers only, who in no way misrepresent the nature or character of the business they are engaged in.

PAR. 9. The use by respondents 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 respondents' alcoholic beverages on account of such erroneous belief. As a result of the representations aforesaid, trade is being, and has been, diverted unfairly to respondents from their aforesaid competitors.

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CONCLUSION

The aforesaid acts and practices of the respondents, La Perla Vineyard Co., a corporation, Harry Ex, doing business as S. Goldenburg & Co. and as Ramshead Products Co., and Ramshead Distilling Co., a corporation, as herein found, are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the record herein, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, La Perla Vineyard Co., a corporation, and Ramshead Distilling Co., a corporation, and their respective officers, and respondent Harry Ex, an individual doing business as S. Goldenburg & Co. and as Ramshead Products Co. or under any other names, and all of their respective agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of wines, liquors, and other alcoholic beverages in interstate commerce or in the District of Columbia, do forthwith cease and desist from, directly or through any corporate or other device or in any manner:

Representing through the use of the word "distilling," or the word "vineyard," or any other word or words of like import, in a corporate or trade name, on stationery, labels, or other advertising matter, or in any other manner (a) that they, or any of them, are distillers; or (b) that they, or any of them, manufacture the said wines or alcoholic beverages; or (c) that they, or any of them, own, operate, or control a vineyard, or place where wines or other alcoholic beverages are manufactured.

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
FLOYD IRL SORRELLS TRADING AS TEXAS TASTY
COMPANY

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

Docket 3487. Complaint, July 12, 1938—Decision, Jan. 10, 1939

Where an individual engaged in manufacture and sale of so-called "Penny Nips" confection to dealers in the various States and in the District of Columbia; in advertising his said product in periodicals and newspapers of interstate circulation and other circulars distributed to prospective purchasers in commerce among the various States, or to agents—

- (a) Represented that said product was a noncompetitive item, and that such or similar product had never been sold in the territories awarded the particular dealers prior to the signing of their contracts, and that no State license would be required of them to sell his said confection in the various States in which he was attempting to operate, facts being it was not non-competitive, but many other confections of similar and better quality had been and were being sold in all parts of the United States at lower prices than those charged for said "Penny Nips," many similar products had been sold in territories awarded his said dealers, and similar products had been sold therein prior to the signing of their contracts, and State licenses were required of them as a condition to their being permitted to sell merchandise in question in their respective territories;
- (b) Represented that said product would withstand 132° F. heat, and that it contained pure fruit juices, and that he would furnish purchaser with a copy of letter from the city of Fort Worth as to the purity of his said confection, facts being it would not withstand heat as above claimed, but would run and become of no value at a much lower temperature, such product did not contain pure fruit juices, but was composed of artificial coloring, acid, sugar, and water, and he had no letter from city officials of said city certifying as to purity and wholesomeness of his said confection;
- (c) Represented that his agents would remain in the respective territories with the dealers involved to aid them in the sale of such confection, until the deposits of whatever amount paid by them had been returned to them through sales of such product, facts being such agents did not thus remain in the various territories involved with the dealers concerned to aid them as aforesaid, but, on the contrary, left such territories as soon as they secured the dealers' payments and did not thus help them; and
- (d) Represented that merchandise in question would be shipped to a bonded warehouse, to which dealers might go and take out merchandise in such quantities as they might need by paying balance of \$9 per case due thereon, and that a certain amount of free merchandise would be shipped to dealers to repay them for any expense incurred by shipping charges, and that a certain amount would be shipped to them direct, prepaid, facts being goods in question were shipped c. o. d., and he did not, as above represented, ship merchandise to warehouses prepaid, as aforesaid, so that such dealers

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might get such merchandise as above set out, nor send certain amounts of free merchandise to dealers to repay them for shipping expenses, nor ship goods directly to them prepaid;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true, and into purchase of substantial quantities of his said products as result of such erroneous belief, and with result of thereby diverting trade unfairly to him from competitor manufacturers and distributors of like and similar products who do not make such false and misleading representations concerning the same and their business methods:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Clark Nichols for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Floyd Irl Sorrells, trading as Texas Tasty Co., hereinafter referred to as respondent, has violated the provisions of the 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 Floyd Irl Sorrells is an individual trading under the name of Texas Tasty Co. with his principal office and place of business located at 904 West Richmond Street, Fort Worth, Tex. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture of a confection known as "Penny Nips," and in the sale and distribution thereof to dealers located in the various States of the United States and in the District of Columbia. Respondent causes, and has caused his said product, when sold, to be transported from his principal place of business aforesaid to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now, and for more than 2 years last past has been, a course of trade by said respondent in such product in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar products, other confections, carbonated beverages, and chewing gum in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, through the media of advertisements inserted in magazines and newspapers of interstate circulation, circulars, and other advertising literature which are and have been distributed to prospective purchasers in commerce, representatives or agents, respondent makes and has made various deceptive, false, and misleading statements and representations to the following effect:

1. That respondent's product is a noncompetitive item.
2. That the product will withstand 132° F. heat.
3. That respondent will furnish the purchaser or dealer with a copy of a letter from the city of Fort Worth, Tex. as to the purity and wholesomeness of respondent's product.
4. That respondent's product contains pure fruit juice.
5. That the respondent's agents or representatives will remain in the territories with said dealers aiding them in getting their sales forces organized and will remain with them until the deposit of whatever amounts paid by said dealers have been returned to them through sales of said product.
6. That the merchandise will be shipped to a bonded warehouse and that said dealers may go to said bonded warehouse and take the merchandise out in such quantities as they may need by paying a balance of \$9 per case due on the merchandise.
7. That a certain amount of free merchandise will be shipped to the dealers to repay them for any expenses they have incurred in paying shipping charges.
8. That a certain amount of goods will be shipped to said dealers direct prepaid.
9. That the respondent's product, or a similar product, has never been sold in the territories awarded said dealers prior to the signing of contracts by them.
10. That no State license will be required to sell respondent's products in the various States in which respondent is attempting to operate.

PAR. 3. In truth and in fact, respondent's product is not a noncompetitive article but, on the contrary, many other confections of similar and better quality are and have been sold in all parts of the United States at lower prices than those for which "Penny Nips" are sold; the product will not withstand 132° F. heat, but, on the contrary, at a much lower temperature will run, lose its shape, and become of no value; respondent has no letter from the city officials of Fort Worth, Tex., certifying to the purity and wholesomeness of his product; said product consists of a paraffin or wax container,

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containing artificial flavoring, artificial coloring, acid, sugar, and water, and does not contain pure fruit juices; respondent's agents or representatives do not remain in the territories with said dealers aiding them in getting their sales force organized and until the deposits made by said dealers have been earned and paid back to them, but, on the contrary, said representatives or agents of respondent leave the territories as soon as they get said dealers' payments and do not aid them in any manner in setting up their sales forces and helping them until they get back the amounts they have paid said representatives of respondent; respondent does not ship the merchandise to bonded warehouses prepaid so that said dealers may get such merchandise from said warehouses by paying for the amounts they desire to withdraw; respondent will not and does not send certain amounts of free merchandise to said dealers to repay them for expenses incurred in paying shipping charges; respondent will not ship goods direct to said dealers prepaid but invariably ships such goods to said dealers c. o. d.; there are many similar products sold in territories awarded said dealers and similar products have been sold prior to the signing of the contracts by said dealers; and said dealers do have to purchase State license before they are permitted to sell said merchandise of respondent in the territories assigned to them.

PAR. 4. The use by respondent of the false, deceptive, and misleading statements and representations above referred to have had, and now have, the capacity and tendency to mislead and deceive, and have misled, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true and to purchase substantial quantities of respondent's product as a result of such erroneous belief. There are among said competitors of respondent, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products and their methods of doing business. By the statements and representations by respondent as aforesaid, trade is unfairly diverted to respondent from such competitors, and as a result thereof, substantial injury is being done, and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 12, 1938, issued, and served its complaint in this proceeding upon respondent, Floyd Irl Sorrells, individually and trading as Texas Tasty Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the 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, Floyd Irl Sorrells, is an individual doing business under the trade name and style of Texas Tasty Co. with his principal place of business and office located at 904 West Richmond Street, Fort Worth, Tex. He is now and for some time last past, has been engaged in the manufacture and sale of a confection known as "Penny Nips" and in the distribution thereof to dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused the said product, when sold, to be transported from his place of business as aforesaid to purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. There is now and for more than 2 years last past has been a course of trade by said respondent in such product in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is in competition with other individuals, firms, and corporations engaged in the sale and distribution of like and similar products, other confections, carbonated beverages, and chewing gum, in commerce between the various States of the United States.

PAR. 2. In the course and conduct of said business, as described in paragraph 1 hereof, respondent, in magazines and newspapers of

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interstate circulation and other circulars distributed to prospective purchasers in commerce among and between the various States of the United States or agents, has advertised said product and has made representations respecting the same to the following effect:

1. The respondent's product is a noncompetitive item.
2. That the product will withstand 132° F. heat.
3. That respondent will furnish the purchaser with a copy of a letter from the city of Forth Worth, Tex., as to the purity of respondent's product.
4. That respondent's product contains pure fruit juice.
5. That respondent's agents will remain in the respective territories with said dealers to aid them in the sale of said product until the deposit of whatever amounts paid by said dealers has been returned to them through sales of said product.
6. That the merchandise will be shipped to a bonded warehouse to which said dealers may go and take the merchandise out in such quantities as they may need by paying a balance of \$9 per case due thereon.
7. That a certain amount of free merchandise will be shipped to the dealers to repay them for any expense incurred by shipping charges.
8. That a certain amount of goods will be shipped to said dealers direct prepaid.
9. That the respondent's product or similar product has never been sold in the territories awarded said dealers prior to the signing of contracts by them.
10. That no State license will be required to sell respondent's product in the various States in which respondent is attempting to operate.

PAR. 3. In truth and in fact respondent's product is not a non-competitive article but on the contrary many other confections of similar and better quality are and have been sold in all parts of the United States at lower prices than those for which "Penny Nips" are sold; the product will not withstand 132° F. heat, but it will run and become of no value at a much lower temperature; respondent has no letter from the city officials of Forth Worth, Tex., certifying to the purity and wholesomeness of his product; said product contains artificial flavoring, artificial coloring, acid, sugar, and water and does not contain pure fruit juices; respondent's agents do not remain in the territories with said dealers aiding them in their sales until the deposit made by said dealers has been earned and paid back to them but on the contrary said agents leave the territories as soon as they get said dealers' payments and do not aid them in sales; respondent does not ship the merchandise to bonded warehouses pre-

paid so that said dealers may get such merchandise from said warehouse by paying for the amount they desire to withdraw; respondent does not send certain amounts of free merchandise to said dealers to repay them for expenses incurred in shipping charges; respondent will not ship goods direct to said dealers prepaid but ships such goods c. o. d.; there are many similar products sold in territories awarded said dealers and similar products have been sold prior to the signing of the contracts by said dealers; that said dealers do have to purchase State licenses before they are permitted to sell said merchandise of respondent in the respective territories assigned to them.

PAR. 4. The use by respondent of the statements and representations above referred to have had and now have the capacity and tendency to mislead and deceive and have misled a substantial portion of the purchasing public into the erroneous belief that such representations are true and to purchase substantial quantities of respondent's product as a result of such erroneous belief. There are among said competitors of respondent manufacturers and distributors of like and similar products who do not make such false and misleading representations concerning their products and their methods of doing business. By the statements and representations of respondent, as aforesaid, trade is unfairly diverted to respondent from such competitors in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

IT IS ORDERED, That the respondent, Floyd Irl Sorrells, an individual trading as the Texas Tasty Co. or under any other trade

name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of confections known as "Penny Nips," whether sold under the name or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing directly or in any manner whatever

1. That such confection is a noncompetitive article of merchandise.
2. That such confection will remain in marketable condition in weather temperature up to 132° Fahrenheit.
3. That the city officials of Fort Worth, Tex., or of any other city, have certified the purity of such confection, until and unless such officials have so certified respondent's confection.
4. That the liquid in such confection is pure fruit juice.
5. That respondent's representatives or agents will remain in the territory allotted to a dealer under contract, for the purpose of aiding the dealer in his sale of respondent's product, until the dealer has sold merchandise equaling the amount the dealer advanced to respondent's representative or agent as a consideration for the contract.
6. That such confection will be shipped by respondent to a bonded warehouse, where the dealer may withdraw it in small quantities by paying the amount due on each small box so withdrawn.
7. That free merchandise will be shipped to the dealer to reimburse him for expense incurred in paying shipping charges, unless such merchandise is actually shipped.
8. That such confection will be shipped to purchasers charges prepaid, unless it is in fact so shipped.
9. That products similar to respondent's confection or respondent's confection have never been sold in the territory allotted to the dealer, when such is not the fact.
10. That no State or municipal license will be charged the dealer for selling respondent's confection in the territory allotted to such dealer.

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
EDWARD E. PARTAIN, TRADING AS PAR-TEX HOSIERY
MILLS

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

Docket 3510. Complaint, July 26, 1938—Decision, Jan. 10, 1939

Where an individual engaged in sale of men's and women's hosiery through agents whom he supplied with samples, sales kits, letter of introduction, and other supplies and printed matter, and who solicited sale of his said products directly by house-to-house canvassing—

- (a) Represented, directly, that hosiery purchased would be of quality, grade, texture, and color corresponding to samples selected by purchaser, and that it was woven with a special lock stitch which prevented it from snagging, running, or developing holes, and that it would last from 6 to 12 months and was guaranteed, and that he would replace, with new, worn hosiery which failed to wear as represented, facts being hosiery supplied was inferior in grade, texture, and quality to that represented by his said agents and, in many instances, not of size and color indicated by purchaser, was not woven as above set forth, nor so as to prevent it from snagging, running, or developing holes, and it did not last for period of time specified and he did not make replacements as promised and guaranteed, but included with goods shipped guarantee which differed from that represented by his salesmen or representatives;
- (b) Made use of word "Mills" in trade name employed by him, and represented that he was the only hosiery manufacturer in the State of Texas selling direct to the consumer, facts being he did not make women's hose offered and sold by him, but purchased said product from various manufacturers thereof; and
- (c) Delayed unduly and unreasonably correction of mistakes in filling orders, and failed and neglected to make promised adjustments, and retained hosiery sent in for exchange or adjustment of mistakes and failed and neglected to refund purchaser's money and refused adjustments on ladies' hose without payment ranging from 35 to 45 cents a pair;

With effect of misleading and deceiving purchasers and prospective purchasers into erroneous belief that such representations were true, and into purchase of his said product in and on account of such beliefs, and with result that trade was thereby unfairly diverted to him from competitors who do not misrepresent the character and quality of their products or their business status:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Charles S. Cox for the Commission.

Coke & Coke, of Dallas, Tex., for respondent.

Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Edward E. Partain, trading as Par-Tex Hosiery Mills, hereinafter referred to as respondent, has violated the provisions of the 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, Edward E. Partain, is an individual trading as Par-Tex Hosiery Mills, having his principal office and place of business at 2814 Elm Street, in the city of Dallas, State of Texas. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling men's and ladies' hosiery in commerce between and among the several States of the United States and in the District of Columbia. Respondent causes said hosiery, when sold, to be transported from his place of business in the State of Texas to purchasers thereof located in States of the United States other than Texas and in the District of Columbia. There has been for more than 1 year last past, and still is, a constant current of trade in commerce in said men's and ladies' hosiery thus sold and distributed by respondent, between and among the various States of the United States and in the District of Columbia. Respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals and with partnerships, firms, and corporations engaged in the sale and distribution of men's and ladies' hosiery 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 purchases his ladies' hose from various manufacturers. Respondent's best grade and first line of ladies' hosiery is purchased at a cost of from \$5.50 to \$6.50 per dozen pairs to respondent. Respondent has agents and representatives who are given samples of various men's and ladies' hosiery, certain sales kits, and letter of introduction and authority as agent, along with other supplies and literature furnished by respondent. Respondent, by and through said sales agents and representatives, solicits the sale of and sells and has sold men's and ladies' hosiery directly to the persons by whom said hosiery is to be worn, through house to house canvassing. Orders so solicited and received are forwarded to the respondent at his principal place of business in the city of Dallas, in the State of

Texas, and shipments are made pursuant thereto. Said sales agents and representatives of respondent represent that said orders, when received by respondent, are filled according to the statements and representations made by them and with hosiery of a grade, quality, and texture as shown by samples displayed by said sales agents and representatives, and of a color and size selected by the customer.

PAR. 3. Respondent in the course and conduct of his business, in commerce, as aforesaid, represents by and through his sales agents and representatives:

(a) That the hosiery purchased from respondent will be of a grade, texture and quality corresponding to the sample selected by the purchaser from the samples exhibited by said sales agent or representative, and of the color and size selected by such purchaser;

(b) That the "Par-Tex" hosiery sold by him is woven with a special lock stitch which prevents them from snagging, running, or developing holes;

(c) That such hosiery is guaranteed to be hole-proof from 6 to 12 months.

PAR. 4. Respondent in the course and conduct of his business in said commerce, as aforesaid, through his sales agents and representatives makes use of, and has made use of, the following methods and practices:

(a) Sending to purchasers hosiery of a grade, texture, and quality different from that of the samples exhibited by the sales agent and representatives of the respondent and from which the purchaser had made the selection and in forwarding the purchaser hosiery of a different color and size from that selected by such purchaser;

(b) Unduly and unreasonably delaying the correction of mistakes in filling orders, or failing and neglecting to make adjustments as promised;

(c) Retaining hosiery sent in for exchange or adjustment of mistakes and failure or neglecting to refund the money paid by the purchasers;

(d) Refusing to make adjustments on ladies' hose unless and until purchasers remit or agree to pay from 35 to 45 cents per pair for each pair of ladies' hosiery on which adjustment is made;

(e) By including in each parcel or envelope in which his hosiery is shipped a guarantee different from that represented by his salesman or representative, to wit:

GUARANTEE

We guarantee our merchandise to be perfect in material and workmanship and with reasonable care and proper laundering to give service as follows:

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- No. 286 Men's Socks, 6 pairs guaranteed for 12 months
- No. 360 Men's Socks, 6 pairs guaranteed for 12 months
- No. 205 Men's Socks, 6 pairs guaranteed for 12 months
- No. 1200 Men's Socks, 6 pairs guaranteed for 8 months
- No. 1240 Men's Socks, 6 pairs guaranteed for 8 months

All women's hose guaranteed 6 pairs to wear 6 months.

With proper laundering and care you will have no difficulty whatever in securing the maximum wear from every pair. If, however, you are not satisfied with the service you receive, return the hose to us laundered, and adjustment will be made in accordance with the amount of wear you have received.

Notice: For best results silk stockings should be washed after each wearing

PAR-TEX HOSIERY MILLS

2814 Elm Street

Dallas, Texas

The only hosiery manufacturer in Texas selling direct to the consumer.

PAR. 5. The representations of respondent set forth in paragraphs 3 and 4 hereof, and others similar thereto, have the capacity and tendency to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers of respondent's said hosiery into the false and erroneous belief:

(a) That the men's and ladies' hosiery sold and distributed by respondent are made of fabrics of the grade, texture, and quality corresponding to the samples displayed by respondent's sales agents and representatives and as selected by said purchasers, and of the size and color indicated by the purchaser;

(b) That correction of mistakes in filling orders will not be unduly and unreasonably delayed;

(c) That deposits made on hosiery purchases by purchasers will be refunded unless exchange or other satisfactory adjustment is made;

(d) That respondent's hosiery is woven with a special lock stitch, preventing it from snagging, running, or developing holes;

(e) That respondent's hosiery is guaranteed to be hole-proof, snag-proof, or run-proof for a period of from 6 to 12 months;

(f) That purchasers of respondent's hosiery will get a new pair in exchange without additional charge if and when it develops holes within the period guaranteed;

(g) That respondent is the manufacturer of the ladies' hosiery sold and offered for sale by him.

PAR. 6. In truth and in fact respondent ships to purchasers hosiery of a grade, texture, and quality inferior to the samples selected and of a grade, texture, and quality inferior to that represented by his sales agents and representatives, and, in many instances, not of the size and color indicated by the purchaser. Respondent unduly and unreasonably delays correction of mistakes and filling orders, and

neglects to make adjustments as promised. Respondent does not refund the deposit made on hosiery purchases by purchasers when exchanges or other adjustments are not made. The hosiery sold by the respondent is not woven with a special lock stitch, nor does the weave or stitch prevent said hosiery from snagging, running, or developing holes. Said hosiery will not, and does not, under normal wear, last for the period of time specified and the respondent will not, and does not, replace worn hosiery with new hosiery within the period of time promised in said guarantee. Respondent does not replace a pair of ladies' worn hosiery unless the purchaser will pay from 35 to 45 cents per pair for each pair replaced, which in truth and fact practically covers the actual cost to respondent of a new pair of respondent's best grade and first line of ladies' hose. Respondent does not manufacture the ladies' hosiery sold and offered for sale by him.

PAR. 7. There are among the competitors of the respondent, in said commerce, manufacturers, sellers, and distributors of hosiery who do not in any manner misrepresent their products and who do not use the methods or practices used by the respondent as hereinbefore alleged in connection with the offering for sale, sale and distribution of their products.

PAR. 8. The above alleged acts and practices of respondent have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers into the erroneous beliefs described in paragraph 5, hereof, and into the purchase of respondent's said hosiery in and on account of such beliefs. Thereby trade is unfairly diverted to respondent from his competitors, and, as a consequence thereof, substantial injury is done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 26, 1938, issued, and served its complaint in this proceeding upon respondent, Edward E. Partain, 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

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permission to withdraw said answer and to substitute therefor answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the 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, Edward E. Partain, is an individual trading as Par-Tex Hosiery Mills, having his principal office and place of business at 2814 Elm Street, Dallas, Tex. Respondent is now and for more than 1 year last past has been engaged in the business of selling men's and women's hosiery in commerce between and among the several States of the United States and in the District of Columbia. Respondent causes said hosiery, when sold, to be transported from his place of business in the State of Texas to purchasers thereof located in States of the United States other than Texas and in the District of Columbia. There has been for more than 1 year last past and still is a constant current of trade in commerce in said men's and women's hosiery thus sold and distributed by respondent between and among the various States of the United States and in the District of Columbia. Respondent is now and for more than 1 year last past has been in substantial competition with other individuals, firms, and corporations engaged in the sale and distribution of men's and women's hosiery 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 purchases his women's hose from various manufacturers. He has agents who are given samples of various men's and women's hosiery, certain sales kits, a letter of introduction and authority as agent along with other supplies and literature furnished by respondent. Through these agents he solicits the sale of and sells and has sold men's and women's hosiery directly to the persons by whom said hosiery is to be worn by means of house to house canvassing. Orders so solicited and received are forwarded to the respondent at his place of business in Dallas, Tex., and shipments are made pursuant thereto. Said sales agents of respondent represent that said orders, when received by respondent, are filled according to the statements

made by them and with hosiery of a quality and texture as shown by samples displayed by said sales agents and of a color and size selected by the customer.

PAR. 3. Respondent, in the course of his business in commerce as aforesaid, represents directly and by and through his sales agents:

(a) That the hosiery purchased will be of a grade and quality corresponding to the samples selected by the purchaser from the samples exhibited by said sales agent, and of the color and size selected by said purchaser;

(b) That the "Par-TEX" hosiery sold by him is woven with a special lock stitch which prevents them from snagging, running, or developing holes;

(c) That such hosiery is guaranteed to be hole-proof from 6 to 12 months;

(d) That respondent is the only hosiery manufacturer in Texas selling direct to the consumer.

PAR. 4. In truth and in fact respondent ships to purchasers hosiery of a grade, texture, and quality inferior to that represented by his sales agents and in many instances such hosiery is not of the size and color indicated by the purchaser. The hosiery sold by the respondent is not woven with a special lock stitch nor does the weave or stitch prevent said hosiery from snagging, running, or developing holes. Said hosiery will not and does not, under normal wear, last for the period of time specified and the respondent will not and does not replace worn hosiery with new hosiery within the period of time promised in said guarantee. Respondent does not manufacture the ladies' hosiery sold and offered for sale by him.

PAR. 5. Respondent in the course and conduct of his business in said commerce, as aforesaid, through his sales agents and representatives make use of, and has made use of, the following methods and practices:

(a) Sending to purchasers hosiery of a grade, texture, and quality different from that of the samples exhibited by the sales agent and representatives of the respondent and from which the purchaser had made the selection and in forwarding the purchaser hosiery of a different color and size from that selected by such purchaser;

(b) Unduly and unreasonably delaying the correction of mistakes in filling orders, or failing and neglecting to make adjustments as promised;

(c) Retaining hosiery sent in for exchange or adjustment of mistakes and failing or neglecting to refund the money paid by the purchasers;

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(d) Refusing to make adjustments on ladies' hose unless and until purchasers remit or agree to pay from 35 to 45 cents per pair for each pair of ladies' hosiery on which adjustment is made;

(e) Including in each parcel or envelope in which his hosiery is shipped a guarantee different from that represented by his salesman or representative, to wit:

GUARANTEE

We guarantee our merchandise to be perfect in material and workmanship and with reasonable care and proper laundering to give service as follows:

No. 286 Men's Socks, 6 pairs guaranteed for 12 months

No. 360 Men's Socks, 6 pairs guaranteed for 12 months

No. 205 Men's Socks, 6 pairs guaranteed for 12 months

No. 1200 Men's Socks, 6 pairs guaranteed for 8 months

No. 1240 Men's Socks, 6 pairs guaranteed for 8 months

All women's hose guaranteed 6 pairs to wear 6 months.

With proper laundering and care you will have no difficulty whatever in securing the maximum wear from every pair. If, however, you are not satisfied with the service you receive, return the hose to us laundered, and adjustment will be made in accordance with the amount of wear you have received.

Notice: For best results silk stockings should be washed after each wearing.

PAR-TEX HOSIERY MILLS

2814 Elm Street,

Dallas, Texas

The only hosiery manufacturer in Texas selling direct to the consumer.

PAR. 6. The above acts and representations of respondent have the capacity and tendency to and do mislead and deceive purchasers and prospective purchasers into the erroneous beliefs that such representations are true and into the purchase of respondent's said hosiery in and on account of such beliefs. Thereby trade is unfairly diverted to respondent from his competitors who do not misrepresent the character and quality of their products or their business status.

CONCLUSION

The aforesaid 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 the Federal Trade Commission 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 of respondent filed herein on November 28, 1938, in which answer respondent admits all the material allegations of facts set

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forth in said complaint and states that he waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act,

It is ordered, That the respondent, Edward E. Partain, an individual trading as Par-Tex Hosiery Mills, or under any other name, his agents, servants, representatives, and employees, 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, directly or through any corporate or other device—

(a) Representing directly or by means of sales agents or otherwise that the hosiery purchased will be of a grade, quality, texture, and color corresponding to samples selected by the purchaser unless he does in fact deliver to such purchasers, hosiery of the same grade, quality, texture, and color as that selected by the purchaser.

(b) Representing that his hosiery is woven with a special lock-stitch.

(c) Representing that the weave or stitch in his hosiery will prevent the hosiery from snagging, running, or developing holes.

(d) Representing by means of a guarantee, or by other means, that under normal wear, his hosiery will last from 6 to 12 months or any other specified period of time.

(e) Representing by means of a guarantee, or by other means, that he will replace worn hosiery with new hosiery within any specified time provided by such guarantee unless he does in fact make replacements in accordance with such guarantee.

(f) Representing, through use of the word "Mills," or any other word or term of similar import or meaning, in his trade name or in any other manner, or through any means or device, that he manufactures ladies' hosiery until and unless he owns and operates or directly and absolutely controls a manufacturing plant wherein ladies' hosiery is manufactured by him.

(g) Supplying purchasers with hosiery of a grade, texture, and quality different from that of the samples exhibited by the sales agents and representatives of respondent, from which the purchasers have made selections and from forwarding to purchasers hosiery of a different color and size from that selected by such purchasers.

(h) Unduly and unreasonably delaying the correction of mistakes in filling orders, or failing and neglecting to make adjustments as promised.

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(i) Retaining hosiery sent in for exchange or adjustment of mistakes and failing or neglecting to refund the money paid by such purchasers.

(j) Refusing to make adjustment on ladies' hosiery returned where such hosiery is not accompanied by a remittance of from 35 to 45 cents per pair unless and until he informs the purchasers at the time of the placing of the original order for said hosiery that adjustments will only be made when accompanied with such remittances.

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

IN THE MATTER OF
ROXIE THORSON, TRADING AS THORSON'S SOAP LAKE
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 2832. Complaint, June 3, 1936—Decision, Jan. 16, 1939

- Where an individual engaged in preparing certain packaged mineral salts, (1) salt ingredients of which were obtained from Soap Lake in State of Washington, and (2) which included such products as salts, effervescent salts, "Liniment," "Skin-Aid Soap Lake Ointment," "Shampoo," and "Skin-Aid Soap Lake Soap," and designations of which (3) included words "Soap Lake," and in selling and distributing, under trade name including words "Soap Lake Products," her said preparations to purchasers in other States and in the District of Columbia, in competition with others likewise engaged in preparing, distributing, and selling mineral salt or other products prepared, intended and sold for same purposes for which her said preparations were sold in commerce as aforesaid; in advertising her said products through letters, pamphlets, and other material circulated through the various States, and through broadcasts from stations of extrastate audience—
- Featured her trade name, as aforesaid, and, through such statements as "A Short Cut to Health through Nature," "Health Through the Skin," "The World's Greatest Healing Spot," and "* * * contain all the qualities of the lake itself," and "Bringing a great Health Resort to your Home," in connection with references to said Soap Lake and Soap Lake salts, etc., represented that her products aforesaid would prevent and cure, or be beneficial in the treatment of, a large number of diseases, ailments, and afflictions, including stomach, liver, bowel, and kidney troubles, rheumatism, diabetes, skin diseases, diseases of the blood, high blood pressure, arthritis, neuritis, and numbers of others;
- Facts being use thereof would not cure any or all of such diseases, ailments, and afflictions and did not constitute treatment for all or any thereof, and none of said products were beneficial in treatment of all or any of said conditions set forth as above indicated, and benefits, if any, obtained from use of any or all of said products were limited to those resulting from the laxative and diuretic properties and action thereof, and their use as either external or internal cleansing agents, and representations above set forth as descriptive of products in question were grossly exaggerated, misleading, and untrue;
- With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that all of said representations were true, and with result, as direct consequence of such mistaken and erroneous beliefs induced by said acts and misrepresentations, that number of consuming public bought substantial volume of her said products, and trade was unfairly diverted to her from those likewise engaged in preparing, distributing, and selling similar products or others designed, intended, and sold for use in the cure, relief, or treatment of the various

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diseases, ailments, afflictions, and conditions concerned, and who truthfully represent the effectiveness of their respective products; to the substantial injury of competition in commerce:

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

Before *Mr. Henry M. White*, trial examiner.

Mr. J. T. Welch and *Mr. R. A. McOuat* for the Commission.

Mr. William M. Clapp, of Ephrata, Wash., for respondent.

Honorable Clarence D. Martin, Governor of the State of Washington, and *Honorable G. W. Hamilton*, attorney general for the State of Washington, of Olympia, Wash., for said State as *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 Roxie Thorson, trading as Thorson's Soap Lake Products Co., hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Roxie Thorson, trading as Thorson's Soap Lake Products Co., has her place of business at Soap Lake, in the State of Washington. Respondent is now, and has been for some years, engaged in the business of preparing, distributing, and selling, in commerce as herein set out, certain packaged mineral salts designated as "Thorson's Soap Lake Salts," "Thorson's Effervescent Soap Lake Salts," and packaged kindred products designated as "Thorson's Soap Lake Liniment," "Thorson's Skin-Aid Soap Lake Ointment," "Thorson's Soap Lake Shampoo," and "Thorson's Skin-Aid Soap Lake Soap," obtained from Soap Lake, located in the State of Washington.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said salts and kindred products, when sold, to be transported from her place of business in the State of Washington to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been for several years, a constant current of trade and commerce in said products so prepared, distributed, and sold by the respondent, between and among the various States of the United States and in the District of Columbia.

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PAR. 3. In the course and conduct of her business, respondent is now, and has been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of manufacturing, distributing, and selling mineral salts 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. 4. In the course of the operation of said business, and for the purpose of inducing the purchase of said salts and kindred products, respondent has printed and circulated throughout the several States to customers and prospective customers, through the United States mails and otherwise, advertising folders, pamphlets, circulars, letters, and other literature, and has made use of radio broadcasts over stations of sufficient power to convey the programs emanating therefrom into the various States of the United States to advertise the products sold by her; in all of which advertisements, respondent has caused her trade name, Thorson's Soap Lake Products Co., to be prominently and conspicuously displayed, together with the following statements:

A Short Cut to Health through Nature.

Learn to Get Well Quick and Be Well Always.

Relieve your Ailments—While at Home.

Thorson's Soap Lake Salts Give Health Through the Skin.

Most persons who come to Soap Lake do so on the advice of friends who have been benefited by the Health Giving Water of Soap Lake which shows that the water, as well as the Sun Evaporated Minerals produced from it, is all it is claimed to be.

Soap Lake—Unequaled Health Giving Water.

The World's Greatest Healing Spot.

Thorson's Soap Lake Salts contain all of the qualities of the lake itself.

Bringing a Great Health Resort to your Home.

You can now take this Soap Lake Mineral Water treatment right in your home, without loss of time—of the vast expense of travel—the Soap Lake Mineral Water Treatment has been used successfully in the treatment of the following Disorders and Ailments:

- High Blood Pressure
- Stomach Disorders
- Liver and Bladder Troubles
- Auto-Intoxication
- Nervous Ailments
- Skin Afflictions
- Kidney Trouble
- Excess Acidity
- Constipation
- Rheumatism
- Arthritis
- Diabetes
- Neuritis

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Thorson's Soap Lake Shampoo—It is a marvelous combination of all the ingredients essential to Hair Health.

Thorson's Skin-Aid Soap Lake Soap—Used in connection with Skin-Aid Ointment is without equal in the treatment of Skin Diseases and Eruptions.

Thorson's Effervescent Soap Lake Salts—Relief for all Stomach Trouble.

By a special process of crystallization you can now make this wonderful product in your own home without losing any of the curative power of the water.

All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's products and their effectiveness in treating or curing many of the diseases, ailments, afflictions, and conditions of the human body. In all of her advertising literature, respondent represents, through the statements and representations herein set out and other statements of similar import and effect, that her various packaged products to wit: Thorson's Soap Lake Salts, Thorson's Effervescent Soap Lake Salts, Thorson's Soap Lake Liniment, Thorson's Skin-Aid Soap Lake Ointment, Thorson's Soap Lake Shampoo, and Thorson's Skin-Aid Soap Lake Soap, will prevent and cure, or are beneficial in the treatment of, many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human body.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said radio broadcasts and advertising literature as diseases, ailments, afflictions, and conditions which the use of said above-named packaged products will prevent and cure, or is beneficial in the treatment of, are the following:

Stomach, liver, bowel and kidney troubles, rheumatism, diabetes, catarrh, skin diseases, female trouble, diseases of the blood, psoriasis, pyorrhea and sore gums, gangrene, foot trouble, eye trouble, eczema, lumbago, dropsy, pleurisy, dyspepsia, ivy oak poison, sunburn, insect bites, chilblains, frostbite, cramps of muscles, scalds, wounds and sores, high blood pressure, auto-intoxication, nervous ailments, excess acidity, constipation, arthritis, neuritis, and Buerger's disease.

PAR. 5. The representations made by the respondent with respect to the nature and effect of her products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the use of respondent's packaged products will not prevent and cure, nor are any of said products beneficial in the treatment of all, or any of, the diseases, ailments, afflictions, and conditions hereinabove named. The benefits, if any, generally obtained from a use of any or all of said products are limited to those resulting from the laxative and diuretic properties and action of said products and the use of said products as either an external or an internal cleansing agent. Said packaged prod-

ucts have no therapeutic value in the treatment of the diseases, ailments, afflictions, and conditions above named.

PAR. 6. There are among respondent's competitors many who manufacture, distribute, and sell various products designed, intended, and sold for the purpose of curing, relieving, or treating some, or all, of the various diseases, ailments, afflictions, and conditions of the human body hereinabove named and who do not, in any way, misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing her products and 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 her said products were, and are, calculated to, and had, and now have, a tendency and capacity to mislead 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 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 products 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, 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 products. As a result thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 3, 1936, issued, and on June 8, 1936, served its complaint in this proceeding upon respondent, Roxie

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Thorson, trading as Thorson's Soap Lake Products Co. 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, 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the 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, Roxie Thorson, is an individual trading as Thorson's Soap Lake Products Co., with her principal office and place of business located at Soap Lake, in the State of Washington. Respondent is now and for some years last past has been engaged in the business of preparing, distributing, and selling in commerce, certain packaged mineral salts designated as "Thorson's Soap Lake Salts," "Thorson's Effervescent Soap Lake Salts" and kindred products designated as "Thorson's Soap Lake Liniment," "Thorson's Skin-Aid Soap Lake Ointment," "Thorson's Soap Lake Shampoo," and "Thorson's Skin-Aid Soap Lake Soap."

The salt ingredients that go to make up these products are obtained by respondent from a body of water called Soap Lake, which is a lake located in the State of Washington.

PAR. 2. Respondent causes her products when sold to be transported from her place of business at Soap Lake in the State of Washington to purchasers thereof located at various points in other States of the United States and in the District of Columbia.

There is now and has been for some time last past a course of trade and commerce by respondent in said products between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, in the course of the operation of her business as described in paragraphs 1 and 2 hereof, is in competition with other individuals and with firms and corporations likewise engaged in the business of preparing, distributing, and selling mineral salt

products or other products prepared, intended, and sold for the same purposes for which respondent's products are sold in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In order to induce customers and prospective customers to purchase her products, respondent causes to be printed and circulated throughout the various States of the United States certain advertising matter which consists for the most part of letters, pamphlets, and circulars. Respondent has also made use of the radio for the purpose of creating a demand for her products by broadcasting advertising statements concerning her products over radio stations which have sufficient power to reach audiences in other States.

In all of her advertising matter respondent has featured her trade name, Thorson's Soap Lake Products Co., together with the following statements and representations which purport to be descriptive of respondent's products, the names of which are set forth in full in paragraph 1 hereof, and the effectiveness of said products in treating and curing many of the diseases, ailments, afflictions, and conditions of the human body:

A Short Cut to Health through Nature.

Learn to Get Well Quick and Be Well Always.

Relieve your Ailments—While at Home.

Thorson's Soap Lake Salts Give Health Through the Skin.

Most persons who come to Soap Lake do so on the advice of friends who have been benefited by the Health Giving Water of Soap Lake which shows that the water, as well as the Sun Evaporated Minerals produced from it, is all it is claimed to be.

Soap Lake—Unequaled Health Giving Water.

The World's Greatest Healing Spot.

Thorson's Soap Lake Salts contain all of the qualities of the lake itself.

Bringing a great Health Resort to your Home.

You can now take this Soap Lake Mineral Water treatment right in your home, without loss of time—of the vast expense of travel—the Soap Lake Mineral Water Treatment has been used successfully in the treatment of the following Disorders and Ailments:

- High Blood Pressure
- Stomach Disorders
- Liver and Bladder Troubles
- Auto-Intoxication
- Nervous Ailments
- Skin Afflictions
- Kidney Trouble
- Excess Acidity
- Constipation
- Rheumatism
- Arthritis
- Diabetes
- Neuritis

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Thorson's Soap Lake Shampoo—It is a marvelous combination of all the ingredients essential to Hair Health.

Thorson's Skin-Aid Soap Lake Soap—Used in connection with Skin-Aid Ointment is without equal in the treatment of Skin Diseases and Eruptions.

Thorson's Effervescent Soap Lake Salts—Relief for all Stomach Trouble.

By a special process of crystallization you can now make this wonderful product in your own home without losing any of the curative power of the water.

In all of her advertising literature respondent represents through statements and representations herein set out and through statements of similar import and effect that her products will prevent or cure, or are beneficial in the treatment of the following diseases, ailments and afflictions:

Stomach, liver, bowel and kidney troubles, rheumatism, diabetes, catarrh, skin diseases, female trouble, diseases of the blood, psoriasis, pyorrhea and sore gums, gangrene, foot trouble, eye trouble, eczema, lumbago, dropsy, pleurisy, dyspepsia, ivy oak poison, sunburn, insect bites, chilblains, frostbite, cramps of muscles, scalds, wounds and sores, high blood pressure, auto-intoxication, nervous ailments, excess acidity, constipation, arthritis, neuritis, and Buerger's disease.

PAR. 5. The Commission finds that the representations set forth in paragraph 4 hereof, which respondent makes with respect to the therapeutic value of her products when used, are grossly exaggerated, misleading, and untrue. In truth and in fact the use of respondent's products will not prevent or cure all or any of the diseases, ailments, or afflictions set forth in paragraph 4 hereof. The use of said products in the manner prescribed by respondent or in any other manner does not constitute a treatment for all or any of the aforesaid diseases, ailments, and afflictions, nor are any of said products beneficial in the treatment of all, or any of, the diseases, ailments, afflictions, and conditions set forth in paragraph 4 hereof. The benefits, if any, generally obtained from a use of any or all of said products are limited to those resulting from the laxative and diuretic properties and action of said products and the use of said products as either an external or an internal cleansing agent.

PAR. 6. Each and all of the false and misleading statements and representations made by respondent, as hereinabove set forth, in her advertising, letters, circulars, pamphlets, and over the radio and by other advertising media in offering for sale and selling her products 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 these mistaken and erroneous beliefs induced by the acts and misrepresentations of respondent as hereinabove

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enumerated, a number of the consuming public purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of preparing, 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 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 as herein found are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and states that she waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act,

It is ordered, That respondent, Roxie Thorson, individually and trading as Thorson's Soap Lake Products Co., or under any other name, her representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce and in the District of Columbia of packaged mineral salts obtained from Soap Lake, Washington, now designated as "Thorson's Soap Lake Salts," "Thorson's Effervescent Soap Lake Salts," "Thorson's Soap Lake Liniment," "Thorson's Skin-Aid Soap Lake Ointment," "Thorson's Soap Lake Shampoo," and "Thorson's Skin-Aid Soap Lake Soap," whether sold under those names or under any other names, do forthwith cease and desist from representing, directly or by inference:

That said mineral salts obtained from the waters of Soap Lake, Washington, will prevent or cure, or are beneficial in the treatment of stomach, liver, bowel, and kidney conditions; rheumatism, diabetes,

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catarrh, skin diseases, female trouble, diseases of the blood, diseases of the hair, psoriasis, pyorrhoea and sore gums, gangrene, foot trouble, eye trouble, eczema, lumbago, dropsy, pleurisy, dyspepsia, ivy and oak poisoning, sunburn, insect bites, chilblains, frost-bite, cramps of muscles, scalds, wounds and sores, high blood pressure, autointoxication, nervous ailments, excess acidity, constipation, arthritis, neuritis, and Buerger's disease, or any similar ailments, afflictions, or conditions which may be present or exist in the human body other than conditions which may be benefited by the laxative, diuretic, or cleansing properties of said mineral salts.

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

IN THE MATTER OF

J. A. SCHWARTZ TRADING AS NATIONAL SALES &
NOVELTY COMPANY

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

Docket 3253. Complaint, Oct. 25, 1937—Decision, Jan. 17, 1939

Where an individual engaged in sale and distribution of radio receiving sets and other articles of merchandise to purchasers in the various States, in substantial competition with others likewise engaged in sale and distribution of similar articles in commerce as aforesaid; in soliciting sale of and in selling and distributing his said products—

Furnished various devices and merchandising plans which involved operation of games of chance, gift enterprises, or lottery schemes for distribution thereof to consumer wholly by lot or chance, and consisted of literature, instructions, and push cards for use in such offer and sale by operators of said cards, under scheme in accordance with which person paid for chance secured varying amount, dependent upon number revealed under disk, and received article being disposed of in accordance with such plan or nothing other than chance, dependent upon success or failure in selecting that one of feminine names disclosed on card corresponding with name concealed under card's master seal after sale of all chances, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of his merchandise in accordance with sales plan above set forth, 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 others engaged in sale and distribution in similar commerce of like and similar articles of merchandise who do not sell the same through use of lotteries or games of chance;

With result that many purchasers of his said products were attracted by element of chance involved in his sales method aforesaid, and thereby induced to purchase his merchandise in preference to same or similar goods of competitors who did not, and do not, use such or equivalent methods, and public, by reason of preference aforesaid, bought substantial volume of said goods and trade was unfairly diverted to him from competitors aforesaid:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, 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 J. A. Schwartz, individually and trading as National Sales & Novelty Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style of National Sales & Novelty Co., with his principal office and place of business located at 1407 Diversey Parkway, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of radio receiving sets and other articles of merchandise 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 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 35 pay in cents the amount of such number, and persons selecting numbers over 35 pay 35 cents 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 radio receiving sets and other articles of merchandise each have a greater value than the cost of a single push from said push card. The radio receiving sets and other 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 radio receiving sets or other articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who make, 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 methods and by the element of chance involved in the sale or distribution thereof 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. 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 an equivalent method.

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 the Federal Trade Commission Act, the Federal Trade Commission, on October 25, 1937, issued, and on October 26, 1937, served its complaint in this proceeding upon J. A. Schwartz, individually, and trading as National Sales & Novelty Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act. After the issuance of the said complaint, testimony and other evidence in support of the allegations of the complaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by John A. Nash, attorney for the respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and the said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence, briefs in support of the complaint, respondent not having filed brief, and oral argument not having been requested; 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.

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. A. Schwartz, is an individual trading under the name and style of National Sales & Novelty Co., with his principal office and place of business located at 1407 Diversey Parkway, city of Chicago, State of Illinois.

In the fall of the year 1936 respondent began selling and distributing radio receiving sets and other articles of merchandise to purchasers thereof located in the various States of the United States. This business was continued by respondent until the month of December 1937. During the time above mentioned, respondent caused said merchandise, when sold, to be transported from his place of business in the State of Illinois to the purchasers thereof located at various points in States of the United States other than the State from which said shipments were made.

Respondent was, at all times mentioned herein, in substantial competition with other individuals and with partnerships and corporations likewise 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 soliciting the sale of, and in selling and distributing, his merchandise, respondent furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise was to be distributed to the consumer wholly by lot or chance.

The methods used by respondent to sell his merchandise were as follows:

Respondent distributed to the public certain literature, instructions, and cards which are known in the trade as "push cards." The aforesaid literature describes the manner in which the push cards were to be used by the people who receive them. The literature also explained in detail the manner of allotting certain premiums or prizes by means of the push card.

Each of the push cards had printed thereon a number of feminine names, together with blank spaces opposite an alphabetical list of the names for writing in the names of customers who purchase chances on the push card.

Each push card had a corresponding number of partially perforated disks marked "PUSH." Below each disk was printed one of the feminine names printed elsewhere on the card. Concealed within each disk was a number, which was disclosed when the disk was pushed or separated from the card. Each card had a master disk, concealed within which was one of the feminine names.

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When all the disks had been selected or "pushed" by customers, and the master seal removed from the master disk, the person who selected the name corresponding to the name concealed within the master disk, received the article of merchandise specified without further charge. Customers paid in cents the amount of money indicated by the number revealed when the disk was removed or "pushed" by them. Customers selecting who "pushed" or removed disks on said cards which revealed numbers higher than the number 35 paid only 35 cents. Customers selecting names which did not correspond with the name revealed by removal of the master seal received nothing but the privilege of making a selection for the money which they paid. In this manner, the respondent sold and distributed a substantial number of New Monarch Radio receiving sets to members of the general public.

The Commission finds that respondent's merchandise was distributed to the purchasing public wholly by lot or chance, and that the amount which a customer paid for a chance, or whether the same was free of charge, was determined wholly by lot or by chance.

PAR. 3. The Commission finds that the persons to whom respondent furnished his push cards used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan.

Respondent thus supplied and placed 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 Commission further finds that the sale of respondent's merchandise to the purchasing public as hereinabove described involved a game of chance or the sale of a chance to procure respondent's merchandise, and that the use of said lottery method in the distribution of merchandise was and is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and was and is contrary to an established policy of the Government of the United States.

PAR. 4. There are among the competitors of respondent individuals, firms, partnerships, and corporations likewise engaged in the business of selling and distributing in similar commerce like and similar articles of merchandise, who do not sell their merchandise by use of lotteries or games of chance.

Many purchasers of respondent's merchandise were attracted by the element of chance involved in respondent's sales method, and were thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who did not and do not use the same or equivalent methods.

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Because of the said preference, the public has purchased a substantial volume of respondent's merchandise with the result that trade has been unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove found 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (respondent having filed no answer), 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, brief filed by counsel for the Commission (counsel for respondent having filed no brief and not having requested oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act,

It is ordered, That the respondent, J. A. Schwartz, individually, and trading as National Sales & Novelty Co., or under any other trade name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of radio receiving sets, or any other merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices for the purpose of enabling such persons to dispose of or sell such or similar products by the use thereof.

2. Mailing, shipping, or transporting to his agents and to distributors or to members of the public push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute such or similar products by the use thereof.

3. Selling or otherwise disposing of such or similar products by the use of push or pull cards, punchboards, or other lottery devices.

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

Syllabus

IN THE MATTER OF
NATIONAL BISCUIT COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AND AMENDMENTS THERETO

Docket 3607. Complaint, Sept. 24, 1938—Decision, Jan. 17, 1939

Where a corporation which (1) was engaged in manufacture, offer, sale, and distribution in commerce of bakery and packaged food products including, chiefly, biscuits, (2) constituted, by volume of sales, largest concern in the United States in such business, and represented consolidation of several companies previously thus engaged, (3) had factories and plants in 21 of more different States and selling agencies or branches in some 257 cities in and through which it maintained very extensive sales and delivery organization for its products and stocks, and from which sales and deliveries to retailers, chiefly, could be and were made by truck, and, as aforesaid engaged in transporting its said products from its various places of business in various States and in the District of Columbia to purchasers in such and various other States and in said District, in substantial competition with others likewise engaged in sale of similar products among the various States and in said District, and with many smaller concerns which were not able to carry on the same character of deliveries direct to retailers as conducted by it as above described, and could not be, and were not, sufficiently equipped as to localized storage and delivery facilities to their purchasers to be able so to do;

In dealing through agents and representatives with certain jobbers and wholesalers who performed little or no service for it, but whom its said agents and representatives certified as headquarters of retail group buyers located in the territory in which such jobbers and wholesalers sold and distributed their products, notwithstanding fact that they did not represent such buyers nor have any connection therewith—

(a) Entered into understandings, agreements, and combinations with jobbers and wholesalers aforesaid, under which (1) it undertook and agreed to, and did, pay to such jobbers and wholesalers percentage on, or discount upon, aggregate amount of purchases from it by retailers who were on lists allocated by such agents and representatives to each of said jobbers and wholesalers and were located in the territories thereof, and (2) said wholesalers or jobbers, in consideration of payment aforesaid, agreed not to deal in product of a competitor or competitors of it, and thereby paid them such percentages or discounts upon purchases by retailers aforesaid on condition or understanding that they would not deal in products of a competitor or competitors;

With intent and effect of preventing wholesalers and jobbers with whom it dealt, from dealing in products of competitors and of preventing them from rendering to competitors customary or ordinary services of jobbers or wholesalers, and of curtailing greatly services to competitors of jobbers or wholesalers in the marketing of competitors' products pending receipt by said jobbers and wholesalers of compensation from it as industry's largest and dominant factor:

Complaint

28 F. T. C.

Held, That such acts and practices were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition; and Where said corporation, engaged and acting as above described—

(b) Paid, under understandings, agreements, and arrangements above set forth, such discounts and percentages, both to many wholesalers and jobbers who were and continued to be its customers, as well as to noncustomers and jobbers;

With intent and effect aforesaid:

Held, That such acts and practices constituted a violation of Section 3 of an Act of Congress approved October 15, 1914, and amendments thereto.

Mr. Daniel J. Murphy for the Commission.

Davis, Polk, Wardwell, Gardiner & Reed and *Mr. George H. Coppers*, of New York City, for respondent.

COMPLAINT

Count 1

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that National Biscuit Co., hereinafter referred to as respondent, has violated the provisions of 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 Biscuit Co., a corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 449 West 14th Street, New York, N. Y., with factories, branches, and selling agencies in many States of the United States. It is now, and for more than 3 years last past has been, engaged in the manufacture, offering for sale, sale, and distribution in commerce of bakery and packaged food products, chiefly biscuits, of which it makes and sells over 500 varieties. It has caused, and still causes, such products when sold by it to be transported from its various places of business in various States of the United States and in the District of Columbia to the purchasers thereof, some located in the States in which it has its places of business 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 3 years last past has been, a constant current of trade in commerce by respondent in such products 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 3 years last past has

been, in substantial competition with other corporations and with persons, firms, and partnerships 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. Respondent, by volume of sales, is the largest concern in the United States engaged in the business hereinabove described, and is itself a consolidation or combination of several companies previously thus engaged, and it also owns several subsidiaries similarly engaged. Respondent has capital stock (common and preferred) issued and outstanding in excess of \$85,000,000 par value. Respondent has factories and plants in 21 or more different States of the United States, and has selling agencies or branches in approximately 257 cities in various States of the United States. In and through its said selling branches, respondent maintains a very extensive sales and delivery organization for its products, and stocks from which sales and deliveries chiefly to retailers can be and are made by automobiles.

Among respondent's competitors in commerce, as described in paragraph 1 hereof, are many smaller concerns which cannot be and are not sufficiently equipped as to localized storage and delivery facilities to their purchasers, and which are not able to carry on the same character of deliveries direct to retailers as conducted by respondent in the manner hereinabove described. By reason thereof, such smaller competitors are in large measure dependent upon jobbers and wholesalers for their marketing outlets to retailers.

Well knowing its dominance in the manner hereinabove described and the consequent dependence of many of its smaller competitors upon jobbers and wholesalers, respondent, for the purpose of injuring such smaller competitors, enters into understandings, agreements, and combinations with jobbers and wholesalers by which, although they perform little or no service for respondent, respondent undertakes and agrees to, and does, pay to them a percentage on or discount upon the aggregate amount of purchases from respondent by retailers on lists of retailers allocated to and furnished by respondent to each such jobber and wholesaler. Such arrangements or agreements are commonly referred to as "headquarters discount agreements." Some of such payments are made direct by respondent, and others through other agencies. The lists of retailers thus made up and furnished by respondent are not confined to bona fide or actual customers of respondent or of its jobbers and wholesalers, but include many who are not customers of and who are not known to the jobbers or wholesalers to whom they are allocated. In some instances where listed retailers are not customers of jobbers, payments by respondent are made to

such jobbers and wholesalers in arbitrary lump sums, and in various instances said alleged percentage, discount, or sum was in truth and in fact a payment without consideration other than the agreement of such jobbers or wholesalers not to deal in the products of a competitor or competitors of the respondent.

The purpose and effect of such lists so furnished and payments so made by respondent, is unfairly to induce and prevent said jobbers and wholesalers from rendering to competitors of respondent the customary and ordinary services of jobbers or wholesalers and greatly to curtail the services of jobbers and wholesalers to respondent's competitors in the marketing of their products, so long as said jobbers and wholesalers thus induced continue to receive compensation from respondent, the largest and dominant factor in the industry, in return for practically no service performed.

PAR. 3. The acts and practices of the respondent as herein alleged are all to the prejudice of the competitors of respondent and of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, competition in the sale of bakery and packaged food products in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in such bakery and packaged food products; and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Count 2

The Federal Trade Commission, having reason to believe that National Biscuit Co., a corporation, hereinafter called respondent, has violated, and now is 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 and the first and second subparagraphs of paragraph 2 of count 1 of this complaint to the same extent and as though the allegations thereof were set out in full herein, and they are incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. Respondent, in some instances, and in some portions of the United States, sells its products to jobbers and wholesalers who

maintain sufficient stock to fill emergency and some other orders. In such instances and places respondent sells such stock to its said jobbers and wholesalers only upon the condition, agreement, and understanding that such jobbers or wholesalers will not deal in or sell products of a competitor or competitors of respondent.

The effect of said sales by respondent upon such conditions, agreements, and understandings 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 bakery and packaged food products.

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).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the provisions of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and amendments thereto, the Federal Trade Commission on September 24, 1938, issued its complaint in the above entitled proceeding and caused same to be served upon the respondent above named, National Biscuit Co., a corporation, charging it with the use of unfair methods of competition and unfair or deceptive acts and practices in violation of the provisions of said acts. After the issuance and service of said complaint, a stipulation as to the facts was made and entered into by and between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and the respondent, which stipulation was accepted and approved by the Commission on November 18, 1938. This stipulation provided that the statement of facts contained therein may be made a part of the record herein and 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 said Commission may proceed upon such statement and inferences that may be drawn therefrom, to make its report stating its findings as to the facts and its conclusions based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, National Biscuit Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 449 West 14th Street, New York, N. Y., and with factories, branches, and selling agencies in many States of the United States. It is now, and for more than 3 years last past has been, engaged in the manufacture, offering for sale, sale, and distribution in commerce of bakery and packaged food products, chiefly biscuits of which it makes and sells over 500 varieties. It has caused, and still causes, such products when sold by it to be transported from its various places of business in various States of the United States and in the District of Columbia to the purchasers thereof, some located in the States in which it has its place of business 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 3 years last past has been, a constant current of trade in commerce by respondent in such products 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 3 years last past has been, in substantial competition with other corporations and with persons, firms, and partnerships 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. The respondent, by volume of sales, is the largest concern in the United States engaged in the business described in paragraph 1 hereof, and is itself a consolidation or a combination of several companies previously thus engaged. Respondent has capital stock (common and preferred) issued and outstanding in excess of \$85,000,000 par value. Respondent has factories and plants in 21 or more different States of the United States and has selling agencies or branches in approximately 257 cities in various States of the United States. In and through its said selling branches respondent maintains a very extensive sales and delivery organization for its products and stocks from which sales and deliveries, chiefly to retailers, can be and are made by motor trucks.

PAR. 3. Among respondent's competitors in commerce, as described in paragraph 1 hereof, are many smaller concerns which cannot be and are not sufficiently equipped as to localized storage and delivery facilities to their purchasers and which are not able to carry on the same character of deliveries direct to retailers as conducted by re-

spondent in the manner hereinabove described. By reason thereof such smaller competitors are in large measure dependent upon jobbers and wholesalers for their marketing outlets to retailers.

PAR. 4. Agents and representatives of respondent, acting for and on behalf of respondent, have entered into understandings, agreements, and combinations with certain jobbers and wholesalers by which, although they performed little or no service for respondent, respondent undertook and agreed to, and did, pay to them a percentage on or discount upon the aggregate amount of purchases from respondent by retailers on lists of retailers allocated, by said agents and representatives, to each such jobber and wholesaler, said retailers having been in the territories of said jobbers and wholesalers. In consideration of the payment of said percentages or discounts, the said wholesalers or jobbers agreed, with said agents and representatives of respondent, not to deal in the products of a competitor or competitors of respondent. Some of such payments were made direct by respondent and others through other agencies. Said agents and representatives certified to respondent that said wholesalers and jobbers were the headquarters of retail group buyers located in the territory where the said jobbers and wholesalers sold and distributed their products, whereas in fact said retail buyers were not represented by nor connected with said wholesalers and jobbers. The result of said understandings, agreements, and combinations was that respondent paid to said wholesalers or jobbers said percentages on or discounts upon the purchases by said retailers on the condition or understanding that such jobbers or wholesalers would not deal in the products of a competitor or competitors of respondent.

PAR 5. Many of said wholesalers and jobbers referred to above were and continue to be customers of the respondent and they as well as noncustomer wholesalers and jobbers received said discounts and percentages on understandings, agreements, and arrangements as above set forth.

PAR. 6. The purpose and effect of the understandings, agreements, or combinations described in paragraph 4 hereof, were to prevent the wholesalers and jobbers with whom respondent had dealings from dealing in the products of competitors of respondent, and further to prevent said jobbers and wholesalers from rendering to competitors of respondent the customary and ordinary services of jobbers or wholesalers and greatly to curtail the services of jobbers or wholesalers to competitors of respondent in the marketing of their products, so long as said jobbers and wholesalers continued to receive compensation from respondent, the largest and dominant factor in the industry.

CONCLUSIONS

The acts and practices of the respondent, as set out in paragraphs 1, 2, 3, 4, and 6 hereof, are all to the prejudice and injury of the public and to competitors of the respondent and constitute unfair methods of competition, within the intent and meaning of the provisions of the Federal Trade Commission Act, and the acts and practices of the respondent as set out in paragraphs 1, 2, 3, 4, 5, and 6 hereof, constitute a violation of Section 3 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and amendments thereto.

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 entered into between the respondent herein 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 conclusions based thereon and an order disposing of the proceedings, and the Commission having made its findings as to the facts and conclusions that said respondent has violated the provisions of the Federal Trade Commission Act, and also 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."

It is ordered, That the respondent, National Biscuit Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of bakery and packaged food products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Entering into any contract, agreement, or understanding with wholesalers, jobbers, or any other dealer in bakery and packaged food products, that such wholesaler, jobber, and dealer shall not deal in bakery and packaged food products made by any one other than the respondent; and from agreeing to pay, and from paying, to any such wholesaler, jobber, or any other dealer commissions, discounts, or compensation of any kind upon the agreement or understanding of such wholesaler, jobber, or dealer, that he shall not deal in the products of a competitor of respondent.

Order

2. Making any sale or contract for the sale of bakery and packaged food products for use, consumption, or resale, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in the goods, wares, merchandise, supplies, or other commodities of a competitor or competitors of the respondent.

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
**GUY J. BANTA DOING BUSINESS AS CAL-A-MO
 LABORATORIES**

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

Docket 3185. Complaint, July 23, 1937—Decision, Jan. 18, 1939

Where an individual engaged in sale and distribution of reducing preparation under name of "Cal-A-Mo Reducing Bath" to purchasers in State of California and in various other States and in District of Columbia in substantial competition with others engaged in sale of reducing preparations among the various States and in said District of Columbia; in advertising his said product in newspapers of general circulation and through advertising folders and matter printed and circulated throughout the various States and through radio broadcasts:

- (a) Represented that his said product was a reducing preparation which contained ingredients that would get rid of excess fat and that by means thereof the user would be enabled to bathe off excess fat or float fat away and that it dissolved fat and penetrated the pores of the skin so as to cause loss thereof and reduction in weight, and that it was harmless in all cases, through such statements, among others, as "The safe way to reduce," "A healthful, harmless way to bathe off excess fat," "The equivalent of a reducing bath in the famous European spas," "Penetrates your pores and reaches your excess fat," etc; facts being said product contained no ingredients which would get rid of excess fat, it was not a reducing preparation, and did not prove harmless in all cases, and claims and representations made by it as above indicated were false, misleading, and untrue.
- (b) Represented, through use of words "Cal-A-Mo Laboratories" in his trade name and advertising matter, to members of the purchasing public that he owned, operated, or maintained a laboratory for the manufacture, experimentation, or testing of his aforesaid "Cal-A-Mo Reducing Bath" product, facts being said preparation was not made by him but by a drug company and after purchase removed by him from the original package and repackaged and labeled for sale through department and drug stores and drug jobbers.

With effect of misleading a substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and with result that public, acting under mistaken and erroneous belief induced by such false and misleading statements and representations, purchased substantial volume of his aforesaid preparation and trade was unfairly diverted to him from his competitors who truthfully advertise and represent the place of manufacture of their product to the injury of competition in commerce:

Held, That such acts and practices were all to the prejudice and injury 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. Lee Roy Brigham, of Los Angeles, Calif., for respondent.

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 Guy J. Banta, an individual trading and doing business under the name and style of "Cal-A-Mo 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 Guy J. Banta is an individual trading and doing business under the name and style of "Cal-A-Mo Laboratories" with his office and principal place of business located at 706 South Hill Street, in the city of Los Angeles, within the State of California. Said respondent is now, and for more than 1 year last past, has been engaged in the sale of a reducing preparation under the name of "Cal-A-Mo Reducing Bath," and in the distribution thereof between and among the various States of the United States. Respondent causes said reducing preparation when sold by him, to be transported to the purchasers thereof located in the State of California, in various other States of the United States, and in the District of Columbia. There is now, and for more than 1 year last past has been, a constant current of trade and commerce by respondent in said reducing preparation between and among the various States of the United States and the District of Columbia. In the course and conduct of his business, the said respondent is now, and for more than 1 year last past has been in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with various other individuals, firms, partnerships, and corporations likewise engaged in the sale of reducing preparations.

PAR. 2. Said reducing preparation "Cal-A-Mo Reducing Bath," is a preparation composed of epsom salts, oil pine cones, oil white pine, and chamomile flowers, and is intended to be placed in the bath. It is manufactured for said respondent by the Brunswig Drug Co., of Los Angeles, Calif., and is purchased by said respondent from the said Brunswig Drug Co. Said respondent causes the said preparation "Cal-A-Mo Reducing Bath" to be removed from the original package in which it is purchased by him, and the said preparation is then packaged and labeled by said respondent, and sold by said respondent through various department stores, drug stores, and drug jobbers.

PAR. 3. In the regular course and conduct of his said 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 his said reducing preparation "Cal-A-Mo Reducing Bath." As media of advertising, said respondent has used, and is now using, newspapers of interstate circulation located in various cities throughout the United States, broadcasts over radio stations with interstate transmission and pamphlets, circulars, and folders distributed with the said product "Cal-A-Mo Reducing Bath." All of said advertisements were and are intended by said respondent, Guy J. Banta, trading and doing business under the name and style of "Cal-A-Mo Laboratories" to be read by the general public and in particular by the purchasers of reducing preparations and to cause and induce said purchasers to buy the reducing preparation "Cal-A-Mo Reducing Bath" sold and distributed by said respondent.

PAR. 4. Said respondent in his said advertisement of the reducing preparation known as "Cal-A-Mo Reducing Bath" and sold by him, 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 his advertisements in newspapers, pamphlets, and in radio broadcasts are the following:

1. The safe way to reduce.
2. The safe road to slenderness.
3. A healthful, harmless way to bathe off excess fat.
4. Cal-A-Mo is the equivalent of a reducing bath in the famous European spas.
5. Let the soothing, medicinal ingredients of Cal-A-Mo float fat away.
6. Your fat slowly dissolves under the medicinal action of Cal-A-Mo Reducing Bath.
7. You can lose from 2 to 5 lbs. or more from one bath without endangering your health.
8. You don't have to diet—you don't have to take any medicines—you don't have to take vigorous exercises.
9. There are actually thousands of men and women who have reduced weight easily and quickly with Cal-A-Mo.
10. Guaranteed safe reducing treatment.
11. Cal-A-Mo Reducing Bath penetrates your pores and reaches your excess fat.
12. Cal-A-Mo Laboratories.

The above statements, together with many other similar statements of like import made by the said respondent in his said advertisements in newspapers, pamphlets, and in radio broadcasts, are false, deceptive, and misleading because in truth and in fact, said "Cal-A-Mo Reducing Bath" is not a reducing preparation, contains

no ingredients which will get rid of excess fat, and its use will not prove harmless in all cases.

Said respondent, Guy J. Banta, in the regular course and conduct of his said business, trades under the name of "Cal-A-Mo Laboratories" and advertises as "Cal-A-Mo Laboratories" whereas in truth and in fact, said respondent does not own, operate, nor maintain any laboratory for the manufacture, experimentation with, or testing of, the said product "Cal-A-Mo Reducing Bath" and does not manufacture nor test the said product, but simply packages and labels the said preparation which is bought by him in bulk.

PAR. 5. The use by the said respondent, Guy J. Banta, trading and doing business under the name and style of "Cal-A-Mo Laboratories," of the foregoing false, deceptive, and misleading representations 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 said respondent is engaged in truth and fact in the manufacture of a reducing preparation known as "Cal-A-Mo Reducing Bath" and maintains a laboratory for the purpose of manufacturing, experimenting with, and testing his said product, and that his said product "Cal-A-Mo Reducing Bath" is in truth and in fact, a safe, efficient, and harmless preparation, the use of which will effectively result in the reduction in weight and the loss of excess fat by the user thereof, and has thereby induced and does now induce the consuming public and especially that portion of the public using reducing preparations, acting in said erroneous belief to purchase "Cal-A-Mo Reducing Bath" in preference to reducing preparations offered for sale by manufacturers and other distributors of reducing 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, trade has been diverted to respondent from such manufacturers and distributors of reducing preparations who do not falsely, deceptively, and misleadingly advertise their respective 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 his 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 the Federal Trade Commission Act, the Federal Trade Commission, on July 23, 1937, issued, and on July 27, 1937, served its complaint in this proceeding upon respondent, 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the 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, Guy J. Banta, is an individual, trading and doing business under the name and style of "Cal-A-Mo Laboratories," with his office and principal place of business located at 706 South Hill Street in the city of Los Angeles, State of California. Respondent is now, and for more than 1 year last past has been engaged in the sale and distribution of a reducing preparation under the name of "Cal-A-Mo Reducing Bath," in commerce between and among the various States of the United States.

The product, "Cal-A-Mo Reducing Bath," when sold, is transported by respondent from his office and place of business in the State of California to the purchasers thereof located at various points in the State of California and in various other States of the United States and in the District of Columbia.

There is now, and has been, since the time respondent started selling his product, a course of trade and commerce by respondent in said product between and among the various States of the United States and in the District of Columbia.

Respondent is now, and has been, in substantial competition in commerce with various other individuals, firms, partnerships, and corporations likewise engaged in the sale of reducing preparations between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, for the purpose of inducing individuals to purchase the product "Cal-A-Mo," has caused advertisements to be inserted in newspapers of general circulation throughout the United States, and has printed and circulated throughout the various States advertising folders and literature. Respondent has also made use of radio broadcasts in advertising said product.

Among the statements which respondent used in his advertising in newspapers, pamphlets, and over radio broadcasts are the following:

The safe way to reduce.

The safe road to slenderness.

A healthful, harmless way to bathe off excess fat.

Cal-A-Mo is the equivalent of a reducing bath in the famous European spas.

Let the soothing, medicinal ingredients of Cal-A-Mo float fat away.

Your fat slowly dissolves under the medicinal action of Cal-A-Mo Reducing Bath.

You can lose from 2 to 5 lbs. or more from one bath without endangering your health.

You don't have to diet—you don't have to take any medicines—you don't have to take vigorous exercises.

There are actually thousands of men and women who have reduced weight easily and quickly with Cal-A-Mo.

Guaranteed safe reducing treatment.

Cal-A-Mo Reducing Bath penetrates your pores and reaches your excess fat. Cal-A-Mo Laboratories.

Respondent, by use of the name "Cal-A-Mo Laboratories" in his trade name and in his advertising matter, represents to members of the purchasing public that he either owns, operates, or maintains a laboratory for the manufacture, experimentation, or testing of the product "Cal-A-Mo Reducing Bath."

PAR. 3. Respondent's product is a preparation composed of Epsom salts, oil pine cones, oil white pine, and chamomile flowers and is used externally in a bath.

The product is manufactured for respondent by the Brunswick Drug Co., of Los Angeles, Calif.

Respondent causes the said preparation, "Cal-A-Mo Reducing Bath" to be removed from the original package in which it is purchased by him and the preparation is then packaged and labeled by respondent. Respondent sells the product through various department stores, drug stores, and drug jobbers.

PAR. 4. The statements and representations made by respondent, as hereinabove set forth, in his advertising, literature, in newspapers and in catalogs and other advertising media are false, misleading, and untrue.

In truth and in fact, respondent's product "Cal-A-Mo Reducing Bath" is not a reducing preparation. The product contains no

ingredients which will get rid of excess fat, and use of the product does not prove harmless in all cases.

Use of the product will not enable an individual to "bathe off excess fat" or "float fat away."

The product does not dissolve fat when used in the manner prescribed by respondent. The product does not penetrate the pores of the skin in such a manner as to cause loss of fat or to reduce weight.

In truth and in fact, respondent does not own and operate or maintain a laboratory for the manufacture, experimentation, or testing of the product "Cal-A-Mo Reducing Bath."

PAR. 5. There are among the competitors of respondent, individual firms, partnerships, and corporations likewise engaged in the business of distributing and selling in interstate commerce reducing preparations who truthfully advertise their products.

Each and all of the false and misleading representations made by respondent in his advertising in newspapers, circulars, pamphlets, and over the radio, in offering for sale and selling his product, had, and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true.

Acting under the mistaken and erroneous beliefs induced by the false and misleading statements and representations herein referred to, the public has purchased a substantial volume of respondent's product, with the result that trade has been unfairly diverted to respondent from his competitors who truthfully advertise their products.

CONCLUSION

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 the Federal Trade Commission Act.

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 fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Guy J. Banta, individually and trading and doing business under the name and style of Cal-A-Mo Laboratories, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a pharmaceutical preparation designated "Cal-A-Mo" or any other preparation composed of like or similar ingredients or having the same properties under whatever name sold, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that Cal-A-Mo is a reducing preparation containing ingredients which will get rid of excess fat or that by the use of Cal-A-Mo the user will be enabled to bathe off excess fat or float fat away.

2. Representing that Cal-A-Mo dissolves fat or that it penetrates the pores of the skin in such a manner as to cause loss of fat and reduction in weight, or that Cal-A-Mo contains any ingredient which has a medicinal or therapeutic value or effect in reducing weight or contains any ingredient which affects the metabolism of fat.

3. Representing that the use of Cal-A-Mo is harmless in all cases.

4. Representing, by the use of the word "Laboratories" or any other term of similar meaning or like import as a part of his trade name, or in any other manner, that he owns, operates, or maintains a laboratory for the purpose of manufacturing, testing, or experimenting with his said preparation Cal-A-Mo until and unless he actually owns and operates or directly and absolutely controls a laboratory for said purposes.

5. Making any other similar representations of like import or effect as to the therapeutic or medicinal value of said preparation Cal-A-Mo or the benefits accruing from the use thereof.

It is further ordered, That the respondent Guy J. Banta, an individual trading and doing business under the name and style of Cal-A-Mo Laboratories, 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 the order hereinabove set forth.

IN THE MATTER OF
CARTER CARBURETOR CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AND OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3279. Complaint, Apr. 5, 1938¹—Decision, Jan. 18, 1939

Where a corporation engaged in manufacture and sale of carburetors and carburetor parts for use in the automobile industry, and which—

1. Constituted one of the two largest manufacturers of carburetors in the United States, with more than 90 percent of passenger cars produced in the year 1937 equipped with its product or that of other concern;

2. Sold and distributed its said products through some 66 regional distributors to whom it granted exclusive territory covering, in the aggregate, the entire United States, some 86 zone distributors, 900 to 1,000 contract service stations, and about 6,000 service stations (a) equipped with cabinets and expert personnel (and supplied by it with a large amount of service and sales bulletins, charts, catalog sheets, and trade information of great value to it in the conduct of its business), and necessary for the effective servicing, both of equipment and "after market" sale of the highly complicated mechanism involved, and customarily maintained for such purposes by manufacturers, generally, of such devices, for the adequate servicing of which the average general garage and automotive dealer is not equipped with necessary parts, training or personnel, and which (b), prior to the below-mentioned acts and practices, were free, in accordance with general custom of such stations, to handle a variety of makes and thus be able to care for the needs of different models of the same manufacturer and various models of different manufacturers, as occasion arose;

Following the acceptance by one of the large automotive manufacturers of a competitive carburetor as equipment on one of the popular and widely sold models made by it, and which was beginning to emerge as the carburetor chiefly competitive with its own, and to the handling of which by its said stations it had not theretofore objected—

(a) Mailed to all its distributors, contract service stations, cabinet stations, and sales service personnel, its General Bulletin No. 134, notifying service stations that if they took on "a new carburetor line" without its written approval, preferential discount and service information (theretofore extended along with special training in service and repair of carburetors and engine tune-up), and its contract, if any, would be discontinued by its distributor, and instructed its field representatives to insist on enforcement of policy stated as aforesaid, and to see that distributors carried out same, and to aid latter in so doing, and to check on service stations with respect to whether they were handling a new line, so defined as to include competitive carburetor above referred to, and announced that "our outlets must choose" between its own and said competitive carburetor, and that "until they make up their minds twenty-five percent (its standard trade discount) will be their discount," and in the meantime suspended all contracts and special discounts;

¹ Amended.

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- (b) Sent a "confidential" bulletin to all regional and zone distributors requesting them to call on all its service stations handling the competitive device or line referred to above, and stating that if they kept "the other line" after a shortly ensuing date specified "mailings to them would be discontinued," and its said contracts, if any, with them would lapse and standard trade discounts referred to would then apply, and thereupon, through its field representatives, distributors, and distributors' salesmen, did call upon service stations and notified and continued to inform them that policy stated in bulletin above set out would be enforced, and told stations found to be handling competing new line that they could not continue to carry same and retain their preferential discount and their contract, if any, with it, and asked them to notify them in writing that they had discontinued such competing line and returned their stock:
- (c) Commenced to contact and seek out, through its field representatives and distributors, service stations through whom distributors thereof, in accordance with usual practice, had entered into sales agreements with a view to developing the after market business of the manufacturer of said increasingly competing line, and informed such stations that if they continued to deal in such particular competitive products they would no longer be permitted to purchase its own at a favorable discount and would cease to receive from its service bulletins and information, and that their contracts, in the case of the contract service stations, would be cancelled, and carried out policy set forth in its aforesaid General Bulletin and "confidential" bulletin, and cancelled contracts with, and reduced discounts available to, some 19 service stations refusing to discontinue dealing in the competitive products before referred to, and in some instances offered service-station privilege of purchasing its products at a more favorable discount than it was then receiving upon condition that it sever its connection with said competitor, while threatening to reduce discount if service stations would not do so;
- With the result that, as a consequence of such concerted action by it, its field representatives and distributors, the independent carburetor and ignition stations throughout the country were given choice of losing privilege of handling on favorable terms carburetor which was standard equipment on a majority of automobiles in use and which furnished large part of their carburetor service business, or of giving up new carburetor line which was standard equipment on only a few cars and which, even as to those, had not been in the field long enough to require any substantial amount of service, and that, confronted with such alternatives, many service stations throughout the country cancelled their contracts with the manufacturer of said competitive line, returned their stock, or ceased to deal therein, and, in substantial number, severed their official connection therewith or returned its stock, or both, and, in some cases in which they did not return the stock of said competitor after receiving aforesaid General Bulletin, refrained thereafter from displaying or advertising said competitor's products as service stations contracting with said competitor had undertaken to do, and prominently, by the terms of their sales contracts with it, as well as to maintain mechanical equipment efficiently to service product of said competitor, and kept competitor's stock out of sight and ceased to promote sale thereof; and

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(d) Entered into or renewed contracts for the sale of its products with more than 900 service stations on the condition or understanding that the purchasers thereof should not use or deal in the goods of a competitor or competitors of it, and fixed the prices charged for its products and discounts from such prices to approximately 7,000 service stations on the condition or understanding that the purchasers thereof should not use or deal in the goods of a competitor or competitors of it, and made such contracts and fixed such prices and imposed such condition and understanding in the course and conduct of its after market interstate business;

With the result that the effect of the contracts and conditions or understandings aforesaid had been and might be to substantially lessen competition and tend to create a monopoly in the sale and distribution of carburetors and carburetor parts in interstate commerce, and effect of its above-described acts and practices was to induce, coerce, and compel a large number of automobile service stations throughout the United States to cease and refuse to deal in or purchase products of competitor aforesaid, and to cancel or violate existing sales agreements with such competitor, and of thereby closing to it a substantial number of actual and potential service stations for its products, diverting business and trade from it and preventing such service stations from selling and dealing in a full line of standard carburetors and parts:

Held, That the sending and giving of such notices, information, and threats, and the taking of such action thereafter and thereunder, and the entering into such contracts and the fixing of such prices, etc., as hereinbefore described, constituted a violation and continued violation of section 3 of Clayton Act, and that its acts and practices as above set forth and indicated were to the prejudice of the public and competitors and constituted unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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

Mr. Cyrus B. Austin for the Commission.

Mr. Noah A. Stancliffe and *Mr. George T. Barker* of Hardy, Stancliffe & Hardy, of New York City, *Mr. George R. Erickson*, of St. Louis, Mo. and *King & King*, of Washington, D. C., for respondent.

AMENDED 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," commonly known as the Clayton Act, the Federal Trade Commission having reason to believe that Carter Carburetor Corporation, the respondent above named, has violated the provisions of section 3 of said act; and pursuant also to the provisions of an Act of 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 known as the Federal Trade Commission Act,

the Commission having reason to believe that the said Carter Carburetor Corporation has been using unfair methods of competition in commerce, as "commerce" is defined in said Act of Congress; and it appearing that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges in such respects as follows:

I

PARAGRAPH 1. The respondent, Carter Carburetor 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 at 2820-56 North Spring Avenue, St. Louis, Mo.

PAR. 2. Respondent is engaged in the manufacture, distribution, and sale, among other things, of carburetors and carburetor parts for use in the automotive industry. In the course and conduct of its business respondent transports the said products, or causes the same to be transported, from the State and place of their manufacture or location, to its customers and purchasers thereof located in other States of the United States and the District of Columbia; and respondent is, and at all times herein mentioned has been, engaged in trade and commerce in said products between the State where respondent or said products are located and other States of the United States.

PAR. 3. Respondent distributes and sells its said products for use, consumption, or resale within the United States and the District of Columbia, in the same territories and places as, and in substantial competition with, various other persons and corporations engaged in the manufacture, distribution, and sale of carburetors and carburetor parts in commerce between and among the several States.

PAR. 4. Commerce in the sale and distribution of carburetors has two main divisions: First, the sale of carburetors to automobile manufacturers for use as original equipment; second, the sale of carburetors and carburetor parts for replacement and repair of original equipment. Respondent supplied more than 50 percent of carburetors used as original equipment in automobile production for 1937 and with one other manufacturer, supplied more than 95 percent of the carburetors so used.

The replacement and repair business is carried on chiefly by independent automobile service stations, electrical and carburetor repair shops and garages (hereinafter collectively referred to as "service stations") throughout the United States. Respondent sells its products to wholesalers, known as distributors, who contact and sell to the service stations in their respective territories. Said distributors

generally handle only respondent's line of carburetors, are under contract with respondent, and are subject to the control and instructions of respondent in the distribution and terms of sale of respondent's products. Respondent also maintains direct contact with service stations through a staff of field representatives and through dissemination of literature. Respondent's distributors and the service stations handling its products are competitively engaged in the resale of such products, at wholesale and retail, in the various territories and places where said customers, respectively, carry on their business.

PAR. 5. Respondent has entered into contracts, now in force, for the sale and governing the terms of sale of respondent's products, with more than 900 independent automobile service stations throughout the United States. Respondent's distributor servicing the territory in which the service station is located is also a party to such contract. The service stations holding said contracts are for the most part shops specializing in carburetor and electrical service and repair, with special equipment and mechanics specially trained for that work, and doing a large part of the carburetor service and repair business in their respective localities. Pursuant to the terms of said contracts, the service station receives a discount of 50 percent from list prices on carburetors and carburetor parts purchased thereunder, as against lesser discounts available to other service stations and to the retail trade generally. Said contracts generally run for a period of 1 year, subject to renewal, and subject to cancellation by any party on 30 days' notice. The power of respondent and its distributors arbitrarily to terminate such contracts on short notice and the relative importance of respondent's products in the automotive industry tend to make the service stations subservient to respondent's wishes and will as to the conduct of their business; and a large proportion are in truth subservient, lest they lose the benefit of said contracts and the preferential discount available thereunder.

PAR. 5-A. In addition to the above-mentioned contract service stations, respondent's said products are dealt in and carried in stock by approximately 6,000 so-called general cabinet service stations located throughout the United States. Said general cabinet service stations are not under contract with the respondent, but purchase respondent's said products at a discount of 40 percent from list price from respondent's distributors and receive directly from the respondent and from its distributors valuable service and sales bulletins and information.

PAR. 6. It is and has been the accepted trade practice of service stations specializing in automobile carburetor replacements and

repairs to carry a complete line of all carburetors and parts sold or used as original equipment on current makes and models of automobiles so that they can make replacements or repairs on any automobile that may be brought to them for such service. Maintenance of such trade practice is in the interest and to the mutual advantage of the service stations and the public. On or about April 1, 1937, respondent inaugurated, has since actively pursued, and is now engaged in enforcing and maintaining, a policy and practice whereby it refuses to enter into, renew or continue the above-described service station contracts, or to grant or continue said preferential discounts (discounts in excess of 25 percent from list price) to service stations which sell or deal in carburetors and carburetor parts manufactured and placed on the market by a competitor or competitors of respondent not engaged in said business prior to June 23, 1934. One or more of respondent's competitors mentioned in paragraph 3 hereof have engaged in business and placed their carburetor products on the market since that date, distributing and selling a substantial amount of said products both to automobile manufacturers for original equipment and to service stations and shops for replacement and repair. Respondent, by printed bulletins, correspondence, personal calls by its field representatives, and through its distributors, has notified all service stations holding said carburetor sales contracts and all its general cabinet service stations that it and its distributors will reduce the discounts available to said service stations to 25 percent, discontinue service information, and terminate such contracts if the service station continues or commences to sell or deal in the said products of such competitor or competitors. The same policy has been and is being enforced as to service stations seeking new contracts with respondent. Respondent has required its distributors to aid and assist in the enforcement of this policy in their respective territories. Respondent and its distributors have terminated their contracts with certain service stations refusing to accept such conditions, and respondent has instructed its distributors thereafter to allow to such service stations only the 25 percent trade discount. The purpose and result of this policy and practice has been to persuade, intimidate, and coerce many service stations to cancel similar carburetor sales contracts with such competitor or competitors, to discontinue dealing in and selling the products of such competitor or competitors, and to refuse to deal in or purchase the products of such competitor or competitors.

PAR. 7. Each of the two divisions of the carburetor business described in paragraph 4 hereof is dependent upon and necessary to

the maintenance of the other. The ability of a manufacturer to sell its carburetors to an automobile manufacturer for original equipment depends to a large extent upon a showing that its carburetors and parts are handled by service stations throughout the United States so that owners of cars equipped therewith can obtain satisfactory service. Respondent is a dominant factor in this industry, controlling a large part of the original equipment business. Its policy and practices herein complained of have the effect not only of persuading and coercing service stations to cease or refuse to handle the products of a competitor or competitors, thereby lessening competition in the repair and replacement field, but the consequence of such effect is to impair the marketability of the products of such competitor or competitors for use as original equipment, regardless of the intrinsic merit of the product itself. Said policy and practices are designed to preserve to respondent (and to its single major competitor in the original equipment field, against whom said practices are not directed) the bulk of the business in original equipment and, therefore, in the industry.

PAR. 8. By and pursuant to the policy and practices above described, respondent has made its said service station carburetor sales contracts subject to the condition, and is making and continuing such contracts and making sales thereunder in the course of its said business on the condition and with the agreement or understanding, that the service station purchasers of its products shall not use, sell, or deal in the carburetor products of a certain competitor or competitors of respondent. The effect of such contracts and sales, and such condition, agreement, or understanding, may be to substantially lessen competition or tend to create a monopoly in the distribution and sale of carburetors and carburetor parts in trade or commerce among the several States and such contracts and sales are, therefore, unlawful and in violation of the provisions of section 3 of said Clayton Act.

PAR. 9. Pursuant to and in furtherance of the policy and practices above described, respondent in the course of its said business has fixed a price for its said products and has fixed a discount from such price, available to a substantial class of purchasers of such products upon the condition, agreement, or understanding that such purchasers shall not use, sell, or deal in the carburetor products of a certain competitor or competitors of respondent. The effect of such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in the distribution and sale of carburetors and carburetor parts in trade or commerce among the several States, and the fixing of such price and discount therefrom upon such condition, agreement, or understanding is, therefore, unlawful and in violation of the provisions of section 3 of said Clayton Act.

II

PARAGRAPH 1. Paragraphs 1 to 6, inclusive, of charge I hereof are hereby adopted and made a part of this charge as fully and with the same effect as though here set forth at length.

PAR. 2. Pursuant to and in furtherance of its policy and practices hereinbefore described, respondent, directly and through its distributors, has induced, coerced, and compelled, and has endeavored to induce, coerce, and compel, a substantial number of independent automobile service stations throughout the United States holding or seeking contracts with respondent, or receiving or seeking to obtain a preferential discount in the purchase of respondent's products, to cancel existing carburetor sales contracts between such service stations and a certain competitor or competitors of respondent and to cease and refrain from dealing in and selling the carburetor products of such competitor or competitors. As a means of such inducement, coercion, and compulsion respondent has threatened to withdraw and deny, and in some cases has withdrawn or denied, the benefits of its service station contract and preferential price discount, requiring such service stations either to discontinue existing business relations with such competitor or competitors or forfeit the opportunity to purchase and sell respondent's products on favorable terms. Thereby respondent closes to such competitor or competitors in the distribution and sale of carburetors and carburetor parts a substantial number of actual and potential service station outlets valuable to the consuming public.

PAR. 3. The tendency and effect of the policy methods and practices above complained of is and has been to hinder and lessen competition in the distribution and sale of carburetors and carburetor parts throughout the United States; to obstruct, hamper, and interfere with the normal and natural flow of trade and commerce in such products; to injure those of respondent's competitors against whom said policy is directed by unfairly diverting business and trade from them and depriving them thereof; to prevent a substantial number of service stations from handling and selling a full line of carburetors and parts, to their prejudice and injury; all to the prejudice and injury of the public. Said policy, methods, and practices constitute unfair and unlawful methods of competition within the meaning of section 5 of the aforesaid Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, and the Clayton Act (U. S. Code, title 15, sections 14 and 45) the

Federal Trade Commission, on April 5, 1938, issued and served its amended complaint in this proceeding upon respondent, Carter Carburetor Corporation, charging it with violation of section 3 of the Clayton Act and with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act. Thereafter, hearings were held and evidence was introduced by Cyrus B. Austin, attorney for the Commission, and by Noah A. Stancliffe, George T. Barker, and George R. Ericson, attorneys for respondent, before John W. Addison, trial examiner theretofore duly appointed by the Commission. Thereupon this proceeding regularly came on for final hearing before the Commission on said complaint and briefs and oral arguments of counsel on behalf of Commission and respondents, and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the public interest and makes its findings as to the facts and conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Carter Carburetor Corporation, is a Delaware corporation, organized in 1925 with factories and principal offices located at 2820-56 North Spring Avenue, St. Louis, Mo. It is engaged in the business of manufacturing and selling, chiefly, carburetors and carburetor parts for use in the automobile industry. It is the successor of Carter Carburetor Co., a corporation which was engaged in the same business from 1909 to 1921 when it went into bankruptcy.

PAR. 2. The respondent and Bendix Products Corporation are the two largest manufacturers of automobile carburetors in the United States. More than 90 percent of the passenger cars produced in the United States in 1937 were equipped with Carter or Bendix (Stromberg) carburetors. Other carburetors adopted by automobile manufacturers as standard equipment on recent models are Chandler-Groves, on Packard Six, Plymouth, standard model, Lincoln-Zephyr and part of Ford; Marvel on Graham, part of Nash and part of Buick and Tillotson on Willys. Zenith Carburetor Co. is a subsidiary of Bendix and makes carburetors for replacement use on practically all makes of passenger cars and also truck carburetors.

PAR. 3. Carter carburetors were standard equipment on 60 percent of 1937 passenger cars and trucks and on more than half of all passenger cars and trucks sold for 3 years prior to 1937. Respondent's carburetors were standard equipment on 1937 and 1938 models of Chevrolet, Pontiac, Oldsmobile, LaSalle V-8, DeSoto, Hudson, Terraplane, and Reo; also Chrysler-Royal, Plymouth, DeLuxe Model,

Cadillac V-16, Dodge trucks, and some Studebaker cars and trucks. About 70 percent of the Carter carburetors used on Chevrolets are manufactured by the Chevrolet Co. in Bay City, Mich., under licenses from Carter. These are Carter carburetors and the parts are interchangeable with those manufactured by respondent. Respondent also makes and sells a number of carburetors which are designed for use in replacing carburetors of various makes and models on automobiles in use, such as the Universal, the Packard, and the Ford carburetors featured in its sales literature. Respondent sold 1,635,000 carburetors to automobile manufacturers in 1937 for use as standard equipment.

PAR. 4. Trade and commerce in carburetors has two principal branches: First, the sale of carburetors to automobile manufacturers for original equipment of automobiles; second, the sale of carburetors and parts for replacement and service of carburetors in use, commonly referred to as "after-market" business. The acts and practices of respondent complained of have been in connection with the after-market branch of its business, but competition in the original equipment field as well is affected. Respondent's dollar volume of sales in the two branches is in the ratio of about 5 to 2, so that its after-market business amounts to a little less than 30 percent of the total. Respondent sold more than 103,000 replacement carburetors in 1937 in the after-market field, the list prices of such carburetors ranging from \$10 to \$28 each; and the volume of the after-market business was greatly increased by the sale of parts.

PAR. 5. The after-market business in the service of carburetors of a new manufacturer entering the field is at first relatively small and takes 2 or 3 years to develop in any volume, because a carburetor ordinarily does not require replacement or repair during the first year or more of use. On recent models little service is required until after the car has been driven from 12,000 to 14,000 miles. In the early stages of respondent's business, after-market sales amounted to only 5 percent of its total volume. Nevertheless, service-station distribution is necessary at the start so that parts or new carburetors will be available if something goes wrong, and also to be able to assure the automobile manufacturer proper warranty service will be given on the carburetors.

PAR. 6. The carburetor manufacturer customarily warrants his carburetor to the automobile manufacturer to be free from defect of material or workmanship in normal use and service, for the warranty period of the automobile (generally 90 days or 4,000 miles). Respondent has an agreement with practically all of its customers that warranty service will be given, and that repairs during the warranty

period will be taken care of by respondent's service stations and distributors without expense to the automobile maker.

PAR. 7. Most automobile makers desire and rely on the carburetor maker's retail outlets for warranty service and, after the warranty period, for service supplemental to that given by automobile dealers. The automobile dealers also rely on the service stations for a ready supply of carburetor parts for making repairs. Such service can be given by a carburetor maker only through a wide service-station distribution of its products, and the availability of such service is considered by most automobile makers (except Ford and possibly Chevrolet) to be a very important factor in connection with the approval of standard equipment. Lists of "official service stations" are issued by equipment manufacturers and distributed by automobile manufacturers to their dealers for the purpose of making this service available to the dealers and car owners.

PAR. 8. The business of servicing, replacing, and repairing automobiles and automobile equipment is carried on in large part by about 60,000 independent service stations and garages located throughout the United States (not including automobile dealers). Seven thousand or more of these service stations specialize in the service of electrical equipment and carburetors. Practically all stations so specializing carry and sell respondent's products, its products being handled by about 6,000 general cabinet stations and more than 900 contract service stations, as hereinafter described.

PAR. 9. Modern carburetors are complicated mechanisms, respondent's carburetors comprising some 150 to 175 parts. Competent carburetor service requires special equipment and training not possessed by the ordinary garage and garage mechanic or by many automobile dealers. For this reason the 7,000 specialized service stations above referred to handle a great bulk of the carburetor service business and the remaining 53,000 or more independent repair shops are chiefly garages not specializing in, and in most cases not giving, carburetor service.

PAR. 10. It is the established custom of the specialized carburetor and ignition stations to offer service on all makes and models of automobiles in current use and to carry in stock and deal in various competing lines of standard equipment in use on such automobiles, so that service can be given on any car that may be driven in. Most service stations originally specializing in the service of electrical equipment have since taken on carburetor service. The larger and better-equipped service stations now carry practically all lines of such equipment standard on automobiles, and have contracts with

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competing manufacturers. A specialized carburetor service station must stock more than one line of carburetors, because the average automobile driver does not know the make of carburetor he has on his car, and different models of the same make of car may carry different carburetors.

PAR. 11. Respondent's original distributors had for years previously been specialized ignition service stations. The great majority of stations now dealing in respondent's products carried other carburetor lines before taking on respondent's line, and still deal in and give service on one or more competing carburetors. Respondent's is one of the newer carburetors in the automotive field, although it has succeeded in acquiring the bulk of the desirable equipment accounts.

PAR. 12. For many years it has been the custom for manufacturers of electrical equipment and carburetors, and their distributors, to enter into contracts with the larger independent service stations throughout the country governing the sale of their products, requiring the service station to carry a stock of the manufacturer's equipment and parts and providing for the price to be paid or discounts to be received by the service station. These contract service stations are known as official service stations of the equipment manufacturer, and are used as service references by the automobile manufacturer.

PAR. 13. Although respondent had some service-station distribution prior to 1927 it did not begin to enter the service field on a large scale until 1930, when it began to sell a general parts cabinet to stations throughout the country. Service stations which have purchased and maintained these cabinets now number about 6,000, are referred to as "general cabinet" stations, and are allowed a discount of 40 percent on purchases of respondent's products, as against respondent's general trade discount of 25 percent.

PAR. 14. In 1932, respondent commenced to enter into service-station contracts, as above described, offering such contracts in many cases to stations already handling Stromberg or other competing carburetors. Respondent now has between 900 and 1,000 official contract service stations (in addition to the 6,000 general cabinet stations), located in the larger towns, cities, and trading areas throughout the United States. These contracts provide that the service station shall receive a discount of 50 percent (in some cases 50 and 10 percent) from list price on purchases of respondent's products and that service station shall sell and exchange such products at prices and discounts "recommended" by respondent. Such contracts also provide that the service station shall give the warranty service above described and certain advertising services. The parties to such contracts are the

respondent, the regional distributor, and the service station. Said contracts are made for a period of 1 year, subject to renewal and subject to cancellation by any party on 30 days' notice.

PAR. 15. Respondent sells and ships its carburetors and carburetor parts f. o. b. St. Louis, to distributors or wholesalers of automotive equipment located in the various States of the United States, who are also under contract with respondent. Regional distributors (66) receive a discount of 60 and 10 percent, and are granted exclusive territory covering in the aggregate the entire United States. Thirty of said regional distributors have territory located in more than one State. Zone distributors (86) may purchase at 60 percent discount for shipment either direct from St. Louis or from the regional distributor.

PAR. 16. Both regional and zone distributors' contracts provide that the distributor shall sell respondent's products at prices and discounts specified by respondent, and respondent, in practice, fixes the prices and discounts at which said distributors sell such products. List prices are published in respondent's catalog. The catalog list prices are the prices used by the distributors and service stations as a basis for the purchase and sale of Carter carburetors and parts.

PAR. 17. Contract service stations purchase from distributors f. o. b. the distributor's city, but parts cabinets are generally shipped to the service station directly from St. Louis, and occasionally other shipments are so made at the distributor's request. General cabinet stations may purchase either from the distributor or a contract service station, at the prices fixed by respondent. Sales to contract service stations constitute the major part of the distributors' sales of respondent's products.

PAR. 18. Respondent has a large mailing list, including all contract and general cabinet service stations and their personnel, and mails to said stations and personnel from time to time, a large amount of service and sales bulletins, charts, catalog sheets, and trade information. This literature is very valuable to the service station in the conduct of its business.

PAR. 19. Respondent employs a staff of 19 field representatives who travel in the field and call upon distributors and service stations, maintaining direct contact between respondent and service stations located throughout the country. The country is divided into four districts, each under the supervision of a district manager, who supervises the work of the field representatives in his district. Respondent conducts short training courses at various distribution points, and a school at its factory in St. Louis, where many service-station mechanics have

received special training in the service and repair of carburetors, and in engine tune-up.

PAR. 20. On or about April 1, 1937, respondent mailed to all its distributors, contract service stations, cabinet stations, and sales-service personnel, its General Bulletin No. 134, notifying the service stations "that if you take on a new carburetor line without our written approval, preferential discount, service information, and Carter contract, if any, will be discontinued by the Carter distributor." A new carburetor was defined as a carburetor made only since the publication of respondent's Bulletin No. 77, which was dated June 23, 1934. Said Bulletin No. 77 was issued only to respondent's distributors, its gist being that if the distributor took on a competing line of carburetors, he could not expect to hold his Carter representation on an exclusive territorial basis. General Bulletin No. 134 is still in effect.

PAR. 21. The manager of respondent's parts and service division instructed respondent's field representatives to insist on the enforcement of the policy stated in Bulletin No. 134, and told them to see that the distributors carried out such policy, and to aid the distributors in carrying it out. He also told them to check up on the service stations that they might visit to see whether the service station was handling a new line of carburetors. On April 5, 1937, he sent a telegram to one of his field representatives in Michigan announcing the issuance of Bulletin No. 134, and stating that "our outlets must choose between Chandler-Groves and Carter" and "until they make up their minds twenty-five percent will be their discount," and in the meantime "suspending all contracts and special discounts." Distributors were to be notified. Copies of this telegram were sent to all of respondent's field men.

PAR. 22. Under date of April 7, 1937, a "confidential" bulletin was sent to all regional and zone distributors requesting them to call on all service stations handling the Chandler-Grove carburetor line, and stating that if service stations kept "the other line" after May 1, "mailings to them would be discontinued" and their Carter contracts, if any, would lapse. The standard trade discount of 25 percent would then apply.

PAR. 23. Thereupon, respondent's field representatives, distributors, and distributors' salesmen called upon the service stations and notified them, and thereafter continued to inform them, that the policy stated in Bulletin No. 134 would be enforced. Service stations found to be handling a new competing line of carburetors were told that they could not continue to carry that line and retain their preferential discount and their Carter contract, if they held such contract, and were asked

to notify respondent in writing that they had discontinued the competing line and returned their stock.

PAR. 24. There appear to be three carburetors which have been made only since June 23, 1934—Chandler-Groves, Mallory, and Fish. Of these, Chandler-Groves is the only one which has been adopted as standard equipment on automobiles. Chandler-Groves carburetors and parts were manufactured by Chandler-Groves Co., a Michigan corporation organized in 1935, with offices and factory in Detroit. Chandler-Groves Co. is a wholly owned subsidiary of Holley Carburetor Co. of Detroit, a concern which has for many years manufactured electrical equipment, and formerly carburetors, for the Ford Motor Co. and other automobile manufacturers. After December 31, 1937, Chandler-Groves Co. ceased to do business, and since that time Chandler-Groves carburetors have been manufactured and sold by Holley Carburetor Co. through Chandler-Groves distributors and service stations.

PAR. 25. In addition to carburetors, the Chandler-Groves Co. at first attempted to develop car heaters, inlet manifolds, fuel pumps, and various other automotive devices. Eventually it developed a single-barrel carburetor of the concentric type. Carburetors of that type in use in 1936 were made chiefly by respondent, whereas Bendix Products Corporation manufactured chiefly carburetors of the duplex or double-barreled type. For that reason, during 1936 and 1937, Chandler-Groves Co.'s competition was mainly with respondent.

PAR. 26. In 1936, Chandler-Groves carburetors were adopted for use as standard equipment on Packard Six and Plymouth PT-50 (truck). In 1937, Chandler-Groves became standard equipment on Plymouth standard model passenger car and, late in the year, was adopted for Lincoln-Zephyr and for a part of Fords. In addition to the foregoing, Chandler-Groves was used on several Dodge and DeSoto export models and on the Chrysler industrial engine. The great majority of the carburetors produced by Chandler-Groves Co. have been for Plymouth and Packard.

PAR. 27. Adoption of the Chandler-Groves carburetor by Plymouth was announced by Chandler-Groves in a bulletin dated March 10, 1937. Previously, all Plymouth passenger cars had been equipped with Carter carburetors. Respondent received a copy of this Chandler-Groves bulletin a short time before respondent issued its General Bulletin No. 134. Prior to that time, respondent had not objected to its service stations handling Chandler-Groves along with other competing lines.

PAR. 28. In developing its after-market business, Chandler-Groves Co. followed the usual service station contract plan hereinabove

described and, prior to April 1, 1937, had entered into sales agreements with a large number of independent service stations in various parts of the United States specializing in electrical and carburetor service. In soliciting these contracts, the Chandler-Groves distributors approached the larger and better-equipped service stations in their respective territories. The Chicago distributor contacted Auto-Lite (electrical equipment) service stations, and the Philadelphia distributor was also an Auto-Lite distributor and was already selling various kinds of electrical equipment to these service stations. The stations thus contracting with Chandler-Groves were established service stations carrying various lines of automotive equipment, and the great majority of them dealt in the products of respondent and other carburetor manufacturers, many of them being holders of respondent's service station contracts.

PAR. 29. About April 1, 1937, respondent, its field representatives and distributors, commenced to contact and seek out said Chandler-Groves service stations and informed them that, if they continued to deal in Chandler-Groves products, they would no longer be permitted to purchase respondent's products at a favorable discount, would cease to receive service bulletins and information from respondent, and in the case of respondent's contract service stations, that such contracts would be canceled. Respondent's instructions to its distributors and field representatives, as indicated by its said General Bulletin No. 134 and its confidential bulletin under date of April 7 have been and are being carried out. Respondent has carried out this policy to the extent of canceling its contracts with and reducing the discounts available to some 19 service stations refusing to discontinue dealing in Chandler-Groves products. In some instances, respondent offered the service station the privilege of purchasing respondent's products at a more favorable discount than the station was then receiving, upon condition that the service station sever its connection with Chandler-Groves, at the same time threatening to reduce the discount if the service stations would not do so.

PAR. 30. As a result of this concerted action by respondent, its field representatives, and its distributors, the independent carburetor and ignition stations throughout the country were given a choice of losing the privilege of handling on favorable terms the carburetor which was standard equipment on a majority of automobiles in use and which furnished a large part of their carburetors service business, or of giving up a new carburetor line which was standard equipment on only a few cars, which, even as to those, had not been in the field long enough to require any substantial amount of service. Confronted with these alternatives many service stations throughout

the country canceled their contracts with Chandler-Groves, returning their Chandler-Groves stock or ceased to deal in Chandler-Groves products. In a few cases the service stations refused to comply with conditions imposed by respondent, but these were mostly Chandler-Groves distributors (wholesalers dealing in respondent's products only on a service station basis). In the 10 months after April 1, 1937, a substantial number of service stations in various parts of the country severed their official service station connection with Chandler-Groves or returned their Chandler-Groves stock, or both. A large majority of these cancelations and returns occurred in April and May 1937.

PAR. 31. About 55 service stations in the Chicago, Milwaukee, Detroit, and Philadelphia areas canceled their Chandler-Groves contracts after April 1, 1937, and in most cases returned their Chandler-Groves stock or ceased to purchase additional stock. After April 1, 1937, the efforts of the distributors in these areas to obtain new Chandler-Groves service-station representation met with little success and many service stations assigned opposition by respondent as the reason for their refusing to sign contracts or purchase stock. The Chicago distributor obtained about 40 service-station contracts for Chandler-Groves prior to April 1, 1937, and only about 10 thereafter; of the 50 contracts obtained, only half were still in force in February 1938, the other half having been canceled by the service stations. None of these cancelations occurred prior to April 1, 1937.

PAR. 32. Of 50 service stations in the Philadelphia area which held Chandler-Groves contracts during all or part of 1937, 36 which did not cancel such contracts purchased an average of \$104 worth of Chandler-Groves products per station during the period of April to December of that year. Fourteen stations which canceled their contracts purchased a net total of \$18 worth of Chandler-Groves merchandise during the same period. While there was very little demand for Chandler-Groves products during the first 3 months of 1937, the 14 stations which later canceled their contracts purchased slightly more per station from January to March than the other 36 stations.

PAR. 33. By the terms of the sales contracts between Chandler-Groves Co. and service stations, the service stations agreed "to prominently display the advertising material of the vendor and to maintain mechanical equipment to efficiently service the product of the vendor." The sale of carburetors is promoted by the display of stock and advertising material. Some service stations did not return their Chandler-Groves stock after receiving respondent's Bulletin No. 134,

but nevertheless refrained thereafter from displaying or advertising Chandler-Groves products, kept such stock out of sight, and ceased to promote the sale thereof.

PAR. 34. Respondent has entered into or renewed contracts for the sale of its products with more than 900 service stations on the condition or understanding that the purchasers thereof shall not use or deal in the goods of a competitor or competitors of respondent.

PAR. 35. Respondent has fixed the prices charged for its products and discounts from such prices, to approximately 7,000 service stations, on the condition or understanding that the purchasers thereof shall not use or deal in the goods of a competitor or competitors of respondent.

PAR. 36. Respondent has made such contracts, fixed such prices, and imposed such condition and understanding, in the course and conduct of its after-market, interstate business.

PAR. 37. The effect of the contracts and the condition or understanding mentioned in paragraph 34 hereof, and of the condition or understanding mentioned in paragraph 35 hereof, has been and may be to substantially lessen competition and tend to create a monopoly in the sale and distribution of carburetors and carburetor parts in interstate commerce.

PAR. 38. The effect of the respondent's above-described acts and practices has been to induce, coerce, and compel a large number of automobile service stations throughout the United States to cease and refuse to deal in or purchase the products of Chandler-Groves Co. and to cancel or violate existing Chandler-Groves sales agreements. Respondent has thereby closed to a competitor a substantial number of actual and potential service station outlets for its products, has diverted business and trade from such competitor, and has prevented such service stations from selling and dealing in a full line of standard carburetors and parts.

CONCLUSIONS

1. By its acts and practices described in paragraphs 20, 21, 22, 23, 29, 34 and 35 of the foregoing "Findings as to the Facts," the respondent, Carter Carburetor Corporation, has violated and is violating section 3 of the Clayton Act.

2. The aforesaid acts and practices of the respondent have been and 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 the Federal Trade Commission Act.

Order

28 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint, the answer of the respondent, the testimony taken and evidence introduced at hearings before a trial examiner theretofore duly appointed by the Commission, and upon briefs and oral argument of counsel for the Commission and for the respondent, and the Commission having duly considered the same and being of the opinion that the respondent has violated and is violating 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" (the Clayton Act), and the Commission further being of the opinion that the respondent has been and is using unfair methods of competition prohibited by an Act of Congress approved September 26, 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 having made its report stating its findings as to the facts;

It is ordered, That the respondent, Carter Carburetor Corporation, and its officers, representatives, agents, and employees, in connection with the distribution, sale, and offering for sale of carburetors and carburetor parts in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. From directly or indirectly making or renewing contracts for the sale of such products to automotive vehicle service stations or other retail dealers on the condition or understanding that such purchasers thereof shall not use or deal in the goods or merchandise of a competitor or competitors of respondent.

2. From directly or indirectly fixing prices for such products, or discounts from such prices, charged or allowed or to be charged or allowed to automotive vehicle service stations or other retailer purchasers thereof on the condition or understanding that such purchasers shall not use or deal in the goods or merchandise of a competitor or competitors of respondent.

3. From directly or indirectly informing or notifying automotive vehicle service stations or other retail dealers in such products, or causing any of them to be informed or notified, that if they use or deal in such products of a competitor or competitors of respondent they will be required to pay a higher price for such products of respondent's manufacture, or will cease to receive service information from respondent, or their service station contracts will be terminated.

4. From requiring or causing any distributor or zone distributor of its products, or other wholesale dealer therein, to do any of the

acts or engage in any of the practices forbidden by paragraphs 1, 2, or 3 hereof; and from requiring or causing any such distributor or wholesaler to charge or threaten to charge a higher price for such products of respondent's manufacture to any purchaser thereof than would be charged if such purchaser did not deal in the goods of a competitor of respondent, or to terminate the service station contract of, or refuse to sell such products to, any automotive vehicle service station or other retailer using or dealing in the goods of a competitor or competitors of respondent.

5. From directly or indirectly inducing or attempting to induce any automotive vehicle service station or other dealer in such products to cease or refuse to deal in such products of a competitor of respondent, or to terminate or violate any contract between such service station or dealer and a competitor of respondent.

It is further ordered, That the respondent, Carter Carburetor Corporation, within 60 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 and is complying with this order.

IN THE MATTER OF
THE ROSS ROY SERVICE, INC., AND KELVINATOR
CORPORATION

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

Docket 3125. Complaint, May 8, 1937—Decision, Jan. 19, 1939

Where a corporation engaged in compilation of statistical data for use of manufacturers in advertising their respective products and in sale and distribution, in commerce among the various States, of books and literature containing such statistical data to manufacturers and dealers of products to which same apply, in substantial competition with others engaged in business of compilation, sale, and distribution of such data; in consideration of payment of sum of \$11,000 by, and in pursuance of agreement entered into with, second concern engaged in manufacture, sale, and distribution of electrical refrigerators to purchasers in the various States in substantial competition with others engaged in manufacture, sale, and distribution in commerce of such products—

Published, sold, and distributed to some 5,000 dealers and distributors of said concern's refrigerators and at the request of said concern and with its aid, assistance, encouragement, knowledge, acquiescence, and cooperation (1) "Comparative Handbook" in which, thus titled and put out under the name of said corporation it described itself as "An independent organization in no way affiliated with any manufacturer" and the book as an "accurate unbiased source of information," and in which were set forth data theretofore submitted to and approved by said concern relating in part to weight, cabinet, ice capacity, finish, hardware, insulation, temperature, mechanical action, economy, and dependability of mechanical refrigerators made and sold by various companies in the United States with schedules making comparisons between refrigerators of aforesaid concern and those of its competitors shown in red type in every case where one had an advantage over the other in the opinion of said corporation; and (2) bulletins designated as "Confidential" and devoted to publication of statistics, illustrations, and discussion respecting and concerning the merits and demerits of one make of refrigerator and comparison thereof with that of aforesaid concern;

Facts being said handbook and comparisons therein made were not "accurate, authoritative, and unbiased" but on the contrary were biased, inaccurate, and unauthoritative; it was not published entirely independent of all manufacturers but said corporation was subsidized as above set forth by aforesaid concern, refrigerators of equal size and capacity and selling value were not always used in the various tables and comparisons in said handbook and bulletins, and comparisons of temperature, hardware, finish, conveniences, cabinet, compressor and condenser units, insulation, cost of operation, and number of ice cubes frozen per hour, and number of kilowatts used per hour in rooms of various degrees of temperature were erroneously shown in handbook as in favor of the refrigerator made and sold by aforesaid subsidizing concern;

Complaint

With tendency and capacity through use of said handbook and bulletins by said corporation and said subsidizing concern to mislead and deceive members of purchasing public with respect to quality and value of refrigerators made and sold by latter, and particularly to mislead purchasers of latter's refrigerators into false and erroneous belief that such handbook and bulletins above described were "unbiased, authoritative, and accurate" and in no way affiliated with any company or corporation which made or sold refrigerators, and with result, due to misrepresentation aforesaid in such handbook and bulletins by said corporation, that trade was thereby diverted to said concern from its competitors who do not misrepresent the character, quality, or value of their refrigerators in advertising and statistics distributed by them in commerce among the various States:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. William L. Pencke for the Commission.

Schmalzriedt, Frye, Granse & Frye, of Detroit, Mich., for Ross Roy Service, Inc.

Wiley, Streeter & Ford and *Cook, Smith, Jacobs & Beake*, of Detroit, Mich., for Kelvinator Corporation.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to 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 Ross Roy Service, Inc., and Kelvinator Corporation, corporations, 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 Ross Roy Service, 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 403 West Baltimore Avenue, in the city of Detroit, State of Michigan. It is now, and has been for some time engaged in the business of compiling statistical data for the use of manufacturers, advertising their respective products and in the sale and distribution of books and literature containing such statistical data to manufacturers and to dealers in the products to which said data apply in commerce between and among the various States of the United States and in the District of Columbia. It causes the said statistical data, when sold, to be shipped from its place of busi-

ness in the State of Michigan to purchasers thereof located in the various States of the United States other than the State of Michigan and in the District of Columbia. There is now, and has been at all times herein mentioned, a constant current of trade and commerce in said statistical data so distributed and sold by the respondent between and among the various States of the United States and in the District of Columbia.

Respondent, Kelvinator Corporation 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 14250 Plymouth Road in the city of Detroit, State of Michigan. It is now, and has been for several years last past engaged in the manufacture, sale, and distribution of electrical refrigerators. It causes said refrigerators when sold to be shipped from its place of business in the State of Michigan to purchasers thereof located in the various States of the United States other than the State of Michigan 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 refrigerators so distributed and sold by the respondent, Kelvinator Corporation between and among the various States of the United States and in the District of Columbia.

PAR. 2. The respondents in the course and conduct of their respective businesses, are now and have been at all times mentioned herein, engaged in substantial competition with other corporations, and with individuals, firms, and partnerships likewise engaged in the sale and distribution of similar information and statistical data and refrigerators in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The Crosley Radio 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 located in the city of Cincinnati in said State. It has been for more than 1 year last past engaged in the manufacture, sale, and distribution of electrical refrigerators in commerce between and among the various States of the United States. It causes the same when sold to be shipped from its place of business in the State of Ohio to purchasers thereof located in the various States of the United States other than the State of Ohio. In the conduct of its business, Crosley Radio Corporation was at all times herein mentioned, and still is in competition with other corporations and with individuals, firms, and partnerships, among which is the respondent Kelvinator Corporation, likewise engaged in the sale and distribution of electrical re-

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

PAR. 4. In such competition between the sellers of various mechanical refrigerators, one of the controlling influences upon the purchasing public is the popular opinion as to the relative consideration to be given to such features as weight, ice capacity, cabinet, hardware, finish, insulation, temperature, conveniences, mechanical action, economy, and warranty in determining the relative merits and dependability of the various electrical refrigerators.

PAR. 5. In the early part of the year 1936, the respondent Ross Roy Service, Inc., collected and compiled certain statistical data relating to the mechanical refrigerators manufactured and sold by the various concerns in the United States, which data in particular related to such features of the various refrigerators as weight, ice capacity, cabinet, hardware, finish, insulation, temperature, convenience, mechanical action, economy, and warranty. Thereupon Kelvinator Corporation entered into an agreement with the respondent Ross Roy Service, Inc., wherein and whereby the Ross Roy Service, Inc., undertook to and did publish the statistical data so collected in the form of a statistical bound book designated as "The Ross Roy Comparative Hand Book," hereinafter referred to as handbook and also published a series of bulletins which make comparisons between certain mechanical refrigerators. Said series of bulletins were and are known as "Confidential Bulletins." Each bulletin in the series referred to is devoted to the presentation of statistics, illustrations, and discussions respecting and concerning the merits or demerits of one make of refrigerator and especially to a comparison [sic] thereof with the Kelvinator refrigerator, always to the advantage of the Kelvinator. The publication of said information and data was made at the request of the respondent Kelvinator Corporation and with the aid, assistance, encouragement, knowledge, acquiescence, and cooperation of the said Kelvinator Corporation. The Ross Roy Service, Inc., disseminated and distributed the aforesaid handbooks and bulletins with the full knowledge and acquiescence and at the request of Kelvinator Corporation to approximately 5,000 dealers and distributors of Kelvinator refrigerators located in the various States of the United States. For such compilation of data and such distribution the respondent, Kelvinator Corporation agreed to and did pay the Ross Roy Service, Inc., the sum of \$10,000. The dealers and distributors of Kelvinator Corporation electrical refrigerators likewise paid the respondent, Ross Roy Service, Inc., a good and valuable consideration for such handbook, data, and bulletins,

and while Kelvinator Corporation lent its financial support to the Ross Roy Service, Inc., in the publication and distribution of such literature and statistics, no mention of the fact was made by either of the respondents at any time.

PAR. 6. In the course and conduct of its business the Ross Roy Service, Inc., in its advertisements and advertising matter which is circulated in the various States of the United States, and in the handbook and other literature sold and distributed to the dealers in Kelvinator Corporation electrical refrigerators, as above set out, stated and represented that it was and is an independent organization "in no way affiliated with any manufacturer," and that its literature, representations, and comparisons were "accurate, authoritative, and unbiased."

In truth and in fact the information contained in the said handbook and the comparisons therein made between such refrigerators were not and are not accurate, authoritative, or unbiased, and the handbook was not and is not published entirely independent of all manufacturers. On the contrary such information and data so published by the respondent the Ross Roy Service, Inc., was biased, inaccurate, and unauthoritative. As a matter of fact, the respondent Ross Roy Service, Inc., was subsidized by the respondent Kelvinator Corporation in the manner herein set out. The derogatory and disparaging comparisons referred to were and are made concerning various refrigerators that are competitive with Kelvinator Corporation's refrigerators. Among such refrigerators which were unfairly disparaged are the refrigerators of Crosley Radio Corporation. In the handbook and bulletins devoted to a description of the refrigerators made by the Crosley Radio Corporation and other competitors of the respondent, Kelvinator Corporation, various statements and representations are made which are unfairly derogatory to, or disparaging to, such refrigerators. Comparisons were made between various features of the Kelvinator refrigerators and various features of the Crosley refrigerator and other refrigerators of competitors to the disadvantage of the Crosley Radio Corporation's refrigerators and the refrigerators of other competitors of the respondent Kelvinator Corporation. Illustrative of the unfair comparisons and disparaging statements and representations concerning the various competitive refrigerators are the following statements, representations, and comparisons concerning the refrigerator made by Crosley Radio Corporation.

In the schedules contained in the handbook purporting to give the comparisons between the Kelvinator refrigerators and refrigerators of its competitors, it is stated at the top of the pages of said hand-

book that the specifications are shown in red in every case where one refrigerator has an advantage over the other in the opinion of the respondent Ross Roy Service, Inc.

Under the heading of "Hardware-Finish" respondents represent that the Kelvinator refrigerator was to be preferred to and had an advantage over the electrical refrigerator of the Crosley Radio Corporation known as "Shelvador" because of the fact that the finish of the Kelvinator was "Chrome Ivory" and the finish of the "Shelvador" was "Chromium." As a matter of fact, the only difference between the two refrigerators in this respect was one of color which is not a feature of any importance. In fact, one color finish is not superior to another and is purely a matter of personal taste.

Under the heading of "Temperature," respondents represent that the Kelvinator was favored and to be preferred because it has a built-in thermometer, whereas the "Shelvador" had none. As a matter of fact, a thermometer is supplied with each "Shelvador" sold and distributed by the Crosley Radio Corporation and is so designed that the thermometer may be placed in or left out of the "Shelvador." The fact as to whether the thermometer is built-in or not is not important and does not represent a feature generally considered in determining the relative merits of refrigerators, and in no event is the thermometer of the Kelvinator refrigerator superior to the thermometer furnished by the Crosley Radio Corporation with the refrigerators sold and distributed by it.

Under the caption of "Conveniences," the respondents represent that both the Kelvinator and Shelvador contained a utility basket. As a matter of fact the utility basket of the "Shelvador" refrigerator was and is an unique and distinctive feature which is highly advertised and much to be preferred to the utility basket of the Kelvinator refrigerator. Notwithstanding that fact it was not favored with a red letter as a superior feature lending advantage to the Crosley unit.

In a purported comparison of the cabinet compressor and condenser units of the Crosley and other refrigerators as against the Kelvinator, pictorial representations of the motors are shown in the bulletins. In such pictorial representations respondents portrayed the complete and assembled unit of the Kelvinator motor, while the pictures of the motors of the other refrigerators were incomplete and unassembled. In and by such pictorial representations the erroneous and mistaken impression is conveyed that the Kelvinator motor is larger and more complete and that the motors of the competing products are small and of inferior mechanism.

Respondents also represent in the said "Confidential Bulletins" that while the Crosley refrigerator had thick side walls, back and top, the door opening in front of said refrigerator was very thin, and as a result thereof such unit was lacking in proper insulation. Respondents represent that the insulation of the Crosley refrigerator compared favorably in thickness with that used in the Kelvinator refrigerator cabinets, except as to the doors of each refrigerator, and that the Crosley unit is lacking in proper insulation. It was further stated in that connection:

Crosley insulation compares favorably in thickness when all but the doors are considered but to make room for the Shelvadors, the door insulation has been reduced to only $2\frac{1}{4}$ inches in two models, to $1\frac{3}{4}$ inches in two more, and to only $1\frac{1}{8}$ inches in four others.

That is somewhat similar to building a well insulated shanty for a railroad watchman and then putting on a door through which the heat can leak without difficulty.

In truth and in fact the figures as to the thickness of the "Shelvador" doors are and were inaccurate. Moreover such representations convey a false and erroneous impression, inasmuch as thickness does not in any manner mean proper and sufficient insulation. A thin door may be properly insulated and serve a greater degree of efficiency than a thick door. The purpose of such representations were and are to, and they do unfairly disparage the Crosley "Shelvador."

It was stated and represented that only the Kelvinator had an accurate, complete, and perfect temperature control and graduated thermometer, inasmuch as minute calculations appear in the scale of the Kelvinator. In truth and in fact the accuracy of the thermometer does not depend upon the minuteness of the markings on the scale used in the thermometer. In and by such representations, respondents unfairly disparage and discredit competing products of Kelvinator Corporation.

It was stated and represented in such bulletins that the Kelvinator refrigerator could be operated at a lower cost than the refrigerators of competitors; but no mention was made of the fact that with the refrigerators of the Crosley Radio Corporation and other refrigerator companies, more ice cubes per hour could be frozen than with the Kelvinator. Respondents failed to disclose that on the part of some manufacturers of refrigerators it is their policy to give their customers faster ice freezing even though at a slightly increased cost of operation, and, as a matter of fact, there is a preference on the part of some customers for refrigerators that accord fast ice freezing even though at an increased cost as compared to refrigerators that produce ice at a slower pace. In and by such representations

respondents unfairly disparage and discredit the competing products of the respondent, Kelvinator Corporation.

In said bulletins respondents make a comparison of operating cost of the Kelvinator and Crosley refrigerators and represented that in a room temperature of 80° the number of kilowatt-hours consumed by the Crosley refrigerator was 1.70 as against 1.65 for the Kelvinator in 24 hours; and for a room temperature of 90° the kilowatt-hours consumed by the Crosley refrigerator was 2.20 as against 0.85 per 24 hours for the Kelvinator. Such representations, made by the respondents, were and are grossly inaccurate and are greatly in excess of the actual consumption of the Crosley unit. As a matter of fact figures vary with respect to the kilowatt-hour consumption on all makes at varying temperatures and there is no established standard of comparison. The effect of such false and misleading statements is to unfairly disparage and discredit the refrigerators of the Crosley Radio Corporation.

In the various tables and comparisons referred to, used for comparison, respondents did not compare Kelvinator and "Shelvador" refrigerators of equal size, capacity, and selling value; but used instead a much larger Kelvinator, having a selling price of \$300 per unit, and a smaller "Shelvador" having a selling price of \$175 per unit, and such comparisons so made by respondents are and were unfair to the "Shelvador" refrigerator and tend to reflect discredit upon the refrigerator of Crosley Radio Corporation.

PAR. 7. The purpose, intent, and effect of the representations and comparisons made by the respondents as set forth in paragraph 6 hereof and many similar representations not herein set out, all of which are false, misleading, and inaccurate, was and is to disparage the products of competitors of respondent Kelvinator Corporation. The purpose and effect of the representations that the statistical handbook was accurate, authoritative, and unbiased, and published entirely independent of all manufacturers, was and is to mislead the trade and consuming public into believing that the representations and comparisons therein made were those of a disinterested organization having no affiliation or connection with the respondent, Kelvinator Corporation. The concealment of such affiliation was and is calculated to prevent competing manufacturers of the Kelvinator Corporation from fixing responsibility upon it for such representations. Said disparagements of said competing manufacturers' products handicap said competing manufacturers in defending their products. The methods devised and adopted by respondents as set forth herein were calculated to deceive the trade and consuming public as to the origin and weight of the attacks made upon competitive producers.

The distribution of such data and information as set out herein places in the hands of dealers in Kelvinator refrigerators a means whereby they may represent, offer for sale and sell to the purchasing public Kelvinator refrigerators under erroneous and misleading representations.

PAR. 8. The aforesaid false, misleading, and disparaging statements, representations, and comparisons so made by respondents, 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 such statements, representations, and comparisons are authoritative, accurate, unbiased, independent, and true, and that by reason of such representations and comparisons the refrigerators of the respondent Kelvinator Corporation, were recommended and favored, and in fact superior to the products of its competitors. Further, said false and misleading statements, representations, and comparisons have a tendency and capacity to, and do unfairly divert trade to respondents from their competitors, and induce the public to purchase the refrigerators of the respondent Kelvinator Corporation in preference to the refrigerators of competitors because of such erroneous beliefs brought about as above set out. As a result thereof substantial injury has been and is now being done by respondents to substantial 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 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 the Federal Trade Commission Act, the Federal Trade Commission, on May 8, 1937, issued and served its complaint in this proceeding upon respondents, The Ross Roy Service, Inc., and Kelvinator Corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Said respondents filed answers to said complaint. Thereafter, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the alleg-

tions of the complaint Fred R. Schmalzriedt and Waldo C. Granse appeared for the said The Ross Roy Service, Inc., and Richard Ford represented the said Kelvinator Corporation, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for hearing before the Commission on the said complaint, testimony and other evidence and briefs in support of and against the complaint, and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Ross Roy Service, 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 in the city of Detroit in said State. Said respondent is engaged in the business of compiling statistical data for the use of manufacturers advertising their respective products and in the sale and distribution of books and literature containing such statistical data to manufacturers and dealers in the products to which said data applies in commerce between and among the various States of the United States. Respondent, Kelvinator Corporation, 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 located in the city of Detroit in said State. On January 4, 1937 steps were taken to dissolve said corporation and to reincorporate the same under the name of Nash-Kelvinator Corporation. Said respondent was for several years last past as its successor is now, engaged in the manufacture, sale, and distribution of electrical refrigerators. It caused said refrigerators, when sold, to be shipped from its place of business located in the said State of Michigan to purchasers thereof located in the various States of the United States.

PAR. 2. Other persons, firms, and corporations have been and now are engaged in the business of compilation, sale, and distribution of statistical data, and the manufacture, sale, and distribution of refrigerators in commerce between and among various States of the United States in substantial competition with said respondents.

PAR. 3. The Crosley Radio Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the

State of Ohio. Its principal office and place of business is located in the city of Cincinnati in said State. For more than 5 years last past said corporation has been engaged in the manufacture, sale, and distribution of electrical refrigerators in commerce between and among the various States of the United States. Said corporation is now, and has been at all times herein mentioned, in substantial competition with other corporations and individuals, firms, and partnerships, including said respondent, Kelvinator Corporation.

PAR. 4. In competition between manufacturers and sellers of various mechanical refrigerators, purchasers give consideration to such features as weight, cabinet, ice capacity, finish, hardware, insulation, temperature, mechanical action, economy, and dependability of the various electrical refrigerators.

PAR. 5. In the early part of the year 1936, said respondent, The Ross Roy Service, Inc., collected and compiled statistical data relating to the mechanical refrigerators manufactured and sold by various concerns or companies in the United States. Said data related partly to the weight, cabinets, ice capacity, finish, hardware, insulation, temperature, mechanical action, economy, and dependability. Said data was submitted to said respondent, Kelvinator Corporation, for inspection and was approved by it. Thereupon, said Kelvinator Corporation entered into an agreement with said respondent, The Ross Roy Service, Inc., to publish a book designated as "The Ross Roy Comparative Handbook," hereinafter referred to as "handbook," and also to publish a series of bulletins making a comparison between said mechanical refrigerators. Said bulletins were designated as "Confidential Bulletins" and were devoted to the publication of statistics, illustrations, and discussion respecting and concerning the merits and demerits of one make of refrigerator and a comparison of said refrigerator with the Kelvinator refrigerator manufactured by said respondent, Kelvinator Corporation. Publication of said data and information was made at the request of the respondent, said Kelvinator Corporation, and with the aid, assistance, encouragement, knowledge, acquiescence, and cooperation of said Kelvinator Corporation. Said The Ross Roy Service, Inc. sold and distributed said handbooks and bulletins in commerce with the full knowledge and consent of the Kelvinator Corporation to approximately 5,000 dealers and distributors of said Kelvinator refrigerators, whose names and addresses were furnished to respondent, The Ross Roy Service, Inc., by said respondent, Kelvinator Corporation, located in various States of the United States. For compensation to said respondent, The Ross Roy Service, Inc., for the compilation of said data and bulletins and distribution of same, said respondent,

Kelvinator Corporation, agreed to, and did, pay said respondent, The Ross Roy Service, Inc., the sum of \$10,999. Notwithstanding the Kelvinator Corporation did lend financial aid and assistance to The Ross Roy Service, Inc., no mention was made of the fact in said handbooks or bulletins, but there was a statement incorporated in said handbooks by said respondent, The Ross Roy Service, Inc., that it was "An independent organization in no way affiliated with any manufacturer," and that it was an "accurate unbiased source of information." The facts plainly show, and the truth indicates, that said handbook and the comparison therein made between various refrigerators were not "accurate, authoritative, or unbiased," and said handbook was not published entirely independent of all manufacturers. The truth and facts clearly indicate said information and data so published by respondent, The Ross Roy Service, Inc., was biased, inaccurate, and unauthoritative. Also, it is a matter of fact that said respondent, The Ross Roy Service, Inc., was subsidized by said respondent, Kelvinator Corporation, in the manner hereinbefore set out. The derogatory and disparaging comparisons heretofore referred to were made concerning various refrigerators that are in competition with said respondent Kelvinator Corporation's refrigerators. One of such refrigerators which were unfairly disparaged was manufactured and sold by said Crosley Radio Corporation heretofore mentioned. Schedules contained in said handbooks making comparison between Kelvinator refrigerator and refrigerators of its competitors are shown in red type in every case where one refrigerator has an advantage over the other in the opinion of said respondent, The Ross Roy Service, Inc. In various tables and comparisons heretofore referred to in said handbook and bulletins used for comparison, refrigerators of equal size and capacity and selling value were not always used. The comparison of the temperature, hardware, finish, conveniences, cabinet, compressor, and condenser units, insulation, cost of operation, and number of ice cubes frozen per hour, and various numbers of kilowatts used per hour in rooms of various degrees of temperature were erroneously shown in said handbook to be in favor of the Kelvinator refrigerator manufactured and sold by said respondent, Kelvinator Corporation.

PAR. 6. The use of said respondents of the aforesaid handbooks and bulletins had the tendency and capacity to mislead and deceive members of the purchasing public with respect to the quality and value of refrigerators manufactured and sold by said respondent, Kelvinator Corporation, and to particularly mislead purchasers of said respondent Kelvinator Corporation's refrigerators into the false and erroneous belief that said handbooks and bulletins heretofore

described were "accurate, unbiased, and authoritative" and in no way affiliated with any company or organization who manufactured or sold refrigerators. Due to the aforesaid misrepresentations in said handbook and bulletins by respondent, The Ross Roy Service, Inc., trade was thereby diverted to the respondent, Kelvinator Corporation, from its competitors who do not misrepresent the character, quality or value of their refrigerators in advertising and statistics distributed by them in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents, The Ross Roy Service, Inc., and Kelvinator Corporation, are to the prejudice and injury of the public and of said respondents' competitors, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

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 Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission and by Waldo C. Granse and Richard Ford, 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 the Federal Trade Commission Act.

It is ordered, That the respondents, The Ross Roy Service, Inc., and Kelvinator Corporation, their respective officers, representatives, agents, employees, and successors, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of compilations of statistical data, books, and literature containing statistical data and other advertising material in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing directly or indirectly in connection with the publishing and offering for sale of statistical data and comparisons of various competitive products that such data or comparisons are authoritative and unbiased or that the respondent, The Ross Roy Service, Inc., is an independent organization not affiliated with any manu-

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facturer when the cost of such publication or any part thereof is borne by the manufacturer whose product is used as a base for such statistical data or comparisons.

2. Disparaging through the medium of advertising literature, or under the guise of statistical data, comparisons, or in any other manner, the products of competitors of those manufacturers whose products are used as a base for such comparisons.

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

HARLAND L. HERB DOING BUSINESS AS NATIONAL
SCIENTIFIC PRODUCTS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3240. Complaint, Oct. 8, 1937—Decision, Jan. 19, 1939*

Where an individual engaged in manufacture, sale, and distribution of medicinal product known as "Prostorles"; in advertising same in papers and magazines circulating among various States—

Represented that the same was a new medicinal principle and new medical discovery, and that it constituted a competent and effective remedy and cure

- for prostatitis, infection, and other disorders of the prostate gland and that it was a stimulant therefor and would restore, stimulate, or increase potency or sex power, and was a remedy or cure, or a competent and effective treatment for impotency;

Facts being it was not a new or scientific principle of stimulation of said gland, loss of power such as due to age and various diseases and conditions, treatment of diseases of said gland requires examination for purpose of determining cause of ailment, and said product was not an effective treatment for prostatitis and would not accomplish results claimed for it as above set forth, but only effect thereof would be by reason of irritant action of ingredients therein contained to act as an excitant and such irritant might be harmful, and it was not analgesic or pain-relieving;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that its said "Prostorles" was an effective cure for diseases of prostate gland and would relieve pain and suffering caused thereby and increase power of user through stimulation thereof, and to induce number of purchasing public to buy said product because of aforesaid erroneous beliefs engendered by such false and misleading representations, and unfairly to divert trade to him from competitors who do not make use of such misrepresentations:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

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 Harland L. Herb, hereinafter referred to as respondent, has been for more than 1 year last past, and is now, using unfair methods of competition in

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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. Harland L. Herb is an individual operating and doing business under the trade name "National Scientific Products Company," with his principal offices and place of business located at 644 Diversey Boulevard, Chicago, Ill.

PAR. 2. Respondent Harland L. Herb, trading as National Scientific Products Co., is now, and for more than 1 year last past has been engaged in the business of manufacturing, compounding, advertising, selling, and distributing medicaments and medicinal compounds allegedly for the relief and cure of diseases, infections, and disorders of the prostate gland; for relief from impotency, and for the restoration, stimulation, and increase of sex power in man.

Among the commodities so advertised and sold by respondent is a product known and advertised as "Prostories" recommended as a treatment and cure for prostatitis and for the increase of sex desire and sex power in man.

Said respondent now causes, and for more than 1 year last past has caused, his said product, when manufactured and sold, to be transported from his principal place of business in the city of Chicago, State of Illinois, to retail stores and other purchasers thereof at their respective points of location, in the several States of the United States other than the State of origin, and in the District of Columbia.

Respondent is now, and for more than 1 year last past has been, in substantial competition with other persons, firms, partnerships, and corporations engaged in the sale of medicaments and medicinal products like or similar to those sold by respondent, or in the sale of other medicaments, medicinal compounds, or other products designed, intended, sold, and used for the treatment of the same diseases, conditions, maladies, and disorders of the human body, 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 said business, as described in paragraphs 1 and 2 hereof, for the purpose of inducing and encouraging the sale of his said products, respondent now, and for more than 1 year last past, has made use in newspapers, magazines, pamphlets, circulars, letters, radio broadcasts, and other forms of advertising media having an interstate circulation—published and circulated under the trade name "National Scientific Products Company"—and in sales talks and on signs posted around retail stores

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located in the several States of the United States and in the District of Columbia of statements and representations among which the following are typical:

SEXUAL POWER

DOUBLED IN ONE HOUR

with PROSTORIES

—The Sex-Stimulating Suppositories—

An Amazing New Medical Discovery

These Suppositories strengthen and stimulate the Prostate Gland (which doctors consider the base of all men's sex power) by medicating the gland **DIRECT**—a natural and logical method. Ask your own doctor. No drugs are taken into the system. Prostories contain no narcotics, yet are so effective that they need to be used only an hour before the stimulation is wanted.

Originally developed to relieve the pain and sexual weakness of Prostate Sufferers, repeated tests have proved that Prostories bring greatly increased sexual power to any man—and in just one hour. Users report their power of retarding more than doubled.

There is nothing else on the market like Prostories. Don't confuse them with the harmful temporary drugs that must be taken constantly to get results.

Trial Box of 10—\$1.00; 24 for \$2.00 Sold on Absolute **MONEY-BACK GUARANTEE**. All orders mailed in plain wrapper, with complete directions.

NATIONAL SCIENTIFIC PRODUCTS CO.
644 Diversey Boulevard, Dept. D-3 Chicago, Ill.

PROSTORIES
(Trade Mark)

What they Are
And What They Will Do For
YOU

PROSTORIES

Prostories are prostate stimulating suppositories. The latest scientific development for the relief of sexual weakness, making use of an entirely new medical principle of stimulating the prostate gland direct.

* * * * *

HOW PROSTORIES HELP

As this gland (The Prostate Gland) is located close to the walls of the lower intestine, just inside the rectum, it is easy to understand how it can be medicated through this opening.

In use, the suppository slips past the muscles of the rectum and lodges in the lower bowel beside the prostate where it is melted by the heat of the body. The medicine contained is thus released to its work of stimulation."

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Do not use more than one (suppository) at a time as they contain just the right amount of medicine for the best results. In some case another may be used after a few hours if necessary."

Sold and Guaranteed by
NATIONAL SCIENTIFIC PRODUCTS CO.

The aforesaid statements and representations, together with other similar representations not herein set out in full, serve as representations on the part of respondent that said product constitutes a competent and effective remedy and cure for prostatitis and infections, diseases, and disorders of the prostate gland, and that its use will restore, stimulate, and increase potency or sex power in man.

PAR. 4. In truth and fact, the respondent's said product is not a new medical discovery or scientific development of a new medical principle and does not constitute a competent and effective remedy or cure for prostatitis, or any other infections, diseases, and disorders of the prostate gland. Its use will not cure or relieve impotency or sex weakness and does not stimulate the prostate gland or increase sex power in man.

PAR. 5. The said representations of said respondent, as aforesaid, are false and misleading and have had, and do have, the tendency and capacity to mislead and deceive a substantial number of retail dealers and the purchasing public into the mistaken and erroneous belief that the product so marked, branded, designated, advertised as Prostories and sold, and transported by respondent, is an effective cure for infections, diseases, and impairments of the prostate gland and will relieve pain and suffering caused thereby, and that it will restore, stimulate, and increase sex appetite and sex functioning in man by stimulating the prostate gland when such is not in fact the truth. The said representations of respondent have had, and do have, the capacity and tendency to induce retail dealers and members of the purchasing public to buy respondent's said product because of the aforesaid erroneous beliefs engendered by said false and misleading representations, and to unfairly divert trade from competitors who are engaged in the sale of like products to that sold by respondent, or in the sale of other medicaments, medicinal compounds, or other products designed, intended, sold, and used for the treatment of the same diseases, conditions, maladies, and disorders of the human body, in commerce in and among the various States of the United States and in the District of Columbia, who do not use such false and misleading representations. As a result thereof substantial injury is now being done, and has been done, by the respondent to competition in commerce among and between the various States of the United States and of the District of Columbia.

PAR. 6. The above alleged acts, practices, and representations 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 the Federal Trade Commission Act, the Federal Trade Commission, on October 8, 1937, issued and thereafter served its complaint in this proceeding upon the respondent, Harland L. Herb, an individual, trading as National Scientific Products Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission, acting at that hearing for Carrel F. Rhodes, attorney for the Commission, before Arthur F. Thomas, an examiner of the Commission, duly appointed to take testimony and receive evidence in said proceeding, and in opposition to the allegation of the complaint by Harland L. Herb, appearing on behalf of himself, 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 brief in support of the complaint. Respondent waived the filing of brief and oral argument; 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. The respondent, Harland L. Herb, is an individual doing business under the trade name and style of National Scientific Products Co., with his principal office and place of business located at 644 Diversey Parkway, Chicago, Ill. He is engaged in the manufacture and sale and distribution of a medicinal product known as "Prostories" and has caused said merchandise, when sold, to be transported from his 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. In the course and conduct of said business, respondent is and has been in substantial competition with other firms and corporations engaged in the sale of medicaments and medicinal products like or similar to those sold by respondent or other products intended to be sold and used for the treatment of the same diseases and disorders of the human body 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 said business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his said merchandise, has advertised in papers and magazines having a circulation between and among various States of the United States, said product "Prostories" and in said advertisements he has represented that this product is a new medicinal principle and a new medical discovery; in his advertisements he has further represented that the said product constitutes a competent and effective remedy and cure for prostatitis, infection, and other disorders of the prostate gland; and as (1) a stimulant of the prostate gland; (2) a relief to prostrate sufferers from pain and sex weakness; (3) a relief from impotency; (4) a prostate stimulator doubling sexual power in from 1 to 2 hours.

PAR. 3. All of these representations are false. Loss of sexual power is due to age, diseases of the nervous system, functional and organic; various forms of psychosis, psychoneurosis, degenerate and tonic neurosis; diabetes; local diseases of the genital tracts. Treatment of diseases of the prostate gland requires an examination of the individual affected, for the purpose of determining the cause of the ailment. There is no one effective treatment for all ailments of this gland. The suppository of respondent is not an effectual treatment for prostatitis and would not relieve sex weakness. The ingredients of the suppository known as "Prostories," as disclosed by respondent's formula for the compound, would not effect a cure, or relief, such as the advertisements claim for it. It is not a new or scientific principle of stimulation of the prostate gland. These ingredients would not stimulate the prostate gland, and, if it should be conceded that the ingredients contained such value, under respondent's plan or method of medication the medicament could not reach the prostate gland. The only effect this suppository has is that the ingredients act as irritants to certain parts of the body, as the mouth of the bladder, etc., and any suppository composed of any ingredients might act with the same effect. This irritant merely acts as an excitement of sexual appetite, but has no effect on sexual power, and it may be harmful. The compound is not analgesic or pain-relieving.

PAR. 4. The said false and misleading representations of said respondent have had and do have the tendency and capacity to mislead and deceive a substantial number of the purchasing public into the mistaken and erroneous belief that the product so marked and advertised as "Prostories" and sold and transported, in interstate commerce, by him is an effective cure for diseases of the prostate gland, and will relieve pain and suffering caused thereby, and that it will increase sex power in man by stimulating the prostate gland, when such is not in fact the truth. Said representations of respondent have had the capacity and tendency to induce members of the purchasing public to buy respondent's product because of the aforesaid erroneous beliefs engendered by said false and misleading representations, and unfairly to divert trade from competitors who are engaged in the sale of other medicinal compounds sold and used for the treatment of like diseases or disorders of the human body, in commerce in and among the various States of the United States and in the District of Columbia, who do not use such false and misleading representations.

CONCLUSION

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

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 Arthur F. Thomas, 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 Carrol F. Rhodes, counsel for the Commission (respondent having waived the filing of 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Harland L. Herb, individually, and trading as National Scientific Products Co., or trading under any other name, his agents, representatives, and employees, directly or through any device, in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia

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of a medicinal preparation now known as "Prostories" or any other preparation containing substantially similar ingredients or possessing similar therapeutic properties, whether sold under that name or any other name, do forthwith cease and desist from:

Representing directly, or in any manner, that said preparation

1. Is a remedy or cure, or a competent and effective treatment, for prostatitis or any other infections, diseases, or disorders of the prostate gland.

2. Is a stimulant for the prostate gland.

3. Will restore, stimulate, or increase potency or sex power.

4. Is a remedy or cure, or a competent and effective treatment for impotency.

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

ISIDORE STEIN DOING BUSINESS AS UNIVERSAL TRADING CO., EASTERN DISTRIBUTING CO., EMPIRE DISTRIBUTING CO., AND THE NATIONAL PRODUCTS

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

Docket 3554. Complaint, Aug. 24, 1938—Decision, Jan. 19, 1939

Where an individual engaged in sale and distribution of comb and brush sets, flashlights, jewelry, razor blades, pocketknives, and other articles of merchandise, in commerce among the various States and in the District of Columbia—

- (a) Sold and distributed said articles by means of a game of chance, gift enterprise, or lottery scheme, in accordance with which he distributed or caused to be distributed to representatives, and prospective representatives, advertising literature including a circular listing a number of items and prices thereon and including a pull card, tabs of which various concealed name of one of aforesaid items and price thereof, and under which scheme or plan purchaser received article of merchandise as aforesaid of varying retail value or apparent value in accordance with tab selected by chance, and operator or representative selling such tabs or chances was compensated by receipt of premium after sale of entire number thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with sales plan above set forth, contrary to an established public policy of the United States Government and in violation of criminal laws 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 any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by his said method and by element of chance involved in sale of such merchandise and were thereby induced to buy and sell his said goods in preference to those offered and sold by competitors who did not use such or equivalent method, and with effect by reason of said game of chance of unfairly diverting trade and custom to him from his competitors aforesaid;

- (b) Represented that his merchandise was distributed free or without cost through such statements in his advertising matter as "Gifts for all. No cost to you," "How to get your free gifts," "Special offer. Two extra valuable surprise gifts free," facts being none of so-called premiums or gifts were given away free or without cost to representatives, but were either purchased with labor by them or prices thereof were included in those of other articles which they had to sell or procure sale of before they could procure so-called premiums or gifts, and in case of a number thereof certain sums of money in addition to labor performed or services rendered were required to be paid;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such statements and representations were true and into purchase of substantial quantities of his products as a result thereof, and of thereby unfairly diverting trade to him from manufacturer

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and distributor competitors of like and similar products who did not make such false, deceptive, and misleading statements and representations concerning the same, to the substantial injury of competitors in commerce:

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

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Isidore Stein, individually and trading as Universal Trading Co., Eastern Distributing Co., Empire Distributing Co., and the National Products, hereinafter referred to as respondent, has violated the provisions of 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, Isidore Stein, is an individual trading under the names of Universal Trading Co., Eastern Distributing Co., Empire Distributing Co., and the National Products. Respondent has operated at various addresses, commencing with the National Products at 846 Broadway, New York City, and 547 Howard Avenue, Brooklyn, N. Y. Thereafter, respondent traded as Universal Trading Co., Eastern Distributing Co., and Empire Distributing Co., all at 18 West Seventeenth Street, New York, N. Y. Since using the last-named address, respondent has conducted business through Box 75, Station B, Brooklyn, N. Y., and from his home address, 1453 East New York Avenue, Brooklyn, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of comb and brush sets, flashlights, pen and pencil sets, cigarette cases and lighters, jewelry, tooth paste, shaving cream, spoons, razor blades, perfume, pocketknives, bill folders, cosmetics, clocks, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his places of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia at their respective points of location. There is now and has been for some time last past a course of trading by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other individuals and with part-

nerships 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 and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and distributes and has sold and distributed said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondent's merchandise is distributed to the purchasing public in the following manner:

One portion of said sales circular consists of a list on which there is designated a number of items of merchandise and the prices thereon. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached the tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise as compared to the prices the prospective purchaser will be required to pay in the event he secures one of said articles induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts

called for and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling said merchandise. Said operator delivers the merchandise to the purchaser of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes, and has sold and distributed, various assortments of said merchandise and furnishes, and has furnished, various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said pull cards, use, and have used, 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 is contrary to an established public policy of the Government of the United States and is in violation of criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations, who sell and 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 method which 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 of such merchandise, 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 capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or equivalent methods.

Complaint

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PAR. 5. In the course and conduct of his business as hereinabove related, respondent causes, and has caused, various false, deceptive, and misleading statements to appear in his advertising matter as aforesaid of which the following are examples, but are not all inclusive:

Gifts for all. No cost to you.

How to get your free gifts.

Special offer. Two extra valuable surprise gifts free.

Beautiful, useful household gifts at absolutely no cost to you.

The effect of the foregoing false, deceptive, and misleading statements or representations of respondent in selling and offering for sale such articles of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and in the District of Columbia by inducing them to mistakenly believe that respondent gives away certain of his said articles of merchandise without cost to his representatives.

PAR. 6. In truth and in fact none of the so-called premiums or gifts are given away "free" or without cost, but said so-called premiums or gifts, which are represented as being "free" or without cost to said representatives are either purchased with labor by said representatives, or the prices thereof are included in the prices of other articles of merchandise, which said representatives must sell, or procure the sale of, before said so-called premiums or gifts can be procured by them. For a number of so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and 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 statements and representations are true, and to the purchase of substantial quantities of said respondent's products as the result of such erroneous beliefs. There are among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products, who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid trade is unfairly diverted to the respondent from such competitors, and as a result thereof, substantial injury is being done, and has been done, by respondent to competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 24th day of August 1938, issued and subsequently served its complaint, in this proceeding upon respondent, Isidore Stein, individually and trading as Universal Trading Co., Eastern Distributing Co., Empire Distributing Co., and the National Products, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 13th day of October 1938, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, Isidore Stein, is an individual trading under the names of Universal Trading Co., Eastern Distributing Co., Empire Distributing Co., and the National Products. Respondent has operated at various addresses, commencing with the National Products at 846 Broadway, New York City, and 547 Howard Avenue, Brooklyn, N. Y. Thereafter, respondent traded as Universal Trading Co., Eastern Distributing Co., and Empire Distributing Co., all at 18 West Seventeenth Street, New York, N. Y. Since using the last-named address, respondent has conducted business through Box 75, Station B, Brooklyn, N. Y., and from his home address, 1453 East New York Avenue, Brooklyn, N. Y. Respondent is now, and for some time last past has been engaged in the sale and distribution of comb and brush sets, flashlights, pen and pencil sets, cigarette cases and lighters, jewelry, tooth paste, shaving cream, spoons, razor blades, perfume, pocketknives, bill folders, cosmetics, clocks, and other articles of merchandise in commerce between and among the various States of the United States and in the District

of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his places of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia at their respective points of location. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said merchandise among and between the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been 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 and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1, respondent sells and distributes and has sold and distributed said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondent's merchandise is distributed to the purchasing public in the following manner:

One portion of said sales circular consists of a list on which there is designated a number of items of merchandise and the prices thereon. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached the tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise as compared to the prices the prospective purchaser will be required to pay in the event he secures one of said articles induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value

than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull-card tabs receives an article which has apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling said merchandise. Said operator delivers the merchandise to the purchaser of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes, and has sold and distributed, various assortments of said merchandise and furnishes, and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said pull cards, use, and have used, 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 is contrary to an established public policy of the Government of the United States and is in violation of criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations, who sell and distribute merchandise in competition with the respondent as above 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 method which 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 of such merchandise, 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 capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or equivalent methods.

PAR. 5. In the course and conduct of his business as hereinabove described, respondent causes, and has caused, various false, deceptive, and misleading statements to appear in his advertising matter as aforesaid of which the following are examples, but are not all inclusive:

Gifts for all. No cost to you.

How to get your free gifts.

Special offer. Two extra valuable surprise gifts free.

Beautiful, useful household gifts at absolutely no cost to you.

The effect of the foregoing false, deceptive, and misleading statements or representations of respondent in selling and offering for sale such articles of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and in the District of Columbia by inducing them to mistakenly believe that respondent gives away certain of his articles of merchandise without cost to his representatives.

PAR. 6. In truth and in fact none of the so-called premiums or gifts are given away "free" or without cost, but said so-called premiums or gifts, which are represented as being "free" or without cost to said representatives are either purchased with labor by said representatives, or the prices thereof are included in the prices of other articles of merchandise, which said representatives must sell, or procure the sale of, before said so-called premiums or gifts can be procured by them. For a number of so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and 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 statements and representations are true, and to the purchase of substantial quantities of said respondent's products as the result of such erroneous beliefs. There are among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products, who do not make

Order

such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid trade is unfairly diverted to the respondent from such competitors, and as a result thereof, substantial injury is being done, and has been 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 respondent, as herein found, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Isidore Stein, individually and trading as Universal Trading Co., Eastern Distributing Co., Empire Distributing Co., and the National Products, or trading under any other name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of comb and brush sets, flashlights, pen and pencil sets, cigarette cases and lighters, jewelry, toothpaste, shaving cream, spoons, razor blades, perfumes, pocket-knives, billfolds, cosmetics and clocks, or any other articles of merchandise in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pull cards or circulars having pull tabs thereon, or other lottery 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 his agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon or other lottery 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 such merchandise by the use of

pull cards or circulars having pull tabs thereon or any other lottery device.

4. Representing, directly or indirectly, that his merchandise is distributed free or without cost when such is not the fact.

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

Syllabus

IN THE MATTER OF
AMERICAN OPTICAL COMPANY ET AL.

COMPLAINT, FINDINGS, OPINION, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED

Docket 3232. Complaint, Sept. 30, 1937—Decision, Jan. 21, 1939

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—CUMULATIVE QUANTITY DISCOUNTS—LARGE CUSTOMER DIFFERENTIALS—WHERE NOT SUCH AS MAKE ONLY DUE ALLOWANCE FOR DIFFERENCES IN COST OF SALE OR DELIVERY OF STOCK RESULTING FROM DIFFERING QUANTITIES IN WHICH SALE AND DELIVERY MADE TO DIFFERENT CUSTOMERS.

A cumulative discount is sound only where savings have been achieved by the seller with respect to individual sales made to a particular buyer over a period of time, which savings were not reflected in the price at which the buyer purchased, and which are reserved for the purpose of refunding at the end of a period of time, and it does not follow that purchasers of large annual amounts also buy in larger individual shipments than do buyers whose purchases do not amount to so large a sum. Large buyers also place numerous small orders, the average size of which is frequently less than the average size of orders placed by buyers whose periodical annual purchases are less in volume. Thus it may cost seller more per dollar of sales to serve a customer who places a large number of small orders sufficient in the aggregate to earn the discount, than to serve a customer who places a few large orders whose total is not sufficient for such purpose. *H. C. Brill Co., Inc.*, Docket 3229, 26 F. T. C. 666.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—QUANTITY DISCOUNTS—QUANTITY ORDER BASIS—DEALER PURCHASE RANGE—WHERE IN REACH OF AVERAGE—SAVING SALE AND DELIVERY CRITERIA.

Discount schedule under which Nation-wide producer-wholesaler seller of ophthalmic products provided for such quantity bases for discounts from list as one-order purchases of 2, 5, 10, 25, or 50 units without further concessions was not found to have effect of substantially lessening or injuring competition, either with said seller or with its customers, in the absence of evidence that quantity differentials in question were beyond the range of the purchases of the average retailer and thereby resulted in discrimination in favor of certain large dealers, and in view of possible justification, in whole or in part, by differences in cost of sale and delivery resulting from difference in size of individual orders, large orders ordinarily being obtained, assembled, packed, billed, and delivered at a lower cost per dollar of sales than small orders.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (A)—CUMULATIVE QUANTITY DISCOUNTS—LARGE CUSTOMER DIFFERENTIALS—"BIG DEALER" (RETAILER) DISCOUNT PLAN—WHERE NATION-WIDE PRODUCER-WHOLESALE SELLER AND COMPETITIVE EFFECTS ADVERSE, ABSENT DUE ALLOWANCE DIFFERENTIALS ONLY.

Where a voluntary association organized, existing, and doing business as a Massachusetts common-law trust; various officers thereof; and a corporation organized by them to do business in certain States in which said association did not do so, and stock of which was owned or controlled by such association; and which, as largest manufacturers and sellers of ophthalmic products in the United States, were engaged in selling as chain wholesaler through their 220 branches throughout the United States their said products to, chiefly, opticians, optometrists, and oculists, and in selling also to wholesalers, and to consumers such as laboratories, hospitals, and educational institutions direct, in competition with other manufacturers, jobbers, and distributors engaged in sale and distribution of optical and ophthalmic products, and including independent wholesalers in sales territories served by such branches;

In selling, as aforesaid, their said products (a) under certain catalogue "column" schedules or discounts from list under which purchasers, irrespective of total amounts otherwise bought, received, without further concession, discount on basis of purchases in one order, and discounts on lenses, frames, and mountings based on such order purchases of 2, 5, 10, 25, or 50 units as case might be, and (b) under so-called "big dealer" discount schedule by which, on basis of all monthly purchases aggregating (or averaging over year) \$1,500 or \$750, as case might be, retailer received off list, among other discounts, on types of merchandise for which demand is greatest and making up bulk of purchases of its customers, i. e., on lenses, frames, and mountings purchased by it and counted at 5- and 10-unit price of "column" schedules 33 $\frac{1}{3}$ percent or 25 percent respectively, and under which they included in such aggregate for determining discount eligibility as aforesaid prescription items, surfacing, polishing, and edging machinery, and all purchases regardless of particular item's own discount status, and regardless also of size or number of separate orders making up total, and aggregated for determining retailer's "big dealer" discount status, as aforesaid, all purchases of multiunit outlets of retailer having such outlets, and (c) under which approved wholesalers were sold on usual manufacturer-to-wholesaler discount of 33 $\frac{1}{3}$ percent on lenses, frames, mountings, cases, and machinery, as were, as above set forth, \$1,500 dealer purchasers under "big dealer" discount schedule—

Discriminated in price between different retail dealer purchasers of their products by offering to sell and selling same to a substantial number of their larger customers in various cities and towns throughout the United States at the cumulative discounts and substantial price differences and differentials of their said "big dealer" discount schedules, which did not make only due allowance for, or have any consistent relation to, differences, if any, in cost of sale or delivery of stock merchandise resulting from differing quantities in which sale and delivery was made to different customers under said plan, and which, in case of maximum discounts allowed thereunder and secured by such large purchasers as department stores and jewelry chains, approximated their factory-to-jobber discounts and those of other manufacturers, and of which differentials and discounts substantial number

of their customers were able to secure the benefit, and of which many other customers engaged in competition with such "big dealers" did not secure the benefit;

With the result that—

There was a distinct competitive advantage to such "big dealer" customers by reason of the very considerable saving per dollar on purchases to such customers as against smaller retailer who could not, in general, purchase their products or other products of like grade and quality from wholesalers or jobbers on such favorable terms;

Many independent wholesalers who necessarily must purchase, as wholesalers, optical goods of first grade and quality from manufacturers at prices generally approximating those available to large retailers under such "big dealer" plan, were prevented from selling stock merchandise to a large and profitable class of customers, except at a loss, and smaller manufacturers of optical goods who market their products largely through independent wholesalers were likewise affected;

There was a tendency to induce retailers whose purchases were little more than enough to qualify for "big dealer" discount to group all purchases with their wholesale branch offering cumulative discounts, so that independent wholesaler or small and limited line manufacturer, not in a position to offer similar "big dealer" plan covering all classes of optical goods, even by direct sales, was required, to obtain part of such business, to offer sufficiently lower prices to compensate retailer for loss of discount on purchase of his requirements which he might desire or be compelled to purchase from them; and

Many retailers were induced, necessarily, through inclusion in totals under said plan of prescription business, not discountable, for determination of discount status on other items subject thereto, to give such retailers' prescription business to their said various branches, equipped therefor, to obtain lower price on purchases of stock merchandise subject to discount, and freedom of competition on basis of price, quality, and efficiency of service was, to such extent, prevented for prescription business, of importance to retailer and public in view of necessary reliance by most of smaller optometrists and opticians on wholesaler for prompt prescription service in view of own lack of machinery, facilities, or stock necessary to meet greatly varying needs of individual customers; and

With result that effect of such discrimination in price (a) had been and might be to injure, destroy, or prevent competition of their retailer customers who, as aforesaid set forth, did not secure benefit of such "big dealer" discount plan, with those of their retailer customers who did secure such benefit, and (b) had been and might be substantially to lessen competition or tend to create a monopoly in the line of commerce in which they were engaged, and to injure, destroy or prevent competition with them in both wholesale and manufacturing fields:

Held, That through use of their "big dealer" cumulative discount plan and pricing policies embraced therein, they violated and were violating Section 2 (a) of Clayton Act.

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

Mr. Cyrus B. Austin for the Commission.

Root, Clark, Buckner & Ballantine, of New York City, for respondents.

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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," commonly known as the Clayton Act, as amended by an Act of Congress approved June 19, 1936 (U. S. C. Title XV, Section 13), commonly known as the Robinson-Patman Act, the Federal Trade Commission having reason to believe that the respondents named in the caption hereof have violated and are now violating the provisions of Subsection (a) 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, American Optical Co., an association, is a voluntary association, organized in 1912 under the laws of Massachusetts as a common law trust, owning, holding, or controlling all of the capital stock of respondent (American Optical Co., 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 Southbridge, Mass.

The American Optical Co., a corporation, was organized by respondents to engage in and carry on manufacturing and sales activities of the respondents in States where the Massachusetts trust type of association is not recognized as a corporate entity, and the said respondent corporation is licensed to do and does carry on such business and sales activities for and on behalf of respondents in the States of Pennsylvania, Virginia, Ohio, Tennessee, Alabama, Michigan, Wisconsin, Texas, California, and Idaho.

Respondents, George B. Wells, Ira Mosher, Charles O. Cozzens, John M. Wells, Edward E. Williams, A. Turner Wells, and Albert B. Wells, all of Southbridge, Mass., are severally here made parties respondent in their respective capacities as indicated in the caption hereof, individually and as representative members of American Optical Co., the association.

PAR. 2. Respondents and each of them are now and have been since June 19, 1936, engaged in the business of manufacturing and selling optical goods and ophthalmic products, including lenses, frames, mountings, diagnostic instruments, optical machinery, tools, and grinding and polishing materials to various retailers, independent wholesalers, and chain business enterprises engaged in business as lessee-operators of the optical departments of various large department stores. Respondents effect the sale and distribution of these products through some 320 branch offices, each of which functions

as a wholesaler. These branch offices are grouped into 9 districts or sales territories, each with a central sales branch where the respondents maintain a stock of supplies on hand from which they supply the other branch sales offices in each district. Respondents employ over 300 salesmen who call regularly upon the retail trade, and during 1936 did a volume of approximately \$18,500,000 in total sales. The individual respondents herein named in their respective capacities as officers and chairman of the board and as representative of the association American Optical Co., control and direct the sales policies, pricing, and selling activities engaged in by all of the said other respondents as hereinafter set forth.

PAR. 3. In the course and conduct of their respective businesses as aforesaid, respondents, and each of them, transports or causes to be transported the said products, when sold, from the places of their respective locations to the purchasers thereof located in the several States of the United States other than the States in which such shipments originated, and there is and has been at all times herein mentioned a current of trade and commerce in said products, between the States wherein these several respondents are located and the various other States of the United States.

Said respondents and each of them sell and distribute the aforesaid products for use, consumption or resale within the United States and the District of Columbia, in the same territories and places and in competition with various other manufacturers, distributors, and wholesalers engaged in the sale of optical goods and ophthalmic products, including lenses, frames, mountings, diagnostic instruments, optical machinery and tools, and grinding and polishing materials.

Respondents' aforesaid purchaser customers are competitively engaged with each other and with the purchaser customers of respondents' competitors, in the resale of said products, both at wholesale and retail, within the several sales areas in which the said wholesale and retail customers respectively offer for sale and sell the said products of American Optical Co.

PAR. 4. Said respondents and each of them, in the course and conduct of interstate commerce as hereinbefore set forth have, since June 19, 1936, discriminated in price and are now discriminating in the prices at which they and each of them have sold and do sell American Optical Co. products and commodities of like grade and quality, between the different purchasers of such products and commodities, by giving and allowing certain of said purchasers a lower price than given or allowed other purchasers competitively engaged in said line of commerce, and by giving and allowing certain of said purchasers

adjustments, rebates, or discounts in the form of cash or commodities not given and allowed to others of respondents' said purchaser customers. Respondents' purchaser customers in whose favor such price discrimination is made are generally the larger dealers who are thus enabled either to undersell their competitors or furnish superior facilities and services to the prospective consumer purchaser, or both, and thereby trade is diverted from the smaller retailer to the more favored and larger dealer in said products.

PAR. 5. The effect of such discrimination in price made by said respondents, as set forth in paragraph 4 hereof, may be substantially to lessen competition between the respondents and their aforesaid competitors; between the customers of respondents in whose favor such discrimination is made and respondents' other customers; and between the customers of respondents' competitors who do not grant such customers the benefit of such discriminatory prices and the customers of respondents in favor of whom respondents discriminate, or tend to create a monopoly in the aforesaid line of commerce in respondents and respondents' favored customers, and to injure, destroy and prevent competition with the said respondents and with those of respondents' customers who knowingly receive the benefit of such discrimination, and with the customers of each of them.

Such discrimination in price by said respondents, and each of them, between different purchasers of commodities of like grade and quality in interstate commerce in the manner and form aforesaid are in violation of the provisions of Subsection (a) of Section 2 of the Act described in the preamble hereof.

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" (the Clayton Act), as amended, the Federal Trade Commission, on September 30, 1937, issued its complaint against the above-named respondents and caused such complaint to be served as required by law, charging that said respondents were and had been discriminating in price between different purchasers from them of commodities of like grade and quality in commerce, in violation of the provisions of Section 2 (a) of said Act.

Respondents duly filed their joint answer to said complaint. Thereafter a stipulation was entered into between counsel for the Commission and counsel for the respondents containing a statement

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of the facts in this proceeding upon which it was agreed that said proceeding might be submitted to the Commission for final determination, the respondents consenting that upon said stipulation an order be issued requiring them to cease and desist from the price discrimination alleged in the complaint. Said stipulation was duly approved and filed herein by order of the Commission.

This proceeding regularly coming on to be heard upon said complaint, answer and stipulation, filing of briefs, and presentation of oral argument having been waived, the Commission, having duly considered the same and being fully advised in the premises, and being of the opinion that the respondents have been and are violating the provisions of Section 2 (a) of said Clayton Act, now makes these its findings as to the facts and states its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent American Optical Co., an association, is a voluntary association organized in 1912, and existing and doing business under and by virtue of the laws of the State of Massachusetts as a common-law trust. Respondents George B. Wells, Ira Mosher, Charles O. Cozzens, John M. Wells, Edward E. Williams, A. Turner Wells, and Albert B. Wells are, respectively, president, vice president, and general manager, vice president in charge of sales, vice president in charge of research laboratory, treasurer, secretary, and chairman of the board of trustees of American Optical Co., an association. Respondent American Optical Co., a corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, having been organized by the other respondents to engage in business in certain States where the respondent association does not do business. All of the capital stock of said respondent corporation is owned or controlled by the respondent association. "American Optical Company" and "respondents," when used hereinafter, shall be deemed to refer to both American Optical Co., the association, and American Optical Co., the corporation, and to the individual respondents only in their capacities as directors, officers, and/or trustees of the respondent association and corporation.

PAR. 2. Respondents are now and for many years have been engaged in the business of manufacturing, distributing, and selling ophthalmic merchandise and optical goods generally, including lenses, frames, and mountings for eyeglasses, cases, ophthalmological equipment, machinery, and specialties. They are the largest manufacturers and sellers of ophthalmic products in the United States. Their only man-

ufacturing competitor of comparable size is Bausch & Lomb Optical Co., of Rochester, N. Y. The annual volume of business of each of these two concerns is considerably larger than that of any other manufacturer of optical goods in the United States.

Distribution and sales of American Optical Co. are effected through about 220 branch stores located throughout the United States, each of which performs the functions of a wholesaler for the adjacent sales territory. Each branch store is operated by a salaried branch manager. More than 80 percent of the company's sales volume of ophthalmic merchandise is in sales to opticians, optometrists, and oculists through the branch stores. The branches are divided territorially into nine zones, each with a main zone office to which the branch managers account and which maintains a complete stock of the company's products from which the branch stores are chiefly supplied.

Respondents also sell ophthalmic merchandise to wholesalers, such sales accounting for between 10 and 15 percent of total volume. Other sales are made direct to consumers such as laboratories, hospitals, and educational institutions.

PAR. 3. Respondents' products are manufactured at Southbridge, Mass., and are constantly shipped from that point to the company's zone and branch agencies in the other States of the United States and the District of Columbia for sale through said agencies and to meet the constant demand which exists for such products on the part of respondents' wholesaler and retailer customers. Shipments are also made, when necessary or convenient, directly from the factory to purchasers in other States. Said products are sold for use and resale in the United States and the District of Columbia.

PAR. 4. Respondents sell and distribute their said products in the same territories and places as and in active competition with various other manufacturers, jobbers, and wholesalers likewise engaged in the sale and distribution of optical and ophthalmic products. Some of respondents' customers are engaged in competition with each other and with customers of respondents' competitors, in the use and resale of such products, at wholesale or retail, within the several localities and sales areas in which such customers are located and do business.

PAR. 5. An important function of the so-called optical wholesaler is the maintenance and operation of a prescription shop with the necessary machinery and tools for grinding, polishing, edging, and inserting or mounting lenses. There are many retailers who cannot or do not wish to make the investment in machinery and provide the space

necessary to maintain their own prescription shops, and they rely upon the nearby wholesalers to do this work and to maintain an extensive supply of unfinished lenses, frames, and mountings of various types and styles from which individual prescriptions can be filled promptly as ordered. The greater part of the business of the average small independent optical wholesaler is in the filling and delivery of prescription orders for the retailers in his locality. All of respondents' branch offices have well-equipped prescription shops and actively compete for the prescription business in their respective sales territories. Many of the larger retailers maintain their own prescription shops and do most of their own grinding, edging, etc., in order to enable them to give better service.

PAR. 6. The lenses, frames, and mountings manufactured by respondents are listed in respondents' catalog and sold to retailers at varying prices, depending on the number of pairs (lenses) or units (frames and mountings) of one description, type, or brand purchased in a single order. For example, as applied to certain gold filled mountings and lenses, the catalog "column" schedules quote prices under the following headings:

- 2 (pairs) of a kind or 5 assorted
- 5 (pairs) of a kind or 10 assorted
- 25 (pairs) assorted
- 50 (pairs) assorted

For certain other items, such as blank and semifinished lenses, zylonite frames, solid gold mountings, etc., fewer columns are listed, in some cases the price reduction for quantity extending only to purchases of five or more assorted units, or one package of lenses. Generally no price concession is made on the basis of single purchases in excess of 50 units or pairs. These "column prices" are available to all purchasers on the basis above stated, irrespective of the total amount of merchandise of various kinds ordered at one time or the total volume purchased over any given period.

Prices listed for a single pair of lenses or a single frame or mounting (RX prices) are the prices charged for filling prescription orders. The column price lists above described do not apply to sales on prescription, but only to sales of stock merchandise.

PAR. 7. Respondents also sell their lenses, frames, mountings, machinery, ophthalmological equipment and other stock merchandise to retailer customers at different prices, under respondents' "big dealer discount" plan. The "Big Dealer Discount Schedule", as printed in respondents' price list, follows:

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DISCOUNT SCHEDULE

Applying to All Listed Merchandise

The discounts on stock as shown in the following schedule apply to the large retail accounts and are classified under the *Big Dealer Discount Schedule*

Big Dealer Discount Schedule

| | \$1,500 and up at list prices per month | \$750 up to \$1,500 at list prices per month |
|-----------------------------------------------------------------|-----------------------------------------------|----------------------------------------------------|
| Lenses | 33 1/3% & 2% | 25% & 2% |
| Tilley Single Vision and Bifocals | 33 1/3% & 2% | 25% & 2% |
| All Bifocals (except Panoptik and Full-Vue) | 33 1/3% & 2% | 25% & 2% |
| Panoptik Bifocal Blanks (to Licensees and Agents only) | Net. | Net. |
| Full-Vue Bifocal Blanks (to Licensees Only) | Net. | Net. |
| Gold | 20% & 2% | 20% & 2% |
| Zylonite | 33 1/3% & 2% | 25% & 2% |
| All other frames (except Oxfords) | 33 1/3% & 2% | 25% & 2% |
| Oxfords—Folding | Net. | Net. |
| Non-Folding, G. F. and Zyl. | 25% & 2% | 20% & 2% |
| Non-Folding, Gold | 20% & 2% | 20% & 2% |
| Z-Fold | 20% & 2% | 10% & 2% |
| Cases | 25% & 2% | 20% & 2% |
| Ophthalmological Equipment | 10% & 1% | 10% & 1% |
| Machinery | 20% & 2% | 10% & 2% |
| All Chains and Ribbons | 20% & 2% | 10% & 2% |
| Sun Goggles except Sportglas (including Autoglas and Solarglas) | 33 1/3% & 2% | 25% & 2% |
| Sportglas | Net. | Net. |
| Specialties | 20% & 2% | 10% & 2% |

All Items Are Included in Determining Above Dealer Classifications

Rx and Net items are included in determining above dealer classifications but are not subject to any trade discount.

Machinery and Ophthalmological Equipment items are to be included in determining above dealer classifications; and are subject to the discounts listed above.

Dealers whose purchases total \$18,000 per year will receive the same discounts as apply to the \$1,500 per month classification, the discount being extended each month when the dealer qualifies, and credit given at the end of the year for the difference in the discount received during the month or months when dealer did not purchase \$1,500.

Dealers who purchase \$750 per month will be granted similar proportionate credit for total purchases of \$9,000 per year.

The lenses, frames, and mountings on which the big-dealer discounts 33 1/3 percent and 25 percent are offered in the above schedule include the types of such merchandise for which the demand is greatest and which make up the bulk of the purchases of respondents' customers. In computing the big-dealer discounts on lenses, frames, and mountings, purchases falling under the second, third, or fourth catalog column headings shown in paragraph 6 hereof are billed at the second column price (5 of a kind or 10 assorted). Under this schedule the discounts allowed are determined solely by the customer's total purchases during the discount period, regardless of the size or number of

separate orders filled in making up the total. No discount (except cash discount) is allowed on prescription (Rx) sales and "net" items, but such sales are included in determining total volume for qualification for big-dealer discounts on stock merchandise. Purchases of surfacing, polishing, and edging machinery are likewise so included. Such purchases frequently run into hundreds of dollars, and in some cases are in larger amounts, and a single such purchase may, under the above schedule, affect the discount received by the buyer on lenses and frames purchased during the month or year. A substantial number of respondent's customers have been able to secure the discounts provided for in the big dealer discount schedule, while many other customers engaged in competition with such "big dealers" in the use and sale of respondents' said products have not received the benefit of such discounts.

PAR. 8. Respondents maintain a list of approved wholesalers and sell to the wholesalers so listed at discounts which on lenses, frames, mountings, cases, and machinery are in general the same as those extended to \$1,500 per month dealers under the big-dealer schedule. The smaller manufacturers of ophthalmic merchandise market their products largely through these and other wholesalers, and also by direct factory-to-retailer selling. The majority of such manufacturers produce only limited lines, some making only lenses, others frames, etc. In general, list prices of the various manufacturers are substantially the same for merchandise of comparable quality, price competition generally being carried on through the granting of discounts rather than by lowering base prices. The usual manufacturer-to-wholesaler discount on lenses, frames, and mounting is $33\frac{1}{3}$ percent, but greater discounts are given by some manufacturers.

PAR. 9. Respondents sell some of their products to large retailer purchasers who are proprietors or operators of multiple shops or outlets. In some cases these outlets are in a single city, in some cases in more than one city, and in some cases in more than one State. These outlets are in some cases separate stores and in some cases optical departments in department stores or jewelry stores. In many cases each of the shops or departments operated by these concerns orders merchandise which it requires and has the same delivered from respondents' nearest branch. The business of each of said shops or departments may be in competition with the businesses of other optometrists and opticians in the same locality who purchase from the same branch of respondents, and in some cases in as large or larger quantity. Total purchases by the various outlets or shops of these large retailer purchasers are billed to the central office of

the proprietor, subject to big-dealer discounts on the total purchases for all the outlets rather than on the basis of the total purchases of the several units.

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The products manufactured by the respondent are constantly shipped by them in interstate commerce from their factories at Southbridge, Mass. to their zone and branch agencies, and from zone agencies to local branches, for sale through said agencies to meet the constant demand for said products existing on the part of optical wholesalers and retailers throughout the country. The prices fixed and charged by respondents for their products so shipped and sold are fixed and charged by them in the course of commerce, and such sales are sales in commerce, within the meaning of Section 2 (a) of the Clayton Act.

Pursuant to the "Big-Dealer Discount Schedule" set forth in paragraph 7 of the above findings, respondents have, at all times since June 19, 1936, discriminated in price between different retailer purchasers of their products by offering to sell and selling said products to a substantial number of their larger customers, located in various cities and towns throughout the United States, at the cumulative discounts shown in said schedule while many other customers, engaged in competition with said larger customers, do not receive and cannot purchase in sufficient volume to obtain these discounts. On lenses, frames, and mountings making up the bulk of sales of ophthalmic stock merchandise, large purchasers, including department store and jewelry store chains, are allowed a discount of $33\frac{1}{3}$ percent plus 2 percent for cash, other purchasers receive 25 percent plus 2 percent for cash, while smaller purchasers are allowed only 2 percent cash discount (plus such additional savings as result when purchases are made in lots of 25 or 50 units or pairs). The resulting price differences are substantial, and amount to a very considerable saving per dollar of purchases to the "big dealer" as against the smaller retailer. The maximum discounts allowed under the "big dealer" plan approximate the factory-to-jobber discounts of respondents and other manufacturers, and the smaller retailer cannot, in general, purchase respondent's products or other products of like grade and quality from wholesalers or jobbers on these favorable terms. The lower price paid for respondents' products by their "big dealer" customers has been and is a distinct competitive advantage to such customers.

The effect of such discrimination in price has been to injure, and may be to injure, destroy, or prevent competition with respondents' retailer customers receiving the benefit of such discrimination.

Respondents operate as a chain wholesaler, maintaining some 220 branch stores throughout the United States, each of which performs the functions of a wholesaler and engages in active competition with independent wholesalers in the same sales territory. Independent wholesalers must purchase optical goods of first grade and quality from manufacturers at prices generally approximating those available to large retailers under the respondents' "big-dealer" plan. As a result of the discriminatory prices charged by respondents, many independent wholesalers are prevented from selling stock merchandise to a large and profitable class of customers, except at a loss. The smaller manufacturers of optical merchandise market their products largely through the independent wholesalers, and to that extent are likewise affected. Furthermore, the smaller limited line manufacturer is not in a position to offer a similar "big-dealer" plan covering all classes of optical goods, even by direct sales. The tendency of the cumulative "big-dealer" discounts is to induce the retailer whose purchases are little more than enough to qualify therefor to group all his purchases with the respondents' wholesale branch offering the cumulative discount. The independent wholesaler or small manufacturer cannot obtain a *part* of this business even by offering an equal price, but must offer a sufficiently *lower* price to compensate the retailer for the loss of discount on the portion of his requirements which he may desire or be compelled to purchase from the respondents.

What has just been stated applies particularly to competition between respondents' branches and independent wholesalers for prescription business. An important function of the optical wholesaler is the maintenance and operation of a prescription shop with machinery and tools for grinding, polishing, edging, and inserting or mounting lenses, and the filling of prescriptions for nearby optometrists and opticians. Most of the smaller optometrists and opticians do not have the machinery or facilities for doing this work nor maintaining the large stock of merchandise necessary to meet the greatly varying needs of individual customers, and they must rely upon the wholesaler for prompt prescription service. Free and open competition in this branch of the wholesale optical business is important to the retailer and to the public. Under respondents' "big-dealer" plan, prescription sales are included in volume of purchases in determining the retailer's qualification for the cumulative discounts, resulting in a discrimination in price between retailers who do, and who do not, give their prescription business to respondents' branches. No discount is allowed on prescription sales, and it does not appear that such sales affect the cost of sale or delivery of stock merchandise to the same customer. Such a plan necessarily

induces many retailers to give their prescription business to respondents in order to obtain a lower price on purchases of stock merchandise, and to that extent prevents freedom of competition for such prescription business on the basis of price, quality and efficiency of service.

The effect of the price discrimination practiced by respondents under their "big-dealer discount" plan is and may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondents are engaged and to injure, destroy or prevent competition with respondents in both the wholesale and manufacturing fields.

It does not appear from the facts before us that the differentials of the "big-dealer" plan make only due allowance for, or bear any consistent relation to differences, if any, in cost of sale or delivery of stock merchandise resulting from the differing quantities in which sale and delivery is made to different customers under said plan. There is no indication of differing methods of sale or delivery. Since the "big dealer" has no price incentive for ordering lenses, frames and mountings in lots of more than five of a kind or ten assorted, it cannot be inferred that the average individual order for stock merchandise placed by a retailer making purchases of \$1,000 or \$1,500 in a month is larger than the average order of a \$500 per month or smaller purchaser. The \$500 purchaser may receive no discount other than for cash, while a competitor purchasing \$400 worth of stock merchandise during the same month in similar quantities may be allowed a discount of 25 percent, or even 33 $\frac{1}{3}$ percent, as a result of throwing in his prescription business or giving an order for machinery or equipment.

As we stated in our opinion in Matter of H. C. Brill Co., Inc. (F. T. C. Docket 3299, opinion dated February 10, 1938, 26 F. T. C. 666) :

Purchasers of large annual amounts sometimes buy in larger individual shipments than do buyers whose purchases do not amount to as large a sum. Large buyers, however, also place numerous small orders and the average size of such orders is frequently less than the average size of orders placed by buyers whose aggregate annual purchases are less in volume. Indeed under a discount plan based on aggregate volume purchases for a given period, such as that contained in the aforesaid contract, it may cost the seller more per dollar of sales to serve a customer who places a large number of small orders which are sufficient in the aggregate to earn the discounts than to serve the customer who places a few large orders whose total is not sufficient to obtain the discounts.

* * * * *

A cumulative discount is sound only where savings have been achieved by the seller with respect to individual sales made to a particular buyer over a period of time, which savings were not reflected in the price at which the buyer purchased and which are reserved for the purpose of refunding at the end of a period of time.

Stock merchandise manufactured by respondents is listed in respondents' catalogs and price lists at prices which, for most merchandise, vary according to the number of articles of a particular type and description (or pairs of a single type of lens) which are purchased in one order. For the majority of lenses and the more popular types of frames and mountings, the price range extends to purchases in the following "column" quantities (lenses in pairs): 2 of a kind or 5 assorted; 5 of a kind or 10 assorted; 25 assorted; 50 assorted. While the price for 50 pairs or units is substantially lower than the price for 2 or 5, these prices are available to all customers who purchase in the stated amounts. In general no price concession is made for single orders of more than 50 units or pairs.

We do not find, upon these facts, that the "column" differentials have the effect of substantially lessening or injuring competition, either with respondents or with their customers. A different conclusion might be reached if it should appear that these differentials were extended to large quantities beyond the range of the purchases of the average retailer, thereby resulting in discrimination in favor of certain large dealers—but such is not shown to be the case here. Furthermore, said column differentials may be justified, in part at least, by differences in cost of sale and delivery resulting from the difference in the size of individual orders. Ordinarily large orders are obtained, assembled, packed, billed, and delivered at a lower cost per dollar of sales than small orders.

We conclude that through the use of their "big-dealer" cumulative discount plan and the pricing policies embraced therein respondents have violated and are violating Section 2 (a) of the Clayton Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of the respondents, and a stipulation as to the facts signed by counsel for the Commission and counsel for the respondents in which it is provided that the statement of facts contained therein may be accepted as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and the taking of testimony and all intervening procedure having

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been waived, and the Commission being of the opinion that said respondents have violated the provisions of Section 2 (a) 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, and having made its report stating its findings as to the facts, which report is made a part hereof,

It is ordered, That the respondents, American Optical Co., an association, and American Optical Co., a corporation, and their respective officers, members, representatives, agents, and employees, in connection with the distribution and sale of optical and ophthalmic products in commerce between the States and in the District of Columbia, do forthwith cease and desist

1. From discriminating in price between different purchasers of such products of like grade and quality, either directly or indirectly, by granting or allowing the cumulative or volume discounts described in paragraph 7 of said findings as to the facts, or by continuing in effect the "big-dealer" discount plan in said paragraph described.

2. From discriminating in price between purchasers of ophthalmic stock merchandise and equipment who also purchase merchandise from respondents on prescriptions for single pairs of glasses, or employ respondents to fill such prescriptions, and other purchasers of such merchandise and equipment who do not purchase from respondents on prescriptions or employ respondents to fill prescriptions, unless such price differences make only due allowance for differences in cost of selling or delivering such stock merchandise and equipment to such purchasers resulting from the differing methods or quantities in which such stock merchandise and equipment is sold and delivered.

3. From discriminating in price between different purchasers of such products of like grade and quality by granting or allowing any other cumulative or volume discounts, rebates, or price reductions, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in a line of commerce in which respondents or their customers are engaged, or to injure, destroy, or prevent competition with respondents or with any of their customers, except where such discounts, rebates, or price reductions make only due allowance for differences in cost resulting from the differing methods or quantities in which such products are to such purchasers sold and delivered during the period of time for which such discounts, rebates, or price reductions are granted or allowed.

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Nothing contained in paragraphs 2 or 3 hereof shall be construed to prevent said respondents from showing that any such discount, rebate or other price reduction made or offered to be made by them was given in good faith to meet an equally low price of a competitor or the services or facilities furnished by a competitor, or from granting any discounts, rebates or price reductions permitted by law.

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

IN THE MATTER OF
BAUSCH & LOMB OPTICAL COMPANY ET AL.

COMPLAINT, FINDINGS, OPINION, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED

Docket 3233. Complaint, Sept. 30, 1937—Decision, Jan. 21, 1939

Where (1) a corporation engaged in manufacture, distribution, and sale of a complete line of ophthalmic merchandise and optical goods, including lenses, frames, and mountings for eye glasses, scientific instruments for eye testing, cases, equipment, machinery, and specialties, and which (a) effected distribution and sale of its products through six corporate wholesalers, outstanding voting stock of which is controlled, with power to coordinate and control their sales and pricing policies, and which engaged in their respective territories in selling, through a system of wholesale outlets or branches extending throughout the United States, its said products under pricing policies coordinated and controlled by it and at uniform prices fixed or approved by it, and to which and other wholesalers it sold its products at same prices as those listed as below set forth for \$1,500 retailer accounts, and (b) constituted, considered together with its aforesaid selling affiliates, the second largest organization manufacturing and distributing ophthalmic products in the United States; and (2) said six corporate wholesalers, in their respective territories, dealing, principally, in its products, directing their sales efforts primarily to sale of its merchandise, and charging prices and using discount plans which were substantially the same, and quoting and using, in the case of its merchandise, prices published in its catalogs, and making use thereof as basis for computation of various discount allowances; and, by and large, with well-equipped prescription shops and doing substantial amount of prescription business in their respective sales territories, and competing for such business for which many retailers, not themselves equipped, rely upon nearby wholesalers;

In selling, as thus engaged, such manufacturer's said products in competition with numerous other manufacturers of such goods, and in substantial competition with other wholesalers and with wholesale branches of largest manufacturer of such products in the United States, (a) under certain "column" schedules or discounts from list prices which were, in general, common to and made use of by manufacturing trade in question, and under which purchasers, irrespective of total amounts otherwise bought, received, without further concession, discount on basis of purchases in one order and discounts on lenses, frames, and mountings based on such order purchases of 2, 5, 10, 25, or 50 units, as case might be, (b) under so-called "big dealer" discount plan or "volume purchase schedule" by which, on basis of all monthly purchases aggregating \$1,500 or \$750, as case might be, retailer received off list, among other discounts on types of merchandise for which demand is greatest and which make up bulk of purchases of its customers, i. e., on lenses, frames and mountings purchased by it, 33½ percent or 25 percent, respectively, and under which they included, in such aggregate for determining discount eligibility as aforesaid, prescription

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items, surfacing, polishing and edging machinery and all purchases, regardless of particular item's own discount status, and regardless also of size or number of separate orders making up total, and under which, moreover, large part of stock merchandise as thus sold to \$1,500 per month "big dealers," and including most lenses, frames, and mountings, was sold at cost without markup for selling, handling and overhead—

Discriminated in price, through use of their "big dealer" cumulative discount plan and cumulative discounts and differentials allowed thereunder, which bore no consistent relation to size of single orders or differences in cost of sale and delivery per dollar of merchandise as between different purchasers, and did not make only due allowances for differences, if any, in cost of sale or delivery resulting from differing methods or quantities in which sale or delivery is made to different purchasers under said plan, in favor of a substantial number of their larger customers who were able to receive volume discounts thus provided, and as against many other customers engaged in competition with such "big dealers" and including small optometrists and opticians who did not receive such discounts and could not purchase in sufficient volume to qualify therefor;

With the result that the effect of such discrimination in price had been and might be to injure, destroy, or prevent competition with customers of industry receiving benefit of discrimination aforesaid, and had been and might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which they were respectively engaged, and to injure, destroy or prevent competition with them by other wholesalers and with it by limited line manufacturers of optical goods:

Held, That through use of their "big dealer" cumulative discount plan and pricing policies embraced therein they violated and were violating Section 2 (a) of the Clayton Act.

Mr. Cyrus B. Austin for the Commission.

Hubbell, Taylor, Goodwin, Nixon & Hargrave, of Rochester, N. Y., for respondents, and *Mr. James M. O'Reilly*, of Rochester, N. Y., also for Bausch & Lomb Optical Co.

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," commonly known as the Clayton Act, as amended by an Act of Congress, approved June 19, 1936 (U. S. C., title 15, sec. 13), commonly known as the Robinson-Patman Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof have violated, and are now violating the provisions of subsection (a) 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 Bausch & Lomb Optical Co. is a corporation, organized and existing under and by virtue of the laws of the State of New York, and its principal office and place of business is

located in the city of Rochester in said State. It is now, and has been since June 19, 1936, engaged in the business of manufacturing and selling optical goods and ophthalmic products, including lenses, frames, mountings, diagnostic instruments, optical machinery, tools, and grinding and polishing materials, to various retailers, independent wholesalers, and chain business enterprises engaged in business as lessee-operators of the optical departments of various large department stores. Such sales are by said respondent made both directly and through the other respondents hereinabove named in the caption and hereinafter more particularly designated and described. Respondent Bausch & Lomb Optical Co. owns a controlling share of the stock in each of the said other respondent companies and exercises such control in directing the sales policies, pricing and selling activities engaged in by said other respondents in their respective businesses.

PAR. 2. (a) Respondent Colonial Optical Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 62 West Forty-seventh Street, in the city of New York in said State. Bausch & Lomb Optical Co. owns and holds approximately 91 percent of the outstanding shares of voting stock issued by Colonial Optical Co., Inc.

(b) Respondent McIntire, Magee & Brown is a corporation, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business at 1700 Walnut Street in the city of Philadelphia, in said State. Approximately 58 percent of the outstanding shares of the voting stock by it issued are owned and held by the respondent Bausch & Lomb Optical Co.

(c) Respondent Riggs Optical Co. Consolidated 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 at 222 West NoBank Drive, in the city of Chicago, in the State of Illinois. Approximately 82 percent of the outstanding shares of voting stock by it issued are owned and held by the respondent Bausch & Lomb Optical Co.

(d) Respondent Riggs Optical Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Flood Building, in the city of San Francisco, in the State of California. Approximately 74 percent of the outstanding shares of voting stock by it issued are owned and held by the respondent Bausch & Lomb Optical Co.

(e) Respondent Southeastern Optical Co. is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business at 212 East

Franklin Street, in the city of Richmond in said State. Approximately 60 percent of the outstanding shares of voting stock by it issued are owned and held by the respondent Bausch & Lomb Optical Co.

(f) Respondent The White, Haines Optical Co. is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 82 North High Street, in the city of Columbus, in said State. Approximately 72 percent of the outstanding shares of voting stock by it issued are owned and held by the respondent Bausch & Lomb Optical Co.

(g) Each of the respondents in said subsections (a) to (f) inclusive in this paragraph named is now, and since June 19, 1936, has been engaged in the business of selling at wholesale the aforesaid optical goods and ophthalmic products of the respondent Bausch & Lomb Optical Co.

PAR. 3. In the course and conduct of their respective businesses as aforesaid, respondents, and each of them, transports or causes to be transported the said products, when sold, from the places of their respective locations to the purchasers thereof located in the several States of the United States other than the States in which such shipments originated, and there is and has been at all times herein mentioned a current of trade and commerce in said products, between the States wherein these several respondents are located and the various other States of the United States.

Said respondents and each of them sell and distribute the aforesaid products for use, consumption, or resale within the United States and the District of Columbia, in the same territories and places and in competition with various other manufacturers, distributors, and wholesalers engaged in the sale of optical goods and ophthalmic products including lenses, frames, mountings, diagnostic instruments, optical machinery and tools, and grinding and polishing materials.

Respondents' aforesaid purchaser customers are competitively engaged in the resale of said products, both at wholesale and retail, to the consumers or users thereof, within the several sales areas in which said purchaser customers respectively offer for sale and sell the said products of Bausch & Lomb Optical Co.

PAR. 4. Said respondents, and each of them, in the course and conduct of interstate commerce as hereinbefore set forth, have, since June 19, 1936, discriminated in price, and are now discriminating in the price at which they and each of them have sold and do sell Bausch & Lomb Optical Co. products and commodities of like grade and quality, between the different purchasers of such products and commodities, by giving and allowing certain of said purchasers a lower price than given or allowed other purchasers competitively engaged

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in said line of commerce and by giving and allowing certain of said purchasers adjustments, rebates, or discounts in the form of cash or commodities not given and allowed to other of respondents' said purchaser customers. Respondents' purchaser customers in whose favor such discrimination is made, are generally the larger dealers who are thus enabled either to undersell their competitors or furnish better facilities and services to the prospective consumer purchaser, or both.

PAR. 5. The effect of such discrimination in price made by said respondents, as set forth in paragraph 4 hereof, may be substantially to lessen competition between the respondents and their aforesaid competitors; between the customers of respondents in whose favor such discrimination is made and respondents' other customers; and between the customers of respondents' competitors who do not grant such customers the benefit of such discriminatory prices and the customers of respondents in favor of whom respondents discriminate; and said discrimination tends to create a monopoly in the aforesaid line of commerce in respondents and respondents' favored customers and to injure, destroy, and prevent competition with the said respondents and with those of respondents' customers who knowingly receive the benefit of such discrimination, and with the customers of each of them.

Such discrimination in price by said respondents, and each of them, between different purchasers of commodities of like grade and quality in interstate commerce in the manner and form aforesaid are in violation of the provisions of subsection (a) of section 2 of the act described in the preamble hereof.

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" (the Clayton Act), as amended, the Federal Trade Commission, on September 30, 1937, issues its complaint against the above-named respondents and causes such complaint to be served as required by law, charging that said respondents were and had been discriminating in price between different purchasers of commodities of like grade and quality in commerce in violation of the provisions of section 2 (a) of said act.

Respondents duly filed their separate answers to said complaint. Thereafter a stipulation was entered into between counsel for the Commission and counsel for the respondents containing a statement of the facts in this proceeding upon which it was agreed that said proceeding might be submitted to the Commission for final determination, the respondents consenting that upon said stipulation an order

be issued requiring them to cease and desist from the price discrimination alleged in the complaint. Said stipulation was duly approved and filed herein by order of the Commission.

This proceeding regularly coming on to be heard upon said complaint, answers and stipulations, filing of briefs and presentation of oral argument having been waived by counsel for all parties, the Commission, having duly considered the same and being fully advised in the premises, and being of the opinion that the respondents have been and are violating the provisions of Section 2 (a) of said Clayton Act, now makes these its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Bausch & Lomb Optical Co. (hereinafter referred to as "Bausch & Lomb") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with main offices and factories located at Rochester, N. Y. Said respondent is now and for many years has been engaged in the business of manufacturing, distributing, and selling, among other things, a complete line of ophthalmic merchandise and optical goods, including lenses, frames, and mountings for eye glasses, scientific instruments for eye testing, cases, equipment, machinery, and specialties.

PAR. 2. Respondent Colonial Optical 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 located in New York, N. Y. Said respondent is engaged in the business of distributing and selling optical and ophthalmic products at wholesale, sale, through some 21 branches located in the principal cities of and serving the following territory: New York, the northern half of New Jersey, and all of New England. Of 6,777 shares of capital stock of said respondent outstanding, 6,350 shares are owned by Bausch & Lomb.

PAR. 3. Respondent McIntire, Magee & Brown Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located in Philadelphia, Pa. Said respondent is engaged in the business of distributing and selling optical and ophthalmic products at wholesale, through some 9 branches located in the principal cities of and serving the following territory: the southern half of New Jersey, the eastern half of Pennsylvania, Maryland (except two western counties), Delaware, the District of Columbia, and the northern quarter of Virginia.

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Of 3,695 shares outstanding capital stock of said respondent, 2,139 shares are owned by Bausch & Lomb.

PAR. 4. Respondent Southeastern Optical Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office located in Richmond, Va. Said respondent is engaged in the business of distributing and selling optical and ophthalmic products at wholesale, through some 21 branches located in the principal cities of and serving the following territory: Virginia (except the northern quarter), North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and northeastern Arkansas. Said respondent has voting stock outstanding consisting of 2,014 shares of class A stock, all of which is owned by Bausch & Lomb, and 2,663 shares of common stock, of which 1,559 shares are owned by Bausch & Lomb.

PAR. 5. Respondent The White-Haines Optical 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 located in Columbus, Ohio. Said respondent is engaged in the business of distributing and selling optical and ophthalmic products at wholesale, through some 24 branches located in the principal cities of and serving the following territory: The Western half of Pennsylvania, West Virginia, Maryland (two western counties), Ohio, Kentucky (except southwestern corner), Indiana (except three northwestern counties), central Illinois, and the southern peninsula of Michigan. Said respondent has voting stock outstanding as follows: 5,725 shares, second preferred, of which 4,280 shares are owned by Bausch & Lomb, and 14,376 shares of common stock of which 7,650 are owned by Bausch & Lomb.

PAR. 6. Respondent Riggs Optical Co., Consolidated is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office located in Chicago, Ill. Said respondent is engaged in the business of distributing and selling optical and ophthalmic products at wholesale, through some 56 branches located in the principal cities of and serving the following territory: Illinois (except the central portion), Indiana (three northwestern counties), the southwest corner of Kentucky, the northern peninsula of Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, the eastern quarter of Montana, the eastern two-thirds of Wyoming, Nebraska, Iowa, Missouri, Kansas, Colorado, New Mexico, the southeastern corner of Arizona, Texas, Oklahoma, Arkansas (except the northeastern portion), and Louisiana. The outstanding voting stock of said respondent consists of 8,070 common shares, of which 6,555½ shares are owned by Bausch & Lomb.

PAR. 7. Respondent Riggs Optical 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 located in San Francisco, Calif. Said respondent is engaged in the business of distributing and selling optical and ophthalmic products at wholesale, through some 33 branches located in the principal cities of and serving the following territory: Montana (except eastern quarter), the western third of Wyoming, Idaho, Washington, Oregon, California, Nevada, Utah, and Arizona (except southeastern corner). Of 9,798½ shares outstanding capital stock of said respondent, 7,996½ shares are owned by Bausch & Lomb.

PAR. 8. Distribution and sale of the Bausch & Lomb products herein referred to is effected chiefly through the said six wholesaler respondents. Bausch & Lomb sells most of its ophthalmic merchandise, equipment, and machinery to said wholesaler respondents, and also sells such products to other wholesalers. No sales are made direct to retailers. The lenses, frames, mountings, and other ophthalmic products manufactured by Bausch & Lomb, are listed, described, and priced in its catalogs, which are distributed to and used by the wholesaler respondents as a basis for selling to the trade. Bausch & Lomb sells to the six wholesaler respondents and to other wholesalers at the same prices for goods of the same grade and description, regardless of quantity purchased, the wholesaler or jobbers' prices being in general the same as those listed for "\$1,500 Accounts" in the schedule set forth in paragraph 14 hereof. Bausch & Lomb, through its ownership of a majority of the outstanding voting stock of each of said wholesaler respondents, has power to coordinate and control the sales and pricing policies of said wholesaler respondents.

PAR. 9. Each of said six wholesaler respondents restricts its selling activities to its own territory, as above described, and said respondents do not engage in competition with each other. Said respondents deal principally in the products of Bausch & Lomb, although they also deal in the products of other manufacturers; but their sales efforts are directed primarily to the sale of Bausch & Lomb merchandise. The prices charged by them, respectively, and their respective discount plans are substantially the same, and as to Bausch & Lomb merchandise all of them quote the prices published in the Bausch & Lomb catalogs and use such prices as a basis for computing the various discount allowances hereinafter described.

PAR. 10. Respondent Bausch & Lomb's said products are manufactured at Rochester, N. Y., and are constantly shipped from that

point to its wholesaler customers in other States of the United States and the District of Columbia for use and resale by and through said customers to meet the constant demand which exists for said products on the part of opticians, optometrists, and oculists using and selling such products at retail. Each of said wholesaler respondents is constantly engaged in shipping and distributing such products from its main office or warehouse to its branches in the same and other States in which it does business for resale through said branches to supply the demand of its retail customers. Shipments are also made, when necessary or convenient, directly from the main office to purchasers in the same and other States. Frequently orders for machinery, equipment, or special merchandise are filled by direct shipment from Bausch & Lomb to the retailer purchaser, at the request of the wholesaler. There is a constant stream of commerce in such products running from Bausch & Lomb to said wholesaler respondents and their branches and through them to the retailer purchasers of such products.

PAR. 11. Respondent Bausch & Lomb sells and distributes its said products throughout the United States in competition with numerous other manufacturers of optical and ophthalmic products. Said wholesaler respondents, respectively, are engaged in substantial competition with other wholesalers and with American Optical Co. branches in the sale and distribution of such products in most of the localities and sales areas in which said respondents do business. Many of the customers of said wholesaler respondents are engaged in competition with each other and with customers of competitors of said respondents, in the use and resale of such products in the several localities where such customers are located.

PAR. 12. An important function of the optical wholesaler is the maintenance and operation of a prescription shop with the necessary machinery and tools for grinding, polishing, edging, and inserting or mounting lenses. There are many retailers who cannot or do not wish to make the investment in machinery and provide the space necessary to maintain their own prescription shops, and they rely upon the nearby wholesalers to do this work and to maintain an extensive supply of unfinished lenses, frames and mountings of various types and styles from which individual prescriptions can be filled promptly as ordered. The greater part of the business of the average small optical wholesaler is in the filling and delivery of prescription orders for the retailers in his locality. Substantially all of the branches of the six wholesaler respondents have well equipped prescription shops and, in addition to selling stock merchandise, compete for and do a substantial amount of the prescription business

in their respective sales territories. Many of the larger retailers maintain their own prescription shops and do most of their own grinding, edging, etc. in order to enable them to give better service.

PAR. 13. The lenses, frames, and mountings manufactured by Bausch & Lomb are listed and sold by said wholesaler respondents to retailers at varying prices, depending on the number of pairs (lenses) or units (frames and mountings) of one description, type or brand purchased in a single order. For example, as applied to certain gold filled mountings and lenses, the catalog "column" schedules quote prices under the following headings:

- 2 (pairs) of a kind or 5 assorted
- 5 (pairs) of a kind or 10 assorted
- 25 (pairs) assorted
- 50 (pairs) assorted

For certain other items, such as blank and semifinished lenses, zylonite frames, solid gold mountings, etc., fewer columns are listed, in some cases the price reduction for quantity extending only to purchases on 5 or more assorted units, or 1 package of lenses. No price concession is made on the basis of single purchases in excess of 50 units or pairs. These "column prices" are available to all purchasers on the basis above stated, irrespective of the total amount of merchandise of various kinds ordered at one time or the total volume purchased during any given period. Prices listed for a single pair of lenses or a single frame or mounting are also the prices charged in filling prescription orders. The column price lists above described do not apply to sales on prescription, but only to sales of stock merchandise.

PAR. 14. The wholesaler respondents also sell their lenses, frames mountings, machinery, equipment, and other stock merchandise to retailer customers at different prices, under a "big dealer" discount plan. This plan is illustrated by the following "Volume Purchase Schedule" set forth in a price bulletin issued October 1, 1936, by respondent the White-Haines Optical Co., which is still in effect. The same or substantially the same "big dealer" discount plan is used by the other wholesaler respondents.

VOLUME PURCHASE SCHEDULE

When a customer's total monthly purchases reach \$750, or more, or \$1,500, or more, in any given month, the following discounts are extended, when the account is paid on the 10th of the month following purchases.

Prescription work----- 2% only
 (Includes all kind of Rx work, lenses, frames, etc., in single or pairs)

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ANY ITEMS OF LENSES, FRAMES OR MOUNTINGS SOLD IN THE FIVE COLUMN SET-UP AT THE 25 OR 50 QUANTITY PRICES ARE SUBJECT ONLY TO THE 2 PERCENT CASH DISCOUNT

| | \$750 accounts | \$1,500 accounts |
|---------------------------------------------------------------------------------------------------------------------------------------|-------------------|---------------------|
| LICENSED PRODUCTS: | | |
| PANOPTIKS—Sold to Licensees only at terms specified in License. | | |
| SOFT-LITES—Sold to Licensees only at Licensee Stock and Rx Net Prices. | | |
| ORTHOGONS—Sold to Franchise Dealers only: | <i>Percent</i> | <i>Percent</i> |
| Finished Uncuts, Single Vision in "10 pr. asst." and "5 pr. asst." columns | 25 | 33½ |
| Singles or single pairs..... | 2 | 2 |
| Semifinished, Single Vision or Bifocal blanks (any quantity)..... | 25 | 33½ |
| LOXITS—Sold to Licensees only: | | |
| Gold Filled in quantities of two (2) or more..... | 25 | 33½ |
| Solid Gold in quantities of two (2) or more..... | 20 | 20 |
| Singles..... | 2 | 2 |
| LENSES (not including "6-50", Orthogon or Soft-Lite lenses): | | |
| Finished Uncuts, Single Vision in "10 pr. asst." and "5 pr. asst." Columns..... | 25 | 33½ |
| Singles or single pairs..... | 2 | 2 |
| Semi-finished or Rough, Single Vision or Bifocal Blanks (any quantity)..... | 25 | 33½ |
| LENSES—B & L "1st" 6-50 Ophthalmic lenses (in any quantity)..... | 2 | 2 |
| GOLD FILLED FRAMES, MTGS., AND PARTS (Also Innerlim and Zylonite). | | |
| In quantities of two (2) or more..... | 25 | 33½ |
| Singles..... | 2 | 2 |
| SOLID GOLD FRAMES, MTGS., AND PARTS: | | |
| In quantities of two (2) or more..... | 20 | 20 |
| Singles..... | 2 | 2 |
| OXFORD AND CHAINS (except Z-Fold)..... | 2 | 2 |
| OXFORDS, Z-FOLD..... | 10 | 20 |
| Ear Loop and H. P. Chains, Ribbons, Coris, etc..... | 10 | 20 |
| Sun Glasses & Goggles (except Soft-Lite) Sport-Lite and Soft-Lite Overglass..... | 10 | 20 |
| Soft-Lite Sport-Lite and Overglass..... | 2 | 2 |
| Cases..... | 20 | 25 |
| Miscellaneous—Reels, Field & Opera Glasses, Binoculars, Readers & Magnifiers, Charts, Case Labels, E. G. Cleaners, Clens, etc..... | 2 | 2 |
| Machinery (except Midget Cleaner)..... | 10 | 20 |
| Midget Cleaner..... | 2 | 2 |
| Dual Edger..... | 10 | 20 |
| Shop Tools, pliers, etc., Grinding & Polishing Material & Supplies..... | 10 | 20 |
| Equipment: | | |
| Bausch & Lomb, Shuron, American..... | 10 | 10 |
| Green Test Cabinets, Hamilton and Archer furniture..... | 10 | 10 |
| Rotoscopes..... | 2 | 2 |
| Snyder Electric Table..... | 2 | 2 |
| Henry Retinoscope..... | 2 | 2 |
| Sight-Light Equipment..... | 2 | 2 |
| Troy Furniture..... | 10 | 10 |
| Zeiss..... | 2 | 2 |

The 2-percent discount shown above is a cash discount. This same 2-percent cash discount is also allowed in addition to the trade discounts shown. Cash discounts are not allowed according to custom on the west coast.

The lenses, mountings, and frames subject to the big dealer discounts of 25 and 33½ percent under the above schedule include the types of such merchandise for which the demand is greatest and which make up the bulk of the purchases of the optical retailer. Under this schedule, the discounts allowed are determined solely by the customer's total purchases during the discount period, regardless of the size or number of separate orders filled in making up the total. No discount (other than 2 percent for cash) is allowed on prescription (Rx) sales and "net" items, but such sales are included in determining total volume for qualification for big dealer discounts on stock merchandise. Purchases of surfacing, polishing, and edging machin-

ery are likewise so included. Such purchases frequently run into hundreds of dollars and in some cases are in larger amounts and a single such purchase may under the above schedule affect the discount received by the buyer on lenses and frames purchased during the month or year. A substantial number of respondents' customers have been able to secure the volume discounts provided for in the above discount schedule, while many other customers engaged in competition with such "big dealers" in the use and sale of respondents' said products have not received the benefit of such discounts.

PAR. 15. Respondent Bausch & Lomb considered together with its selling affiliates (the wholesaler respondents herein) is the second largest organization manufacturing and distributing ophthalmic products in the United States, the largest being American Optical Co. of Southbridge, Mass. Many other manufacturers of such products (some of whom also do substantial volumes of business) market their products largely through wholesalers, other than the wholesaler respondents herein. Some engaged to a large extent in direct factory-to-retailer selling. Some of these manufacturers produce only limited lines, some making only lenses, others frames, etc. List prices of the various manufacturers are substantially the same for competitive merchandise, price competition generally being carried on through the granting of discounts rather than by lowering of base prices. The usual manufacturer-to-wholesaler discount on lenses, frames, and mountings is $33\frac{1}{3}$ percent, but greater discounts are given by some manufacturers.

OPINION

*Respondent Bausch & Lomb is engaged in the sale and shipment of ophthalmic products and other optical merchandise in interstate commerce from its factories in Rochester, N. Y., to its customers in other States. The six wholesaler respondents are likewise engaged in interstate commerce as to a substantial portion of their business. Said wholesalers deal principally in Bausch & Lomb merchandise, their pricing policies are coordinated and controlled by Bausch & Lomb, and such merchandise is sold by each of them at uniform prices fixed or approved by Bausch & Lomb. The prices so fixed and charged for Bausch & Lomb products are fixed and charged by respondents in the course of commerce, and such sales are sales in commerce within the meaning of Section 2 (a) of the Clayton Act.

The wholesaler respondents provide a system of wholesale outlets for Bausch & Lomb products extending throughout the United States. All of said wholesalers sell Bausch & Lomb merchandise to different purchasers at varying prices pursuant to the "big dealer" discount plan described in paragraph 14 of the above findings. The discounts

allowed under said plan are determined on the basis of a customer's volume of purchases over a month or year and bear no consistent relation to the size of single orders or differences in cost of sale and delivery per dollar of merchandise as between different purchasers. By allowing such cumulative discounts respondents have discriminated in price in favor of a substantial number of their larger customers. Small optometrists and opticians do not receive these discounts and cannot purchase in sufficient volume to qualify for them.

The "big dealer" discount plan employed by these respondents is substantially the same as the "big dealer" plan considered by us in *Matter of American Optical Company, et al.* (F. T. C. Docket No. 3232), decided this day. The two plans appear to be coextensive in operation and effect. For the reasons stated in our opinion in that case (insofar as applicable to the facts here), we find that the effect of the discrimination in price above described has been to injure, and may be to injure, destroy or prevent competition with respondents' customers receiving the benefit of such discrimination.

We find, further, that the effect of such price discrimination by respondents is and may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondents, respectively, are engaged, and to injure, destroy, or prevent competition with respondents by other wholesalers and, with respondent Bausch & Lomb, by limited line manufacturers of optical goods. As to this branch of the case, the same considerations apply which we outlined in our opinion in *Matter of American Optical Company, supra*. It is also to be noted here that a large part of the stock merchandise sold by the respondent wholesalers to \$1,500-per-month "big dealers," including most lenses, frames, and mountings, is sold at cost without any mark-up for selling, handling, and overhead.

It does not appear from the facts before us that the differentials of the "big dealer" plan make only due allowances for differences, if any, in cost of sale or delivery resulting from differing methods or quantities in which sale and delivery is made to different purchasers under said plan.

We conclude that through the use of their "big dealer" cumulative discount plan and the pricing policies embraced therein respondents have violated and are violating Section 2 (a) of the Clayton Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the separate answers of the respondents, and a stipulation as to the facts signed by counsel

for the Commission and counsel for all of the respondents in which it is provided that the statement of facts contained therein may be accepted as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and the taking of testimony and all intervening procedure having been waived, and the Commission being of the opinion that said respondents have violated the provisions of Section 2 (a) 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, and having made its report stating its findings as to the facts, which report is made a part hereof.

It is ordered, That the respondents, Bausch & Lomb Optical Co., Colonial Optical Co., Inc., McIntire, Magee & Brown Co., Riggs Optical Co., Consolidated, Riggs Optical Co., Inc., Southeastern Optical Co., and The White-Haines Optical Co., and their respective officers, representatives, agents, and employees, in connection with the distribution and sale of optical and ophthalmic products in commerce between the States and in the District of Columbia, do forthwith cease and desist:

1. From discriminating in price between different purchasers of such products of like grade and quality, either directly or indirectly, by granting or allowing the cumulative or volume discounts described in paragraph 14 of said Findings as to the Facts, or by continuing in effect the "big dealer" discount plan in said paragraph described.

2. From discriminating in price between purchasers of ophthalmic stock merchandise and equipment who also purchase merchandise from respondents on prescriptions for single pairs of glasses, or employ respondents to fill such prescriptions, and other purchasers of such merchandise and equipment who do not purchase from respondents on prescriptions or employ respondents to fill prescriptions, unless such price difference make only due allowance for differences in cost of manufacturing, selling, or delivering such stock merchandise and equipment to such purchasers resulting from the differing methods or quantities in which such stock merchandise and equipment is sold and delivered.

3. From discriminating in price between different purchasers of such products of like grade and quality by granting or allowing any other cumulative or volume discounts, rebates or price reductions, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in a line of commerce in which respondents or their customers are engaged, or to injure, destroy, or prevent competition with respondents or with any of their customers except where such discounts, rebates or price reductions make only due allow-

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ance for differences in cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such products are to such purchasers sold and delivered during the period of time for which such discounts, rebates, or price reductions are granted or allowed.

Nothing contained in paragraphs 2 or 3 hereof shall be construed to prevent said respondents from showing that any such discount, rebate or other price reduction made or offered to be made by them was given in good faith to meet an equally low price of a competitor or the services or facilities furnished by a competitor, or from granting any discounts, rebates, or price reductions permitted by law.

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

Complaint

IN THE MATTER OF

S. C. ROSS DOING BUSINESS AS IDEAL GIFT COMPANY

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

Docket 3205. Complaint, Aug. 16, 1937—Decision, Jan. 25, 1939

Where an individual engaged in offer, sale, and distribution of various articles of merchandise, including rotary clocks, fountain pen sets, and fountain pen and pencil combinations, to purchasers in the various States, in soliciting sale of and selling and distributing said products—

Furnished various types of merchandising plans which involved operation of games of chance, gift enterprises, or lottery schemes for distribution thereof to consumers wholly by lot or chance, and consisted of certain literature and circular letters together with paper push cards, order blanks, and advertisements depicting his aforesaid merchandise, for use in offer and sale thereof by operators of said cards under scheme in accordance with which persons paid for chance secured varying amount in accordance with number revealed by particular disk selected and punched, and person purchasing chance received article of merchandise being thus disposed of in accordance with his selection of, or failure to select, feminine name corresponding with that concealed under card's master seal, and other article in accordance with success or failure in securing from cards certain number, and others secured nothing other than privilege of making selection for money paid, and thereby conducted lotteries in sale and distribution of his said products, and placed in hands of others means of conducting lotteries in sale thereof, contrary to the common law and criminal statutes and to an established public policy of the United States Government, and in competition with many engaged in sale and distribution in similar commerce of like and similar articles of merchandise who do not sell the same through use of lotteries or games of chance;

With result that many purchasers of his said products were attracted by games of chance involved in his said sales method and thereby induced to purchase his merchandise in preference to same or similar goods of competitors who did not and do not use same or equivalent method, and thereby substantial volume thereof was bought by public and trade was unfairly diverted to him from competitors aforesaid:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, 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 S. C. Ross, individually and trading as the Ideal Gift Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style of the Ideal Gift Co., with his principal office and place of business located in Room 825, Garrick Building, 64 West Randolph 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, rotary clocks, fountain pen sets, and fountain pen and pencil combinations, 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 girl's 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 cents 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 furnished 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 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 his said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid method, 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 the Federal Trade Commission Act, the Federal Trade Commission, on August 16, 1937, issued, and on August 18, 1937, served its complaint in this proceeding upon the respondent, S. C. Ross, individually and trading as Ideal Gift Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the said complaint, testimony, and other evidence in support of the allegations of the complaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by John A. Nash, attorney for the respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and the said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence, briefs in support of the complaint, respondent not having filed brief and oral argument not having been requested; 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 S. C. Ross is an individual trading under the name and style of Ideal Gift Co. with his principal office and place of business located at 64 West Randolph Street, city of Chicago, State of Illinois.

Respondent is now, and for some time last past has been, engaged in the business of offering for sale, selling, and distributing various articles of merchandise, including, among others, rotary clocks, fountain pen sets, and fountain pen and pencil combinations to purchasers thereof located in the various States of the United States.

Respondent causes said merchandise, when sold, to be transported from his place of business in the State of Illinois to the purchasers thereof located at various points in the States of the United States other than the State from which said shipments are made.

Respondent is now, and has been, in substantial competition with other individuals and with partnerships and with corporations likewise 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 soliciting the sale of and selling and distributing his merchandise, respondent furnishes 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 consumers wholly by lot or chance.

The methods used by respondent to sell his merchandise are as follows:

Respondent distributes to the public certain literature and circular letters together with paper push cards. Along with the foregoing, respondent also encloses order blanks and advertisements which contain illustrations or pictures of his merchandise. The circulars enclosed by respondent set forth respondent's plan of selling the merchandise and of allocating it as premiums or prizes to the operators of the push cards.

In said circulars, respondent refers to the enclosed push card as a "sales card."

One of respondent's circulars contains the following:

THE PLAN

The Salescard, you will notice, has an illustration of this recently invented clock. The person selecting the name corresponding with the name under the large seal will receive one of these new Venus Rotary Clocks. The person selecting number 33 receives a beautiful Fountain Pen Desk Set, useful for home and office.

You Also Will Receive One of These Clocks Absolutely Free for Disposing of This Salescard.

The numbers on the Salescard are extremely low priced. Persons selecting numbers from 1 to 29 pay what they draw and those selecting numbers over 29 pay only 29¢—No More.

Upon completion of this card, fill in and mail us the enclosed order blank and we will send you Two of these new Venus Rotary Clocks in your choice of colors, and also the beautiful Fountain Pen Desk Set.

Findings

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Each of the aforesaid push cards or "sales cards" bears a number of feminine names and on the reverse side of each card is a number of blank spaces opposite an alphabetical list of feminine names for writing in the names of customers who purchase chances on the card.

Each card has a corresponding number of partially perforated disks, marked "Push." Above each disk is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disk is a number which is disclosed when the disk is punched or separated from the card. Each push card has a master disk, concealed within which is one of the feminine names.

When all the disks have been selected and the master disk removed, the person selecting the name corresponding to the name under the master disk receives the article of merchandise specified without further charge. In this manner, respondent's merchandise is distributed to the public. Among the items which respondent distributes by means of push cards are the following: Venus rotary clocks, fountain pen desk sets, and fountain pen and pencil combinations.

Customers purchasing chances on the push cards pay in cents the amount of money indicated by the number revealed when the disk is punched or pushed by them, and customers selecting numbers higher than 29 pay only 29 cents. On some of the cards which respondent distributes, additional merchandise is offered by respondent to customers selecting certain numbers. On one of such cards, the customer pushing the number 33 receives a fountain pen desk set. This prize is offered in addition to the principal prize which is the Venus rotary clock. The person winning the Venus rotary clock on said card must select the feminine name which is concealed under the master disk.

Customers selecting names which do not correspond with the name under the master disk receive nothing but the privilege of making a selection for the money which they pay, except the customer selecting the number which entitles him to the fountain pen desk set.

In this manner, the public is induced and persuaded to purchase chances from said push card in the hope of selecting a prize-winning name or number and thus obtaining an article of merchandise for the price of 29 cents or less.

Respondent's merchandise is thus distributed to the purchasing public wholly by lot or chance, and the amount which a customer pays for a chance is determined wholly by lot or chance.

Sales by respondent of said merchandise have averaged approximately \$3,200 annually.

PAR. 3. The Commission finds that the respondent, in selling and distributing his merchandise in connection with the above-described

push cards, conducted lotteries and placed in the hands of others the means of conducting lotteries in the sale of his merchandise.

The Commission further finds that the sale of respondent's merchandise to the purchasing public, as hereinabove described, involves a game of chance, or the sale of a chance to procure respondent's merchandise, and that the use of said lottery method in the distribution of his merchandise is a practice of the sort which long has been deemed contrary to the common law and criminal statutes, and is contrary to an established policy of the Government of the United States.

PAR. 4. There are, among the competitors of respondent, individuals, firms, partnerships, and corporations also engaged in the business of selling and distributing in similar commerce, like and similar articles of merchandise, who do not sell their merchandise by use of lotteries or games of chance.

Many purchasers of respondent's merchandise are attracted by the element of chance involved in respondent's sales method and are thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who did not and do not use the same or equivalent methods.

Because of the said preference, the public has purchased a substantial volume of respondent's merchandise with the result that trade has been unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove found 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 the Federal Trade Commission Act.

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 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, brief of counsel for the Commission (respondent having filed no brief 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 the Federal Trade Commission Act.

Order

28 F. T. C.

It is ordered, That the respondent, S. C. Ross, individually and trading as Ideal Gift Co., or trading under any other name, his agents, representatives, and employees, in connection with the offering for sale, sale and distribution of rotary clocks, fountain pen sets and fountain pen and pencil combinations, or any other merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices for the purpose of enabling such persons to dispose of or sell such or any other merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents and to distributors or to members of the public push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute such or any other merchandise by the use thereof.

3. Selling or otherwise disposing of such or any other merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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

Complaint

IN THE MATTER OF

IRVING SCHWARTZ DOING BUSINESS AS LLOYD'S
DISTRIBUTING COMPANY

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

Docket 3277. Complaint, Dec. 3, 1937—Decision, Jan. 25, 1939

Where an individual engaged in sale and distribution of various articles of merchandise, including electric shavers, radios, and fountain pens, to purchasers in other States; in soliciting sale of and in selling and distributing his said products to customers and prospective customers and salesmen solicited through advertisements in periodicals—

Furnished such customers, prospective customers, and salesmen with a pull card for use in distribution of his said products to purchasing public by means of a lottery scheme or gift enterprise and under sales plan in accordance with which purchasers of chances paid therefor varying amounts or nothing in accordance with particular numbers secured from card, and obtained article of merchandise in accordance with success or failure in selecting girl's name corresponding with that under master seal, and operators of cards were compensated by receipt of articles being thus disposed of, and thereby conducted lotteries and placed in the hands of others means of conducting lotteries in sale of his merchandise, contrary to long-established public policy of the United States Government and the common law and criminal statutes, and in competition with those engaged in sale and distribution in interstate commerce of like or similar articles of merchandise who do not sell the same through lotteries or games of chance;

With result that many purchasers of said products were attracted by game of chance involved in his said sales method and were thereby induced to purchase his products in preference to similar goods of competitors who did not and do not use equivalent methods, and substantial volume of his merchandise was bought by public, and trade was thereby unfairly diverted to him from his competitors aforesaid:

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

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners,

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, 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 Irving

Schwartz, individually, and trading as Lloyd's Distributing Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is an individual, doing business in his own name and under the name and style of Lloyd's Distributing Co., and formerly trading under the name and style of Packard Distributing Co. Respondent has his principal office and place of business located at 521 Fifth Avenue, New York, N. Y. 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 shavers, radios, and fountain pens, in commerce between and among the various States of the United States. He causes and has caused said products when sold to be shipped or transported from his place of business in the State of New York to purchasers thereof in New York 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 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 said merchandise, has furnished his customers and prospective customers with a device commonly called a "pull card," the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent involves the distribution of said merchandise to the purchasing public by means of a lottery scheme or gift enterprise. The method or sales plan suggested by respondent was and is substantially as follows:

The said pull card has a number of indicated squares, and in each square is a partially perforated tab marked "pull." Concealed under each tab is a number; within each of the said squares appears a girl's name. The said pull card also has a master tab or seal, and concealed within such master tab or seal is a name corresponding to one of the names on the card. Purchasers select one of the squares and remove the tab, disclosing the number thereunder. Persons

selecting numbers 1 and 12 to 35 pay in cents the amount of such number. Persons selecting numbers over 35 pay 35 cents. Persons selecting numbers 2 to 11, inclusive receive the same free of charge. The pull card bears a legend or legends informing purchasers and prospective purchasers of the plan or method by which said pull card is operated, and by which the merchandise described thereon is to be distributed. When all of the squares have been selected and the master seal removed, the person who selected the name corresponding to the name under the master seal receives the article of merchandise specified without further charge. Persons selecting numbers 20, 30, and 40 each receive a specified article of merchandise without further charge, and the person, salesman, agent, or representative soliciting sales by means of said card receives his choice of certain specified articles of merchandise without further charge or additional service. The numbers under the tabs are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting a particular name or whether the selection will be free of charge until the selection has been made and the tab removed. The name under the master seal is concealed from purchasers and prospective purchasers until all of the squares have been selected and the tabs removed. Thus, customers selecting names which do not correspond with the name under the master seal receive nothing but the privilege of making a selection for the money which they pay, except customers selecting numbers 20, 30, and 40, who each receive a specified article of merchandise. The person selecting the name corresponding to the name under the master seal and the persons selecting numbers 20, 30, and 40 receive an article of merchandise free of charge or for a price not exceeding 35 cents. The value of the various articles varies, but the retail value of each article is greater than 35 cents. The purchasing public is thus induced and persuaded into purchasing pulls from said card in the hope of selecting a prize-winning name or number and thus obtaining an article of merchandise for a price of 35 cents or less, or free of charge. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance or whether the same is free of charge is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with 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 his 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 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 the Federal Trade Commission Act, the Federal Trade Commission, on December 3, 1937, issued, and on December 6, 1937, served its complaint in this proceeding upon respondent, Irving Schwartz, individually, and trading as Lloyd's Distributing Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act. After the issuance of the said complaint, testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel and H. C. Lank, attorneys for the Commission, and in opposition to the allegations of the complaint by John A. Nash,

attorney for the respondent, before Miles J. Furnas and William C. Reeves, 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, testimony and other evidence, briefs in support of the complaint, respondent not having filed brief, and oral argument not having been requested; and the Commission having duly considered the matter, 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

PARAGRAPHS 1. Respondent, Irving Schwartz, is an individual doing business in his own name and under the name and style of Lloyd's Distributing Co. Prior to the time respondent began using the trade name "Lloyd's Distributing Company" respondent conducted his business under the name and style of Packard Distributing Co.

Respondent's principal office and place of business is located at 521 Fifth Avenue, in the city of New York, N. Y.

Respondent is now and has been since about the month of April 1937 engaged in the business of selling and distributing various articles of merchandise, including, among others, electric shavers, radios, and fountain pens, in commerce among and between the various States of the United States.

Respondent causes said products, when sold, to be transported from his place of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made.

Respondent maintains a course of trade and commerce in said merchandise sold and distributed by him between and among the various States of the United States.

Respondent is now, and has been, in substantial competition with other individuals and with partnerships and corporations likewise 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 soliciting the sale of, and in selling and distributing his merchandise, respondent has furnished his customers and prospective customers with a device commonly called a pull card, the use of which involves the distribution of said merchandise to the purchasing public by means of a lottery scheme or gift enterprise. In order to

procure orders for his merchandise, respondent distributed to customers and prospective customers approximately 70,000 pull cards during the years 1937 and 1938.

Respondent also solicited the services of salesmen to sell his products by inserting advertisements in magazines, which advertisements read in part as follows:

The Best and Fastest Moving Deal in the Nation.

Greatest Sales Board Item—Sales Board Operators, Agents, Distributors—Clean Up With \$15 Nationally Advertised Packard Lektro-Shaver.

Respondent enclosed with each pull card a circular letter in which prospective customers were urged to distribute respondent's merchandise by means of the pull card. One of said letters contained the following paragraphs:

Either of these gifts can be obtained with very little effort on your part. You merely show the Packard Lektro-Shaver and DeWald Radio illustrations to your friends, neighbors, co-workers in your office, shop, etc.—explain to them how they may obtain one of these marvelous and useful articles for the small sum of 1¢ up to 35¢.

Upon completion of the sales card you then fill out the inclosed order blank. Upon receipt of your order we will make shipment of the two (2) Packard Lektro-Shavers or the two (2) 5-tube DeWald radios or one (1) of each article, together with the three (3) beautiful fountain pen desk sets, all charges prepaid.

The method or sales plan used, and now used, by respondent and which respondent set forth for the guidance of his customers in the circular letters distributed by him, and in other circulars which respondent distributed with the said pull cards, is, and was, as follows:

The pull card distributed by respondent has printed thereon a number of girls' names and immediately under each name is a partially perforated disk which conceals a number. Near the upper right-hand corner of the card is a larger disk in the form of a seal which conceals a name corresponding to one of the names on the card. Purchasers select one of the squares and remove the tab disclosing the number thereunder. Persons selecting numbers 1 and 12 to 35 pay in cents the amount of each number. Persons selecting numbers over 35, pay 35 cents. Persons selecting numbers 2 to 11, inclusive, receive the same free of charge. Each pull card bears a legend informing the purchasers and prospective purchasers of the plan or method by which said pull card is operated, and by which the merchandise described thereon is to be distributed.

When all the squares have been selected and the master seal removed, the person who selected the name corresponding to the name under the master seal receives the article of merchandise specified without further charge.

Persons selecting numbers 20, 30, and 40, each receive a specified article of merchandise without further charge.

The numbers under the tabs are concealed from purchasers and prospective purchasers, and said purchasers do not know how much they will have to pay for the privilege of selecting a particular name or whether the selection will be free of charge until the selection has been made and the tab removed.

The name under the master seal is concealed from purchasers and prospective purchasers until all of the squares have been selected and the tabs removed. Customers selecting names which do not correspond with the name under the master seal receive nothing but the privilege of making a selection for the money which they pay, except customers selecting Numbers 20, 30, and 40, who each receive a specified article of merchandise.

The persons selecting the name corresponding to the name under the master seal and the persons selecting Numbers 20, 30, and 40 receive an article of merchandise free of charge or for a price not exceeding 35 cents.

In this manner the public is induced and persuaded into purchasing pulls from said card in the hope of selecting a prize-winning name or number and thus obtaining an article of merchandise for a price of 35 cents or less, or free of charge.

Respondent's merchandise is thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance or whether the same is free of charge is determined wholly by lot or chance. By use of the method above described, the respondent sold about 4,000 of the shavers and about 300 radios in the year 1937. During the first 2 months of the year 1938 respondent sold 200 shavers and approximately 25 radios.

PAR. 3. The Commission finds that the respondent, in selling his said merchandise in connection with the above-described pull card, conducted lotteries and placed in the hands of others the means of conducting lotteries in the sale of his merchandise.

The Commission further finds that the sale of respondent's merchandise to the purchasing public, as hereinabove described, involves a game of chance or the sale of a chance to procure respondent's merchandise, and that the use of said method in the distribution of merchandise 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 policy of the Government of the United States.

PAR. 4. There are among the competitors of respondent, individuals, firms, partnerships, and corporations likewise engaged in the business

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of selling and distributing in interstate commerce, like and similar articles of merchandise who do not sell their merchandise by use of lotteries or games of chance.

Many purchasers of said merchandise were attracted by the element of chance involved in respondent's sales method and were thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who did not and do not use the same or equivalent methods.

Because of the said preference the public has purchased a substantial volume of respondent's merchandise with the result that trade has been unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent, as hereinabove found, 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (respondent having filed no answer), testimony and other evidence taken before Miles J. Furnas and William C. Reeves, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (counsel for respondent having filed no brief and not having requested oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Irving Schwartz, individually, and trading as Lloyd's Distributing Co., his agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of electric shavers, radios, and fountain pens, or any other merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of others, punchboards, push or pull cards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.
2. Mailing, shipping, or transporting to agents or to distributors or members of the public punchboards, push or pull cards, or other

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lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of punchboards, push or pull cards or other lottery devices.

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

IN THE MATTER OF

BOYD HOUSER, TRADING AS BOYD HOUSER CANDY
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3506. Complaint, July 22, 1938—Decision, Jan. 25, 1939*

Where an individual engaged in sale and distribution of certain assortments of candy so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which were composed of (a) number of small bars of candy, number of quarter-pound bars, and number of half-pound bars, together with push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for 5 cents paid, 5-cent candy bar and right to make push and, dependent on success or failure in securing thereby one of certain numbers, privilege of exchanging said bar for one of the quarter- or half-pound bars, as case might be, and also, in case of person pushing last number in each of four sections into which card was divided, half-pound bar; and of (b) other assortments and cards varying only in size and detail—

Sold, to wholesale and retail jobbers, for display and resale to purchasing public in accordance with aforesaid sales plans, such assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his said candy, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who sell and ship such product into States other than their respective points of location and are unwilling to sell their products by methods used by said individual and above described, or any other method involving game of chance or lottery, and refrain therefrom;

With result that many persons were attracted by his said sales plan or method of distribution of his candy and by element of chance involved, and were thereby induced to buy and sell such products in preference to those offered and sold by competitors who do not use same or similar method of distribution, and trade was unfairly diverted from such competitors to him;

Held, That such 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. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Boyd Houser, individually and trading as Boyd Houser Candy Co. has violated the provisions of said act and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest

Complaint

hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Boyd Houser is an individual doing business under the trade name of Boyd Houser Candy Co. with his principal office and place of business located at 307 Washington Avenue North, Minneapolis, Minn. He is now and for some time last past has been engaged in the sale and distribution of candy to wholesale and retail dealers and jobbers in commerce between and among the various States of the United States. Respondent causes and has caused said candy when sold to be transported from his principal place of business aforesaid to purchasers thereof located in the various States of the United States at their respective points of location. There is now and for some time last past has been a course of trade by said respondent in such candy in commerce between and among the various States of the United States. In the course and conduct of his business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. Respondent in the course and conduct of his said business as described in paragraph 1 hereof sells and has sold to wholesale and retail 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 of said assortments consists of a number of small bars of candy, a number of one-fourth-pound bars of candy and a number of one-half-pound bars of candy together with a device commonly called a push card. Said bars of candy are distributed to the purchasing public by means of said push card in the following manner. The said push card has 100 partially perforated disks marked "Push" divided into four sections. Sales are 5 cents each and each purchaser is entitled to push one disk from said card. Concealed within each disk is a number. The board bears statements or legends informing purchasers and prospective purchasers that each purchaser receives a 5-cent bar of candy; that persons pushing certain specified numbers can exchange said 5-cent bar of candy without additional cost for a one-fourth-pound bar of candy; and that persons pushing certain other specified numbers or the last number in each section can exchange said 5-cent bar of candy without additional cost for a one-half-pound bar of candy. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disk selected pushed or separated from said card. The one-fourth and one-half-pound bars of candy are thus distributed to the purchasing public

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wholly by lot or chance. Respondent furnishes and has furnished various push cards for use in the sale and distribution of candy by means of a game of chance, gift enterprise, or lottery scheme. Said push cards involve the same lot or chance feature as the one hereinabove described but vary in size and detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of candy expose 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 a lottery in the sale of his candy in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers of candy to purchase respondent's candy in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure larger 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 is contrary to an established public policy of the Government of the United States and in violation of the criminal laws. The use by respondent of said method has a tendency unduly to hinder competition or to create a monopoly in this to wit: That the use thereof has a 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 equivalent elements of chance or lottery. 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 to sell their product by the method above described or by any other method involving a game of chance or lottery and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said sales plan or method and by the element of chance involved in the sale thereof in the manner above alleged and are thereby induced to purchase said assortment of candy from respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or an equivalent or similar method. The use of said method by respondent has a capacity and tendency because of said game of chance to divert to respondent trade and custom from his competitors who do not use the same or an equivalent or similar method, to exclude from the candy trade all competitors who are unwilling to and who do not use the same or an equivalent or similar method because the same

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is against public policy and unlawful, to lessen competition in the candy trade, to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or an equivalent or similar method, and to deprive the purchasing public of free competition. 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 the same or an equivalent or similar method.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 22d day of July, A. D., 1938, issued and served its complaint in this proceeding upon the respondent, Boyd Houser, trading as Boyd Houser Candy Co., charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

After the issuance of said complaint, respondent filed his answer thereto, admitting all the material allegations of fact set forth in said complaint and waiving hearing and all intervening procedure.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Boyd Houser, is an individual doing business under the trade name Boyd Houser Candy Co., and having his principal place of business at 307 Washington Avenue, North, Minneapolis, Minn. Respondent is now, and for some time past has been, engaged in the sale and distribution of candy to wholesale and retail dealers and jobbers. Respondent causes and has caused said candy when sold to be transported from his principal place of business to the purchasers thereof located in the various States of the United States at their respective points of location. In the course and conduct of his business respondent is in competition with other

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individuals, partnerships, and corporations likewise engaged in the sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. Respondent in the course and conduct of his said business sells and has sold to wholesale and retail dealers and jobbers certain assortments of candy accompanied by "push cards," the said candy being so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. The different assortments of candy and "push cards" vary only in size and detail. One of respondent's assortments of candy consists of a number of small bars of candy, a number of one-fourth pound bars of candy, and a number of one-half pound bars of candy. This assortment is distributed to the purchasing public by means of a "push card," which has 100 partially perforated disks marked "Push" divided into 4 sections. Within each disk is a number effectively concealed until the disk is punched or separated from the card. In accordance with the statements appearing upon the "push card" the purchaser upon the payment of 5 cents receives a 5-cent bar of candy and is entitled to push one of the disks from said card; and if a certain specified number is contained within the disk the purchaser can, without additional cost, exchange the 5-cent bar for a one-fourth pound bar of candy. If one of certain other specified numbers is contained within the disk the purchaser can, without additional cost, exchange the 5-cent bar for a one-half pound bar of candy; and the person pushing the last number in each section can, without additional charge, exchange the 5-cent bar for a one-half pound bar of candy.

PAR. 3. Retail dealers who purchase respondent's said assortment of candy expose and sell the same to the purchasing public in accordance with the aforesaid sales plan.

PAR. 4. Respondent, by means of his hereinbefore described sales plan, places in the hands of others the means of conducting lotteries in the sale of his said candy, and the said method of sale and distribution of his candy is contrary to the established public policy of the Government of the United States and is in violation of the criminal laws.

PAR. 5. Many persons are attracted by respondent's sales plan or method of distribution of his candy by the element of chance involved herein and are thereby induced to buy and sell respondent's candy in preference to that offered for sale and sold by respondent's competitors who do not use the same or similar method of distribution.

PAR. 6. Many of respondent's competitors who sell and ship candy into States other than their respective points of location are unwilling

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to sell their products by the methods used by the respondent and hereinbefore described or by any other method involving a game of chance or lottery, and such competitors refrain from using said method, and as a result trade is unfairly diverted from such competitors to the respondent.

CONCLUSION

The practices of the respondent as set forth in the aforesaid findings of facts are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce in violation of the Federal Trade Commission Act.

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 fact set forth in said complaint and states that he waives all the intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Boyd Houser, individually and trading as Boyd Houser Candy Co. or trading under any other name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Selling and distributing 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 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 to the public of such candy contained in said assortments.

3. Supplying to or placing in the hands of dealers assortments of candy, or other merchandise, together with a push or pull card, punchboard or other lottery device for use or which may be used in the sale or distribution of such candy or other merchandise to the public at retail.

4. Supplying to or placing in the hands of dealers a push or pull card, punchboard, or other lottery device, either with assortments of

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candy or separately, which push or pull card, punchboard or other lottery device is to be used or may be used in distributing or selling such candy or other merchandise to the public.

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

HARRY J. SNYDERMAN TRADING AS ACE PREMIUM
COMPANY

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

Docket 3581. Complaint, Sept. 12, 1938—Decision, Jan. 25, 1939

Where an individual engaged in sale and distribution of electric razors, toys, cigarettes, and cigarette cases and lighters, leather goods, blankets, and a variety of other articles of merchandise, in commerce among the various States and in the District of Columbia, and in selling, as thus engaged, certain assortments of his said merchandise, so packed and assembled as to involve use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumers thereof, and which were composed of (a) electric razor and number of packages of cigarettes, together with 20-section punchboard, for sale under a plan, and in accordance with board's explanatory legend, pursuant to which purchaser of punch received, for 5 cents paid, said razor, in accordance with success or failure in punching number concealed under board's master seal, and purchaser of last punch in each section received 20 cigarettes, and purchaser who did not qualify as aforesaid received nothing for his money, and of (b) other assortments of his said products, together with punchboards and push cards for use in sale and distribution thereof through means of game of chance, gift enterprise, or lottery scheme similar to one hereinabove described, and varying therefrom in detail only—

Sold to dealers, for display and resale to purchasing public in accordance with aforesaid sales plan, such assortments and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his products in accordance with such sales plan, involving game of chance or sale of a chance to procure an article of merchandise at a price much lower than normal retail price thereof, contrary to an established public policy of the United States Government, and in violation of the criminal laws, and in competition with many who sell and distribute 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 persons were attracted by said sales plan or method employed by him in sale and distribution of his goods, and element of chance involved therein, 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 of unfairly diverting trade to him from his competitors who do not, as aforesaid, use such or equivalent methods; to the substantial injury of competition in commerce;

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

Mr. D. C. Daniel for the Commission.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Harry J. Snyderman, individually and trading as Ace Premium Co., hereinafter referred to as respondent, has violated the provisions of 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 Harry J. Snyderman is an individual doing business under the name of Ace Premium Co. with his principal office and place of business located at 423 S. Fifth St., Minneapolis, Minn. Respondent is now and for some time last past has been engaged in the sale and distribution of electric razors, toys, cigarettes, cigarette cases, cigarette lighters, pipes, leather goods, fitted cases, blankets, lamps, cocktail shakers, telescopes, opera glasses, knives, pen and pencil sets, tie sets, watches, clocks, cameras, flashlights, compacts, footballs, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his aforesaid place of business in the State of Minnesota to purchasers thereof in the various other States of the United States and in the District of Columbia at their respective points of location.

There is now and for some time last past has been a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof respondent sells and has sold to dealers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumers thereof. One of respondent's assortments was and is sold and distributed to the purchasing public in the following manner:

This assortment consists of an electric razor and a number of packages of cigarettes together with a device commonly called a punch-

board. The punchboard is divided into 20 sections. Sales are 5 cents and each purchaser is entitled to one punch from said board. When a punch is made from said board a number is disclosed. The board also contains a master seal under which is concealed a number corresponding to one of the numbers on said board. The board bears statements or legends informing purchasers and prospective purchasers that the number under the master seal entitles the purchaser thereof to said electric razor and that the purchaser of the last punch in each section receives 20 cigarettes. The numbers on said board are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The number under the master seal is effectively concealed from purchasers and prospective purchasers until all of the said numbers have been punched from the board. Purchasers who do not qualify by securing the number corresponding to the number under the master seal or by securing the last punch in one of said sections receives nothing for their money other than the privilege of punching a number from said board. The said razor is thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of his products and furnishes various punchboards and push cards for use in the sale and distribution of such products by means of a game of chance, gift enterprise, or lottery scheme, but such punchboards and push cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said products directly or indirectly expose 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 a means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 an article of merchandise at a price much less than the normal retail price thereof. 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 a chance or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein 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 a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 12th day of September 1938, issued, and subsequently served, its complaint in this proceeding upon respondent, Harry J. Snyderman, individually and trading as Ace Premium Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 18th day of October 1938, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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 Harry J. Snyderman is an individual doing business under the name of Ace Premium Co. with his principal office and place of business located at 423 S. Fifth Street, Minneapolis, Minn. Respondent is now and for some time last past has

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been engaged in the sale and distribution of electric razors, toys, cigarettes, cigarette cases, cigarette lighters, pipes, leather goods, fitted cases, blankets, lamps, cocktail shakers, telescopes, opera glasses, knives, pen and pencil sets, tie sets, watches, clocks, cameras, flashlights, compacts, footballs, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold by him, to be transported from his aforesaid place of business in the State of Minnesota to the purchasers thereof at their respective points of location in various States of the United States, other than the State of Minnesota, and in the District of Columbia.

There is now and for some time last past has been a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof respondent sells and has sold to dealers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consumers thereof. One of respondent's assortments was and is sold and distributed to the purchasing public in the following manner:

This assortment consists of an electric razor and a number of packages of cigarettes together with a device commonly called a punchboard. The punchboard is divided into 20 sections. Sales are 5 cents and each purchaser is entitled to one punch from said board. When a punch is made from said board a number is disclosed. The board also contains a master seal under which is concealed a number corresponding to one of the numbers on said board. The board bears statements or legends informing purchasers and prospective purchasers that the number under the master seal entitles the purchaser thereof to said electric razor and that the purchaser of the last punch in each section receives 20 cigarettes. The numbers on said board are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The number under the master seal is effectively concealed from purchasers and prospective purchasers until all of the said

numbers have been punched from the board. Purchasers who do not qualify by securing the number corresponding to the number under the master seal or by securing the last punch in one of said sections receive nothing for their money. The said razor is thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of his products and furnishes various punchboards and push cards for use in the sale and distribution of such products by means of a game of chance, gift enterprise, or lottery scheme, but such punchboards and push cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said products directly or indirectly expose 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 a means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 an article of merchandise at a price much less than the normal retail price thereof. 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 a chance or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein 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 a tendency and capacity to, and does, unfairly divert trade in said commerce to respondent from his said competitors who do not use the same or an equivalent method and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Harry J. Snyderman, individually and trading as Ace Premium Co., or trading under any other name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of electric razors, toys, cigarettes, cigarette cases, cigarette lighters, pipes, leather goods, fitted cases, blankets, lamps, cocktail shakers, telescopes, opera glasses, knives, pen and pencil sets, tie sets, watches, clocks, cameras, flashlights, compacts and footballs, or any other merchandise, in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of, others punchboards, push or pull cards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping or transporting to agents or to distributors or members of the public punchboards, push or pull cards or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of punchboards, push or pull cards or other lottery devices.

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

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IN THE MATTER OF

CHARLES M. BREGSTONE DOING BUSINESS AS THE
VELTROLA COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3327. Complaint, Feb. 9, 1938—Decision, Jan. 26, 1939*

Where an individual engaged in sale and distribution of electric razors, wrist watches, silverware sets, and other articles of merchandise; in soliciting and selling his said products—

Distributed to 15,000 persons in the various States along with descriptive and explanatory circular letters and order blanks, push cards for sale, and distribution of his said goods to public under a plan and in accordance with said cards' explanatory legend by which purchasers paid for chances in accordance with particular number punched or secured varying amount or nothing, three of numbers and last sale entitled those securing or making same to Eversharp pencils, and person selecting that 1 of 75 names of girls corresponding to that under card's master seal was entitled to choice of merchandise being thus disposed of, as was operator of card, and thereby conducted lottery and placed in hands of others means of conducting lotteries in sale of his products through game of chance or sale of chance to procure by chance said products; contrary to an established public policy of the United States Government and to the criminal statutes of many of the States, and in competition with those similarly engaged who do not sell their merchandise through use of lotteries or games of chance;

With result that many purchasers of his said products were attracted by element of chance involved in his sales method and thereby induced to purchase his said goods in preference to same or similar merchandise of competitors who did not and do not use such or equivalent methods, and public purchased substantial volume of his said products and trade was unfairly diverted to him from competitors aforesaid:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, 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 Charles M. Bregstone, individually, and trading as The Veltrola Co., 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, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Charles M. Bregstone is an individual doing business under the trade name and style of The Veltrola Co., with his principal office and place of business located at 180 North Wacker Drive, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of electric razors, wrist watches, silverware sets, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped from his place of business in the State of Illinois to purchasers thereof, some located in the State of Illinois and others located in various other States of the United States and in the District of Columbia. In the course and conduct of his business respondent is now, and for some time last past has been, in substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his products in interstate commerce, has adopted and pursued and still continues the following methods and practices:

Respondent distributes to the public, through the United States mail in interstate commerce, certain literature and instructions, including paper push cards and order blanks, and containing illustrations of his said products, and circulars explaining respondent's plan of selling merchandise and of allotting it and other articles as premiums or prizes to the operators of the push cards.

Respondent's push card bears 75 feminine names, with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 75 small, partially perforated discs marked "push," below each of which is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disc is a number, which is disclosed when the disc is pushed or separated from the card. The push card also has a large master seal, and concealed under this seal is one of the feminine means appearing on the reverse side of the said card. The push card bears printed legends or instructions as follows:

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PERSON SELECTING NAME UNDER SEAL RECEIVES
CHOICE OF ARTICLES

6—FREE NUMBERS—6

Nos. 2-3-5-10-14 and 16 are Free

4—EXTRA WINNERS—4

Nos. 20-40-60 and Last Sale Each Receive
A \$1.00 Guarantee Wahl Eversharp Pencil

Nos. 1 to 35 Pay What You Draw

Numbers Over 35 Pay Only 35¢

Write Purchaser's Name Opposite the
Name Selected in Space Provided On
the Back of this Card.

Do not remove seal
until entire card
is sold.

PUSH OUT DISCS BELOW WITH PENCIL OR
ANY POINTED OBJECT

Sales of respondent's products by means of said push card are made in accordance with the above described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The fact as to whether the customer pays nothing or a sum of money from 1 cent to 35 cents for an article of merchandise, and the fact as to whether a customer receives nothing or an article of merchandise, and the fact as to which article of merchandise the purchaser is to receive are determined wholly by lot or chance. Respondent furnishes his representatives with additional printed instructions or suggestions for using said push cards. One of said printed instructions bears the following legend, to wit:

HOW SALES CARD CAN BE USED

There is a number under each girl's name. This number represents the amount the person selecting that name is to pay as shown on the face of the card. Be sure to write the customer's name on the line opposite the name he has selected.

Persons selecting numbers that are designated as Free Numbers on the face of the card Pay Nothing, yet they have an equal opportunity with the others for selecting the winning name shown under the seal. The persons selecting the numbers shown as extra winners are to be given those awards.

When all names have been taken and collections made the Large Seal is opened. The person who has selected the name corresponding to the name under the large seal has his choice of any one of the premium articles illustrated. The person selling the card also receives his choice.

Fill out the order blank and mention the articles desired. Return to us with a money order or bank draft. The articles selected, plus the four Eversharp

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Pencils will be shipped, all shipping charges prepaid. In this way the person running off the card gets an article without actually being out a penny of his own money.

Respondent furnishes or sells various push cards or punchboards for use in the sale and distribution of his said merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such push cards or punchboards are similar to the push card hereinabove described and vary only in detail.

PAR. 3. Respondent, in selling his said merchandise in connection with the aforesaid push card, conducts lotteries or 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 sale of respondent's said merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's merchandise, contrary to the established public policy of the United States, and contrary to criminal statutes of many of the states of the United States. By reason of said facts, many competitors of respondent are unwilling to offer for sale or sell their merchandise so as to involve a game of chance, and said competitors refrain therefrom. Many purchasers of said merchandise are attracted by the element of chance involved in respondent's sales method, as above described, and are thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who do not use the same or equivalent methods.

PAR. 4. The use of said method by respondent has the tendency and capacity unfairly to divert to respondent, because of said game of chance, trade and custom from his competitors who do not use the same or equivalent methods, to exclude from said merchandise trade all competitors who are unwilling to, and who do not, use the same or equivalent methods, to lessen competition in said trade, to tend to create a monopoly of said trade in respondent and such other competitors as use the same or equivalent methods, 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 unfairly to eliminate from said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or any method involving a game of chance or the sale of a chance to win merchandise by chance, because such method is contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such method is detrimental to public morals and to the morals of the purchasers of said merchandise, or because of any other or all of such reasons.

PAR. 5. The aforesaid method, 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 the Federal Trade Commission Act, the Federal Trade Commission on February 9, 1938, issued, and on February 10, 1938, served its complaint in this proceeding upon respondent, Charles M. Bregstone, individually and trading as The Veltrola Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, testimony, and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel and Henry C. Lank, attorneys for the Commission, and in opposition to the allegations of the complaint by John A. Nash, attorney for the respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, briefs in support of the complaint (respondent not having filed brief), and oral argument not having been requested; and the Commission having duly considered the matter, 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. Respondent, Charles M. Bregstone, is an individual doing business under the trade name and style of The Veltrola Co., with his principal place of business located at 180 North Wacker Drive, Chicago, Ill.

Respondent for several months prior to October 1937, was engaged in the business of selling and distributing in commerce as herein set out, electric razors, wrist watches, silverware sets, and other articles of merchandise.

Said products, when sold, were shipped by respondent from his place of business in the State of Illinois to purchasers thereof located at

various points in States of the United States other than the State from which said shipments were made and in the District of Columbia.

Respondent was at the time hereinabove mentioned in substantial competition with other individuals and with corporations and partnerships likewise engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent solicited the sale of and sold his products in the following manner:

Respondent distributed to 15,000 persons located in the various States of the United States a card described as a "push card." Each "push card" was accompanied by a circular letter descriptive of the merchandise which the respondent was offering for sale. The letter also suggested to purchasers and prospective purchasers a plan to be followed by them for the disposition of the merchandise. An order blank was also enclosed with each "push card" for use by the person who received a set of respondent's literature.

On the reverse side of each order blank respondent set forth the plan for use of the "push cards" as follows:

HOW SALES CARD CAN BE USED

There is a number under each girl's name. This number represents the amount the person selecting that name is to pay as shown on the face of the card. Be sure to write the customer's name on the line opposite the name he has selected.

Persons selecting numbers that are designated as Free Numbers on the face of the card Pay Nothing, yet they have an equal opportunity with the others for selecting the winning name shown under the seal. The persons selecting the numbers shown as extra winners are to be given those awards.

When all names have been taken and collections made the Large Seal is opened. The person who has selected the name corresponding to the name under the large seal has his choice of any one of the premium articles illustrated. The person selling the card also receives his choice.

Fill out the order blank and mention the articles desired. Return to us with a money order or bank draft. The articles selected, plus the four Eversharp Pencils will be shipped, all shipping charges prepaid. In this way the person running off the card gets an article without actually being out a penny of his own money.

Each "push card" had printed thereon 75 feminine names and below each name was a partially perforated circular disc, which concealed a number. On the reverse side of each card were ruled columns for the purpose of writing in the name of the customer opposite the feminine name selected by the customer.

Each disc had printed thereon the word "Push." The concealed number under each disc was disclosed when the disc was pushed or separated from the card.

The push card also contained a large master seal and concealed under this seal was one of the feminine names appearing on the reverse side of the card. The cards contained the following legends or instructions:

PERSON SELECTING NAME UNDER SEAL RECEIVES
CHOICE OF ARTICLES

6—FREE NUMBERS—6

Nos. 2-3-5-10-14 and 16 are Free

4—EXTRA WINNERS—4

Nos. 20-40-60 and Last Sale Each Receive
a \$1.00 Guaranteed Wahl Eversharp Pencil.

Nos. 1 to 35 Pay What you Draw
Numbers Over 35 Pay only 35¢

Write Purchaser's Name Opposite the
Name Selected in Space Provided On
the Back of this Card.

Do not remove seal until entire card is sold.

PUSH OUT DISCS BELOW WITH PENCIL OR
ANY POINTED OBJECT

Members of the public were solicited to buy one of the names on the card and to pay the number of cents represented by the number concealed by the disc below the name selected by him. Six of said numbers were designated as free and selectors of these numbers paid nothing. Four of the numbers were designated as "Extra Winner" and the selectors of these numbers were given a Wahl Eversharp Pencil. Selectors of numbers higher than the number 35 paid only 35 cents.

When all numbers were selected and collections made, the large seal was then opened and the person who had selected the name above one of the discs which corresponded to the name concealed by the master seal was given his choice of the articles of merchandise offered, which articles are described in paragraph 1 hereof. The person who sold chances on the card also had his choice of such merchandise. Customers selecting names which do not correspond with the name under the master disc receive nothing but the privilege of making the selection for the money which they pay except the customers selecting numbers which entitle them to Wahl Eversharp pencils.

In this manner the public is induced and persuaded to purchase chances from said push card in the hope of selecting a prize-winning name or number and thus obtaining an article of merchandise for the price of 35 cents or less.

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The testimony shows and the Commission finds that in the operation of said cards, the selection of a name which might entitle the selector to an article of merchandise was wholly a matter of chance.

PAR. 3. The Commission finds that the respondent in selling his said merchandise in connection with the above described "push card," conducted lotteries and placed in the hands of others the means of conducting lotteries in the sale of his merchandise.

The Commission further finds that the sale of respondent's merchandise to the purchasing public, as hereinabove found, involved a game of chance or the sale of a chance to procure respondent's merchandise, which is contrary to the established public policy of the United States and contrary to the criminal statutes of many of the States of the United States.

There are among the competitors of respondent individuals, firms, partnerships, and corporations also engaged in the business of selling and distributing, in interstate commerce, like and similar articles of merchandise who do not sell their merchandise by use of lotteries or games of chance.

Many purchasers of said merchandise were attracted by the element of chance involved in respondent's sales method and were thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors, who did not and do not use the same or equivalent methods.

Because of said preference the public has purchased a substantial volume of respondent's merchandise with the result that trade has been unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of said respondent as hereinabove found 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (respondent having filed no answer), 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, brief in support of the complaint (respondent not having filed brief and oral argument not having been requested)

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and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act,

It is ordered, That the respondent Charles M. Bregstone, individually and trading as The Veltrola Co., or trading under any other name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of electric razors, wrist watches and silverware, or any other merchandise in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices for the purpose of enabling such persons to dispose of or sell such or any other merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents and to distributors or to members of the public push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute such or any other merchandise by the use thereof.

3. Selling or otherwise disposing of such or any other merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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

Syllabus

IN THE MATTER OF
THE NEWTON 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 3599. Complaint, Sept. 21, 1938—Decision, Jan. 26, 1939.

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 composed of (1) number of small penny pieces of uniform size and shape together with (a) number of candy bars for distribution without charge to those purchasers of said penny pieces securing by chance one of a relatively few thereof, enclosed colored centers of which differed from those of others, and (b) large piece to be given without charge to purchaser of last of said penny pieces, and (2) composed of number of penny pieces of uniform size and shape in small box enclosed, along with large candy piece, in larger box in which wholesaler, jobber, and retail purchasers included, along with other, number of candy bars for gifts as prizes to chance purchasers of said penny pieces, concealed colored centers of which differed from those of majority thereof and from which said large piece was given without charge to purchaser of last of penny pieces in assortment:

Sold to dealers for display and resale to purchasing public in accordance with aforesaid plans such assortments and thereby supplied to and placed in hands of others means of conducting lotteries in sale of its products in accordance with said plan, involving game of chance or sale of chance to procure additional pieces or bars of candy without additional cost; contrary to an established policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to offer or sell their products so packed and assembled as aforesaid described or otherwise arranged and packed for sale to purchasing public so as to involve a game of chance or any other method contrary to public policy and refrain therefrom;

With result that many dealers in and ultimate consumers of candy were attracted by its said method of packing same and by element of chance involved in sale thereof as above set out 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 equivalent sales plans or methods, and with tendency and capacity because of said game of chance to divert unfairly trade and custom to it from its competitors who do not use such or equivalent methods, exclude from candy trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful, lessen competition in said trade, create a monopoly thereof in it and in such other distributors of candy as do use such methods, deprive purchasing public of benefit of free competition and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt or use such methods:

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

Mr. D. C. Daniel for the Commission.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Newton Products Co., a corporation, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, The Newton Products Co. is a corporation organized and doing business under the laws of the State of Ohio, with its principal offices and place of business located at Third and Lock Streets, Cincinnati, Ohio. Respondent is now and for some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused its products, when sold, to be shipped or transported from its aforesaid place of business in the State of Ohio to purchasers thereof located in the various other States of the United States and in the District of Columbia at their respective places of business. There is now and has been for some time last past a course of trade by said respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its 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 and in 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 dealers various 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 sold and distributed to the purchasing public in the following manner: This assortment consists of a number of small pieces of candy of uniform size and shape, a number of bars of candy, and one large piece of candy. The said bars of candy and the large piece of candy are to be given as prizes to purchasers of certain of said small pieces of candy as follows: The majority of said pieces of candy of uniform size and shape in said assortment have centers of the same color but a minority of said pieces of candy of uniform size and shape have centers of a different color. The said pieces of candy of uniform size and shape retail at 1 cent each but the purchasers procuring pieces of the minority pieces of candy are entitled

to and are given, without charge, said bars of candy. The purchaser of the last piece of said small pieces of candy is entitled to receive and is given, without charge, the said large piece of candy. The colors of the centers of said small pieces of candy are effectively concealed from purchasers and prospective purchasers until a purchase is made and the said small pieces of candy broken open. The said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

Another of respondent's assortments consists of a number of small pieces of candy of uniform size and shape contained in a small box, together with a large piece of candy, which box of candy and the large piece of candy are packed in a larger box. The wholesale dealers, jobbers, and retail dealers who purchase this assortment pack and assemble in said larger box, along with the large piece of candy and the box containing the said small pieces of candy, a number of bars of candy. The said bars of candy and the large piece of candy are to be given as prizes to the purchasers of certain of said small pieces of candy as follows: The majority of said pieces of candy of uniform size and shape in said assortment have centers of a same color but a minority of said pieces of candy of uniform size and shape have centers of a different color. The said small pieces of candy retail at 1 cent each but the purchasers procuring pieces of the minority pieces of candy are entitled to receive, and are given without charge, said bars of candy. The purchaser of the last piece of said small pieces of candy is entitled to receive, and is given without charge, the said large piece of candy. The colors of the centers of said small pieces of candy are effectively concealed from purchasers and prospective purchasers until purchases are made and the said small pieces of candy broken open. The said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase respondent's assortments of candy, directly or indirectly, expose 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. Said sales plans have a tendency and capacity to induce purchasers of said candy to purchase respondent's candy 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 additional pieces or bars of candy without addi-

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tional cost. 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 is contrary to an established public policy of the Government of the United States and in violation of the criminal laws. The use by respondent of said methods has a tendency unduly to hinder competition or to create a monopoly in that the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not use and adopt the same methods or equivalent methods involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with respondent, as above alleged, are unwilling to offer for sale or to sell their products 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 any other method which is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate consumers 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 alleged, and thereby are 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 sales plans or methods. The use of said methods by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent trade and custom from its competitors who do not use the same or equivalent methods; to exclude from the 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 the candy trade; 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. 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 the same or equivalent methods.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Findings

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 21, 1938, issued, and on September 22, 1938, served its complaint in this proceeding upon respondent, The Newton Products Co., charging it with the use of unfair methods of competition and deceptive acts and practices in commerce in violation of the provisions of said act. On October 25, 1938, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. 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 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 Newton Products Co. 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 Third and Lock Streets, Cincinnati, Ohio. Respondent is now and for some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused its products, when sold, to be shipped or transported from its aforesaid place of business in the State of Ohio to purchasers thereof located in the various other States of the United States and in the District of Columbia at their respective places of business.

There is now and has been for some time last past a course of trade by said respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its 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 and in 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 dealers various 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 sold and distributed to the purchasing public in the following manner. This assortment consists of a number of small pieces of candy of uniform size and shape, a number of bars of candy and one large piece of candy. The said bars of candy and the large piece of candy are to be given as prizes to purchasers of certain of said small pieces of candy as follows: The majority of said pieces of candy of uniform size and shape in said assortment have centers of the same color but a minority of said pieces of candy of uniform size and shape have centers of a different color. The said pieces of candy of uniform size and shape retail at 1 cent each but the purchasers procuring pieces of the minority pieces of candy are entitled to and are given, without charge, said bars of candy. The purchaser of the last piece of said small pieces of candy is entitled to receive and is given, without charge, the said large piece of candy. The colors of the centers of said small pieces of candy are effectively concealed from purchasers and prospective purchasers until a purchase is made and the said small pieces of candy broken open. The said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

Another of respondent's assortments consists of a number of small pieces of candy of uniform size and shape contained in a small box, together with a large piece of candy, which box of candy and the large piece of candy are packed in a larger box. The wholesale dealers, jobbers, and retail dealers who purchase this assortment pack and assemble in said larger box, along with the large piece of candy and the box containing the said small pieces of candy, a number of bars of candy. The said bars of candy and the large piece of candy are to be given as prizes to the purchasers of certain of said small pieces of candy as follows: The majority of said pieces of candy of uniform size and shape in said assortment have centers of a same color but a minority of said pieces of candy of uniform size and shape have centers of a different color. The said small pieces of candy retail at 1 cent each but the purchasers procuring pieces of the minority pieces of candy are entitled to receive, and are given without charge, said bars of candy. The purchaser of the last piece of said small pieces of candy is entitled to receive, and is given without charge, the said large piece of candy. The colors of the centers of said small pieces of candy are effectively concealed from purchasers and prospective purchasers until purchases are made and the said small pieces of candy broken open. The said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

PAR. 3. The retail dealers who purchase respondent's assortments of candy, directly or indirectly, expose and sell the same to the pur-

chasing 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 a tendency and capacity to induce purchasers of said candy to purchase respondent's candy 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 additional pieces or bars of candy without additional cost. 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 is contrary to an established public policy of the Government of the United States and in violation of the criminal laws. The use by respondent of said methods has a tendency unduly to hinder competition or to create a monopoly in that the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not use and adopt the same methods or equivalent methods involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with respondent, as above found, are unwilling to offer for sale or to sell their products so packed and assembled in the manner in which respondent assembles, packs, and sells its products, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method which is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate consumers 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 found, and thereby are 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 sales plans or methods. The use of said methods by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent trade and custom from its competitors who do not use the same or equivalent methods; to exclude from the 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 the candy trade; 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. The use of said

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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 the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of the respondent as hereinabove found are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Newton Products Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing 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 dealers packages or assortments of candy which are to be used, or may be used, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of candy or any other articles of merchandise to the public.
3. Supplying to, or placing in the hands of dealers assortments of candy, or any other merchandise, together with a lottery device, which lottery device is to be used, or may be used, in selling or distributing such candy or other merchandise to the public.
4. Supplying to, or placing in the hands of dealers a lottery device either with assortments of candy or other merchandise or separately, which lottery device is to be used, or may be used, in selling or distributing such candy or other merchandise to the public.

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5. Packing or assembling in the same package or packages 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 other articles of merchandise, which said larger pieces of candy or other articles of merchandise are to be given as prizes to purchasers procuring a piece of candy having a center of a particular color.

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
JOSEPH C. BRADLEY 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 3072. Complaint, Mar. 10, 1937—Decision, Jan. 27, 1939

Where an individual engaged as owner of an electromagnetic health appliance or belt, in sale and distribution thereof from his place of residence in Toronto, Canada, through agents and subagents in the United States, and said agents, engaged as aforesaid, along with others likewise engaged in manufacture and sale or sale of various appliances made and sold for operation with ordinary house current and used in therapeutic treatment for prevention of or relief from various ailments and pathological conditions, and in competition with others engaged in manufacture, sale, and distribution of magnetic appliances or devices for treatment of various diseases; in soliciting and causing their said agents to solicit sale of said so-called Harmony Electro-Magnetic Health Appliance or Harmony Belt to members of the public through advertising jointly prepared and used by them in radio broadcasts, in newspapers and letters, and by means of circulars, booklets, and other printed matter in furtherance of their common understanding, combination, and agreement and joint efforts directed to promoting the sale of said device or belt throughout the United States—

- (a) Represented that said appliance was an effective, safe, tested, and tried and proven therapeutic agent and that electromagnetism had a thoroughly relaxing effect and strengthened vitality, assisting oxidation, increasing circulation, aiding metabolism, stimulating the nerves, and building up the body, etc., and through stimulating circulation dissolved the poisons so that they could be removed, and through removing the cause of disease permitted the body to rebuild itself;
- (b) Represented that said appliance or belt created an intensified magnetic field and that use thereof would remove acidosis and toxicosis from the system and bring quick relief from and overcome such troubles as rheumatism, stiff joints, arthritis, lumbago, neuritis, high blood pressure, strokes, eczema, old-age troubles, phlebitis, and various others, and that it equalized and built up the circulation and had shown wonderful results in various ailments above set out and indicated;
- (c) Represented that said device or belt proved effective in cases of heart trouble and other ailments and resulted in the carrying away of poisons involved through their natural channels and that it assisted kidneys and bowels in performing their normal functions and aided in removing poisons from the body;

Facts being that said device would have no effect upon health by virtue of magnetic field created nor have any effect on diseases for which it was claimed as being remedial and curative as above set forth other than such temporary alleviation as it might afford in certain cases through heat produced, such as accomplished through hot-water bottle, and it would not be of any effect with respect to the functioning of the kidneys, bowels,

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lungs, and skin in the elimination of poisons from the body, or functioning of the liver or elimination of poisons from the blood and would not be effective in such removal;

With capacity and tendency to mislead and deceive members of the public into the belief that such statements and representations were true, and into purchasing or using said device or belt in reliance thereon and with intent of deceiving, misleading, or injuring members of public and inducing purchase thereby of said device for substantial sums thereof for use in self-treatment, and with result of deceiving, misleading, and inveigling members of public into purchasing same, with great loss in money, and with resulting neglect or delay in obtaining competent medical advice and consequent likelihood of having ailments and diseases to which purchasers were subject, including such conditions as anaemia, heart trouble, and rundown condition due to many causes and for which there are many remedies by medical profession, progress from point where timely application and competent medical science or skill or proper appliances might avail to relieve or cure, to condition where those afflicted were beyond human aid, and with further effect, through such acts and practices, of causing trade to be diverted from competitors to themselves:

Held, That such acts and things done and caused to be done by them were each and all to the prejudice of the public and competitors and constituted unfair methods of competition in commerce.

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

Mr. Clark Nichols for the Commission.

Mr. H. F. Fulling, of Tulsa, Okla., for William M. Ireland.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Joseph C. Bradley, John M. Schulz, William M. Ireland, Frieda E. Breslin, and A. R. Erbe, 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 Joseph C. Bradley is an individual residing at No. 4, St. Clair Street West, in the city of Toronto, Ontario, Canada. Respondent John M. Schulz is an individual residing at No. 425 West Ferry Street, in the city of Buffalo, N. Y. Respondent William M. Ireland is an individual residing at No. 1423 South Boston Street, in the city of Tulsa, Okla. Respondent Frieda E. Breslin is an individual residing at No. 37 South Washington Street in the city of

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Wilkes-Barre, Pa., and respondent A. R. Erbe is an individual residing at No. 509 Luzerne Avenue in the city of West Pittston, Pa.

PAR. 2. The respondents, since on or about August 1931 to the date hereof, are and have been engaged in a common understanding, combination, and agreement, knowingly and unlawfully, to sell and to cause certain electromagnetic appliances, more particularly hereinafter described as Harmony Belts, to be sold to members of the public in the United States for use by such purchasers in self-therapeutic treatment for the purpose of the prevention, the cure, or the relief of the user of the appliance from one or more physical ailments, diseases, or pathological conditions of the human body, including those mentioned and referred to hereinafter, to which the user was subject, or to which the user thought or believed he was subject or suffering therefrom.

In accordance with and in pursuance of the said common understanding, combination, and agreement, as hereinafter set forth, the respondents have sold the Harmony Belts, among others, to members of the public in the States of Pennsylvania, New Jersey, New York, Oklahoma, and Kansas, purchasers of the appliances to whom the respondents have caused Harmony Belts, when so sold by them, to be transported in interstate commerce from Buffalo, N. Y., and in foreign commerce from Toronto, Canada, to the purchasers located in the United States including New York and said other States.

PAR. 3. During all the times herein mentioned the electromagnetic appliance, called Harmony Belt, consisted substantially of a coil containing several hundred turns of wire in layers, the separate layers of wire being insulated from each other by paper. The inside of the coil was stiffened with a piece of impregnated burlap or other material, and, thus prepared, the whole was wrapped in padding and sewed in a cover of artificial leather. Permanently attached to the cover was a metal housing provided with toggle switches marked "Off—On" and "High—Low." When assembled and ready for use the appliance somewhat resembled a horse collar in size and general appearance.

The Harmony Belt, when in use by a member of the public for the treatment of ailments, diseases, or pathological conditions of the human body, is and has been operated by connecting it with the electric current supplied to residences by public service corporations for ordinary house service. When the appliance is so connected to electric current a magnetic field is created in the space within its circumference. The strength of the magnetic field so created by the appliance measures and has measured, approximately 17 gauss at or about its center.

PAR. 4. There is iron in the blood plasms, in the red corpuscles, and in the muscles of the human system. There are traces of iron in nearly all human or animal tissues. The iron in the human or animal system, however, is nonmagnetic. It is not permanently or spontaneously magnetic.

Magnetism or electromagnetism has no effect upon bacteria, the cause of many ailments or diseases, either upon their growth, their reproduction, or their virulence, and electromagnetic fields measuring many thousands of gausses can produce no demonstrable physical or physiological effect in the human body.

The application or use of the Harmony Belt in physiotherapy (that is, treatment by mechanical appliance or apparatus, as distinguished from medical therapy) does not produce or cause, it has not produced or caused, and it cannot produce or cause any demonstrable physical or physiological change or effect in the body of any person subjected to its application or use in treatment for the prevention, the cure, or the relief of any physical ailment, disease, or pathological condition.

PAR. 5. During all the times mentioned and referred to above, other individuals, firms, and corporations, located in various States of the United States and hereinafter referred to as sellers, are and have been engaged, respectively, some of them in the business of the manufacture and sale, and others in the business of the sale of various appliances that are and have been made and sold to be operated with electric current, such as is supplied to residences for ordinary house service by public service corporations, and used in therapeutic treatment for the prevention of, or the relief from physical ailments, diseases, or pathological conditions of the human body.

Some of such appliances are and have been sold by the sellers to the public and to dealers for resale to members of the public for their use in self-therapeutic treatment, and others of such appliances are and have been sold by the sellers to physicians and others skilled in their use, for use in the therapeutic treatment by such skilled persons of physical ailments, diseases, or pathological conditions of the human body, including some of the ailments, diseases, or conditions mentioned and referred to in paragraph 7 hereof.

The sellers during said times, have sold the respective appliances above referred to and described, to dealers for resale and to members of the public, purchasers thereof, located in States other than the State of the seller or the State of origin of the shipment and the sellers, respectively, have caused the appliances, when so sold by them, to be transported from the State of the seller, or the State of origin of the shipment, to the purchasers located in said other States.

The respondents, during all the times mentioned and referred to in paragraphs 2 and 5 hereof, are and have been in substantial competition in interstate commerce in the sale of the appliances, called Harmony Belts, with the sellers referred to above.

PAR. 6. Pursuant to the common understanding, combination, and agreement above mentioned, with knowledge thereof on the part of all the respondents and in furtherance thereof, the respondents Bradley and Schulz, doing business under the name Harmony Electro Manufacturers with places of business in Buffalo and Toronto, engaged in the manufacture and sale of the Harmony Belts, sold by them and the other respondents, as follows:

The respondent Bradley appointed the other respondents, respectively, as agents, each to sell the belts within certain territory with permission on the part of the other respondents, respectively, to appoint subagents, with the knowledge and consent of respondent Bradley. When sales of the belt were made to members of the public by the respondent-agents or their subagents, the Harmony Belts to complete such sales were bought by the respondent-agents from respondents Bradley and Schulz who made the belts and caused them when made to be transported from Buffalo, N. Y., and Toronto, Canada, to the agents ordering them at their respective locations, to be delivered by them or their subagents to the purchasers and users of the belts. The respondent-agents paid to the respondent Bradley \$6 to \$9 for each of the belts manufactured and shipped to them by the respondents Bradley and Schulz. The respondent-agents charged their respective subagents approximately \$22 for each belt sold by the subagents to a member of the public, and the agents and subagents sold the belts to the members of the public, users thereof at the price of approximately \$65 to \$75 each.

PAR. 7. Pursuant to the above common understanding, combination, and agreement, and in furtherance thereof, the respondents solicited and caused their subagents to solicit the sale of the Harmony Belts to members of the public in the several States in their respective territories by means of radio broadcasts, advertisements in magazines having general circulation in the various States, in newspapers, letters, and by means of circulars, booklets, and other printed matter in which the respondents caused statements and representations to be made to the public concerning the use and effect of the use of the Harmony Belts, among others, statements and representations to the effect that science had made wonderful progress in the treatment of disease by electromagnetism; that electromagnetism had brought health and happiness to thousands and that thousands were already helped by it; that the Harmony Belts created a remarkable curative

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agent which had helped thousands of persons; that among the persons who obtained the Harmony Belts and were helped by its use were those who, with rare exceptions, were extremely discouraged with the results obtained by other means of treating their ailments or diseases; that the Harmony Belt, because of electromagnetism produced by it, tended thoroughly to eliminate toxic products from the entire system and that diseases which arose directly and indirectly from toxic poisoning had successfully responded to treatment with the Harmony Belts; and, that among such diseases were the following, and many others:

| | |
|---------------------|------------------|
| Asthma | Nervous disorder |
| Arthritis | Neuritis |
| Bronchitis | Paralysis |
| Constipation | Poor circulation |
| Dropsy | Prostatic gland |
| Eczema | Rheumatism |
| Gall bladder | Sciatica |
| Goiter | Sinus trouble |
| Hemorrhoids | Stomach trouble |
| High blood pressure | Tumors |
| Heart trouble | Ulcers |
| Insomnia | Varicose veins |
| Lumbago | |

PAR. 8. The statements and representations mentioned and referred to in paragraph 7 hereof were each and all false statements and representations, and the respondents knew, or with the use of ordinary and reasonable care should have known that the said statements and representations made and caused to be made by them to the public were each and all false statements and representations.

The said statements and representations above mentioned and referred to, made and caused to be made by the respondents, each and all had the capacity and tendency to deceive and mislead members of the public into the belief that they were true, and in reliance upon that belief, into purchasing and using the Harmony Belts, and the said statements and representations were made and caused to be made by the respondents with the intent and purpose of deceiving, misleading, and inveigling members of the public (unfortunate victims, suffering from ailments and diseases, the causes and defects of which, in general, they knew little or nothing, and which were, in many instances, incurable or beyond assistance from medical science or skill) into purchasing Harmony Belts for the substantial sums of from \$65 to \$75 for use in self-treatment, and members of the public were deceived, misled and inveigled thereby into purchasing the same to their great loss in money, and in further consequence into neglect-

ing or delaying obtaining competent medical advice or assistance with the still further consequence that the physical ailments or diseases to which they were subject were likely, in many instances, to progress from a condition, where competent medical science or skill, or proper appliances used in physiotherapy, if timely applied, might avail to relieve or cure, to a condition where the afflicted persons were beyond human aid.

The respondents by means of the conspiracy above mentioned and the said statements and representations made and caused by them to be made in the sale of Harmony Belts caused trade in appliances used in physiotherapy to be diverted to them from competitors.

PAR. 9. The above acts and things done and caused to be done by the respondent were, and are, each and all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 10, 1937, issued and served a complaint upon the respondents named in the caption, charging that on or about August 1931, respondents were, and have since been engaged in a common, understanding, combination, and agreement, knowingly and unlawfully, to sell, and to cause certain electromagnetic appliances to be sold, to members of the public, in the United States, for use by such purchasers in self-therapeutic treatment for the purpose of the prevention, the cure, or the relief of the user of the appliance from one or more physical ailments, diseases, or pathological conditions of body, in violation of the provisions of section 5 of said act. Answer was filed by respondent Joseph C. Bradley of No. 4 St. Clair Avenue West, Toronto, Canada, on March 22, 1937, said answer being in the form of an open letter addressed to the Secretary of the Commission; Attorney H. F. Fulling of Tulsa, Okla., submitted an answer dated March 22, 1937, for respondent William M. Ireland of Tulsa, Okla., and said attorney became the attorney of record for said respondent; respondent John M. Schulz filed his answer to the complaint, March 22, 1937; respondents Freida E. Breslin and A. R. Erbe filed no answer to the complaint herein. No appearances, either by attorney or in person were made at any of the hearings, subsequently set before a trial examiner of the Commission heretofore duly ap-

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pointed, except the appearance at Buffalo, N. Y., on April 1, 1938, of respondent John M. Schulz, and the appearance of respondent Freida E. Breslin and respondent A. R. Erbe, who appeared at the hearing held at Wilkes-Barre, Pa., and who were under subpoena of the Commission.

Respondents having entered their appearance and filed their answers to said complaints, hearings were had and evidence was introduced in support of the allegations of said complaint. At the conclusion of the said hearings, on behalf of the Commission, respondents were given an opportunity to submit evidence on their behalf, but no evidence or testimony was submitted or received on behalf of any of said respondents.

Thereupon this proceeding coming on for final hearing upon the record, and brief of the attorney for the Commission, respondents having failed to file briefs herein, although an opportunity was given them therefor, and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Joseph C. Bradley is an individual residing at No. 4 St. Clair Avenue West, in the city of Toronto, Ontario, Canada; respondent John M. Schulz is an individual residing at No. 345 West Ferry Street, in the city of Buffalo, State of New York; respondent William M. Ireland is an individual residing at the Albany Hotel, in the city of Tulsa, State of Oklahoma; respondent Frieda E. Breslin is an individual residing at No. 75 South Wells Street, Wilkes-Barre, Pa., and respondent A. R. Erbe is an individual residing at No. 509 Luzerne Avenue, in the city of West Pittston, Pa.

Respondent Joseph C. Bradley is an American citizen residing at No. 4 St. Clair Avenue West, in the city of Toronto, Ontario, Canada. He is the owner and distributor of the Harmony Electro-Magnetic Health Appliance, and does business as the Harmony-Electro Manufacturers, Toronto, Canada. His method of doing business, in the sale and distribution of the "Harmony Electro-Magnetic Health Appliance" is to appoint agents, said agents in the United States being respondent-agent John M. Schulz, located and residing at 245 West Ferry Street, Buffalo, N. Y.; respondent-agent William M. Ireland, residing at the Albany Hotel, Tulsa, Okla.; respondent-agent Frieda E. Breslin, residing at 75 South Wells Street, Wilkes-Barre, Pa., and respondent-agent A. R. Erbe, residing at 509 Luzerne Avenue, West Pittston, Pa. The Harmony Electro-Magnetic Health Appliance (herein-

after called "Harmony Belt"), respondent Joseph C. Bradley has manufactured for him, under contract, by respondent-agent John M. Schulz, in Buffalo, N. Y. These respondent-agents, appointed by respondent Joseph C. Bradley, are authorized to sell respondent's "Harmony Belt" within certain territory, and appoint subagents, with the knowledge and consent of respondent Bradley. When sales of said "Harmony Belt" are made to the purchasing public by respondent-agents or their subagents, the orders obtained by said respondent-agents or subagents are forwarded to respondent Bradley at Toronto, Canada, who in turn forwards said orders to respondent John M. Schulz, at Buffalo, N. Y., who manufactures the said "Harmony Belt," and after the same is completed forwards said "Harmony Belts" to the respondent-agent, who has forwarded the original order. The "Belts," after being manufactured by said respondent-agent Schulz, upon order from respondent Joseph C. Bradley, are transported from Buffalo, N. Y., or in some instances, from Toronto, Canada, to the agents ordering them, at their respective localities, in various States of the United States, to be by them delivered to their subagents, to be delivered in turn to the purchasers thereof and users of the "Belts."

Respondents, in the course and conduct of their business, in the sale and distribution of said "Harmony Belts," are in competition with other individuals, copartnerships, and corporations likewise engaged in the manufacture, sale, and distribution of electromagnetic appliances or devices sold for the treatment of various diseases affecting the physical body by electric current methods.

PAR. 2. There are numerous other individuals, firms, and corporations, located in various States of the United States who are and have been engaged, respectively, some of them in the business of manufacture and sale, and others in the business of the sale of various appliances and devices that are, and have been manufactured and sold to be operated with electric current, such as is supplied to residences for ordinary house service by public service corporations, and used in therapeutic treatment for the prevention of, or the relief from physical ailments, diseases, or pathological conditions of the human body.

PAR. 3. The "Harmony Electro-Magnetic Health Appliance" as manufactured and distributed by respondent Joseph C. Bradley, and the respondents named in paragraph 1 above, consists of about 350 turns of what appears to be No. 20 aluminum wire, wound continuously on a fiber form. This is covered with some sort of padding, all enclosed in an imitation leather covering. On the ends of the wire there is a control switch and upon the control switch there is a lamp

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cord and plug which is used to plug into an ordinary house outlet. Before the apparatus begins to operate, it is necessary to plug into an ordinary alternating current, an ordinary house current as supplied by the public utilities. The control switch has marked on it, "Off-On," and "High-Low." The device is approximately 50 centimeters in diameter (approximately 4 inches) and has an approximate width of 10 centimeters. When the current is turned on and the current flowing through the wires there is a magnetic field generated which is stronger inside the belt, and there is also a magnetic field in the general vicinity of the wind; the magnetic field is strongest at the edge, gradually getting to the smaller value at the center and terminating as the distance increases away from the center. Another part of the said "Harmony Electro-Magnetic Health Appliance," and to be used in connection with said "Appliance," is what is known as a "test coil." This part of respondent's appliance is also circular in form and has a bulb attached to it which is used by the person using the device to tell if the magnetism is coming from the said "Harmony Belt." This "test coil" is an indicator, to the user, as to whether or not the apparatus is in operation.

PAR. 4. Instructions for using accompany the "Harmony Belt" when sales thereof are made by respondent Bradley, and his respondent-agents and subagents. The ordinary current required to operate the "Harmony Belt" is 110 volts, 25 to 60 cycles. The instructions indicate that a person using the "Belt" should be relaxed as much as possible, in a comfortable position. The "Belt" is placed around the waist of the user for most ailments, although the "Harmony Belt" may be used on any part of the body where there is pain or discomfort. The "Harmony Belt" is generally used three times a day, upon awaking in the morning, before dinner, and before supper. Respondent-agents and subagents paid to respondent Bradley, \$6 to \$9 for each of the said "Harmony Belts" manufactured and shipped to them by the respondents, Bradley and Schulz. Respondent-agents charged their respective subagents approximately \$22 for each "Belt" sold by the said subagents to a member of the public, and the agents and subagents sold the "Belts" to the members of the public and users thereof at the price of approximately \$65 to \$75 each.

PAR. 5. On or about August 1931 Mr. A. R. Erbe joined with Mr. Joseph C. Bradley in selling the Harmony Belt in the United States. They worked together in preparing advertising matter and continuities for radio broadcasts telling the therapeutic value of the Harmony Belt. In the summer of 1933 Mr. A. R. Erbe knowing that respondent William M. Ireland had been connected with the sale of

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a Theronoid Belt, a similar device against which the Commission had issued an order to cease and desist on April 8, 1933,¹ brought Mr. Joseph C. Bradley and Mr. William M. Ireland together, by correspondence with them, and as a result Mr. William M. Ireland joined Mr. Joseph C. Bradley and Mr. A. R. Erbe in selling the Harmony Belt in the United States, all working together, using advertising prepared by their joint efforts in promoting the sale of the Harmony Belt. Joseph C. Bradley contracted with respondent John M. Schultz to manufacture the Harmony Belt in Buffalo, N. Y. John M. Schultz, who was also familiar with the Theronoid Belt, joined Joseph C. Bradley, A. R. Erbe, and William M. Ireland in promoting the sale of the Harmony Belt in the United States, making and shipping the belts from Buffalo, N. Y., to A. R. Erbe in Pennsylvania and William M. Ireland in Oklahoma. A. R. Erbe interested respondent Frieda E. Breslin in the venture and she operated under a separate contract with A. R. Erbe for a period, but she later became directly associated with Joseph C. Bradley and John M. Schultz in promoting the sale of and selling the Harmony Belt in the United States. Frieda E. Breslin cooperated with the other respondents herein in preparing advertising and continuities for broadcasting used jointly by all of the respondents in the promotion of the sale and sale of the Harmony Belt in the different States of the United States. The association of these respondents as above set forth continued until about the time the complaint in this case was served on them, at which time A. R. Erbe and William M. Ireland ceased their operations, but Joseph C. Bradley, Frieda E. Breslin, and John M. Schultz continued their business relations as above set forth until about the time the hearings were conducted in this case. By reason of these facts the Commission finds that the respondents, Joseph C. Bradley, John M. Schultz, William M. Ireland, Frieda E. Breslin, and A. R. Erbe, are and have been engaged in a common understanding, combination, and agreement, and in furtherance thereof, the respondents solicited and caused their subagents to solicit the sale of the said Harmony Belts to members of the public in several States of the United States by means of radio broadcasts, advertisements in magazines having a general circulation in the various States, in newspapers and letters, and by means of circulars, booklets, and other printed matter, in which the respondents caused statements and representations to be made to the public concerning the use, and the effect of the use, of the Harmony Belts, and among such statements and representations are the following:

¹ 17 F. T. C. 298.

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"Electro Magnetism—FREE OFFER!"—"Prove Our Statements."

FOR YOUR INFORMATION

The Harmony Electro Magnetic Health Appliance is the easiest, most effective, safest, tested, tried and proven therapeutic agent, that has ever been introduced to the public.

* * * * *

Electro Magnetism thoroughly relaxes, strengthens vitality, assists oxidation, increases circulation, aids metabolism, stimulates the nerves, builds up the body, repelling the blood, thus stimulating circulation, dissolving the poisons, placing them in a position to be removed. Thus removing the cause of disease, the body is permitted to rebuild itself.

* * * * *

The action of Electro Magnetism on the blood, is that the blood resists magnetism. It is diamagnetic. This resistance produces friction. Friction produces electricity in the tissues by electrolysis. Oxygen and hydrogen are set free. Oxygen set free increases oxidation, hydrogen set free unites with chlorine, fluorine and sulphur. This is used by the body chemistry to dissolve calcium, oxalate poisonous crystals in the blood, preparing them for elimination.

* * * * *

The Harmony Electro Magnetic Health Appliance is operated by electricity, creating an intensified magnetic field and is placed around the patient, over the regular clothing. Thus the patient is in a magnetic field.

* * * * *

An over amount of waste matter in the system, causes acidosis and toxicosis, in the healthy part of the body, causing diseases which are given many Latin names, congestion, inflammation, lowered resistance, low vitality, pathological tissues, germ action, atrophy, pus, neuritis, rheumatism, high blood pressure, kidney and bladder trouble and all disorders resulting from poor metabolism and lowered function.

* * * * *

These troubles respond quickly and are overcome when Electro Magnetism is used, putting new life into the body. Electro Magnetism equalizes and builds up the circulation.

* * * * *

The use of Electro Magnetism has shown wonderful results in ailments such as rheumatism, stiff joints, arthritis, lumbago, neuritis, headaches, sore eyes, high blood pressure, paralysis, strokes, eczema, phlebitis, catarrh, anaemic condition, hay fever, asthma, bronchitis, indigestion, constipation, ulcers, acidosis, old age troubles, kidney and bladder trouble, and many other ailments too numerous to mention here.

In a folder entitled "Instructions," and which folder is furnished to all purchasers of respondent's "Harmony Belt" by respondent Joseph C. Bradley, and his associate respondent-agents and subagents, appears the following:

Important regarding results.

Some cases respond with the first treatment, and others do not respond for months. This depends on the condition of the ailments. We have had different

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cases of heart troubles, arthritis, neuritis, varicose veins, pains in the body, which have responded promptly to the use of Harmony. The poisons begin to be carried away through their natural channels. If immediate results are not obtained the person using Harmony should not be discouraged. Others have been built up, and the use of Electro Magnetism cannot help but give strength and new energy, and be beneficial. Regularity, intelligence, and persistence must always be used.

PAR. 6. The United States Bureau of Standards, in October 1937, made an examination of respondent's "Harmony Belt," to determine its structural features and its electrical and magnetic characteristics. It appears from said report that when the appliance was connected through suitable measuring instruments to a 110-volt, 60-cycle source of alternating current, the following values of current and power were observed:

| | Switch position | | |
|-------------------------------------------|-----------------|------|----------|
| | High | Low | High—Low |
| A. C. volts applied..... | 110 | 110 | 110 |
| Current in amperes..... | 0.84 | 0.74 | 0.70 |
| Power in watts..... | 47 | 52 | 53 |
| Impedance in ohms..... | 172 | 149 | 157 |
| Reactance in ohms..... | 128 | 115 | 114 |
| E effective A. C. resistance in ohms..... | 115 | 95 | 108 |
| D. C. resistance in ohms..... | 90.0 | 83.3 | 83.1 |

The Bureau of Standards report shows that the heat produced by the coil under normal conditions of operation is approximately equal to that produced by an ordinary 50-watt lamp. The report further shows that the apparatus is essentially a low-frequency coreless solenoid constructed of nonmagnetic materials and producing a magnetic field of the same frequency as that of the circuit to which it is attached. The report further shows that the values of the field strengths in oersteds are given in the following table:

| Switch position | Field strength | |
|-----------------|----------------|------|
| | Center | Edge |
| High..... | 11.5 | 28.1 |
| Low..... | 12.2 | 30.1 |
| Low—High..... | 11.6 | 28.5 |

An oersted is defined as a unit of magnetic force, and may be conceived as the same thing as a gauss. One oersted is the same as one gauss, the term "gauss," in electrical parlance is described as being a unit which is one line of force per square centimeter. It appears that the word "gauss," and the word "oersted" (used in the tabulation above) are now considered by scientists to be used interchangeably.

PAR. 7. The Commission finds that the use of respondent's "Harmony Belt" would heat the surface of the body of a user if kept on long enough; that heating can, and does have no effect on the diseases mentioned in respondent's advertising except possibly a slight alleviation, temporary alleviation of pain in the case of sciatica or lumbago; that it will have no effect on skin diseases, ulcers, tumors, stomach trouble, or rheumatism; that the effect on a user of respondent's "Harmony Belt" would be similar to the use of a hot-water bottle, simply heating the surface of a tender area and furnishing only temporary relief; that it is well known to the medical profession that alternating currents passing through a conductor set up a magnetic field surrounding these conductors, and such magnetic fields have been tested for the action on living human beings, and upon the tissues of living humans, and have been found to have no effect whatsoever; that it still is an open question, among the medical profession whether magnetic fields of tremendous intensity have any effect, either curative or noncurative; that a device that generates 12.2 oersteds would have no effect upon a person's health; that these lower magnetic fields have been tested so abundantly through the years, and have been found to be without effect in the treatment of diseases.

The Commission finds further, in reference to respondent's claim that the "Harmony Belt" is helpful in cases of anemia, heart trouble, and a run-down condition, that it is a serious thing to mislead the sick and thus delay real diagnosis and possible aid; that the medical profession now has many reliefs for anemia and heart troubles, and run-down condition, and that said troubles may be due to a great many causes, many of them dietary; that in reference to respondent's claim that poisons can be carried away through natural channels by and because of the use of the "Harmony Belt"; that respondent's "Harmony Belt" would not be effective in the removal of poisons from the body of human beings; that poisons in the body are carried away by the kidneys, by the bowels, and to much minor degree by the lungs and by the skin, and that respondent's device could have no effect upon these organs that do eliminate poisons from the human being; that one of the important organs for removing poisons in the body, poisons that are in the blood, is the liver, which changes them, destroys them, and that respondent's device could have no effect on this removal whatsoever; that the only truth in respondent's claims for its "Harmony Belt" is that some relief to a sufferer would be caused by heating the surface of the body, or a sore joint or a sore muscle, and that by the use of respondent's device, temporary alleviation of pain in such cases may be obtained, very much in the same manner as by the use of a hot-water bottle.

PAR. 8. The Commission further finds that the statements and representations made and caused to be made by the respondents, each and all had the capacity and tendency to deceive and mislead members of the public into the belief that said statements and representations were true, and in reliance upon that belief, into purchasing and using respondent's "Harmony Belt," and the said statements and representations were made, and caused to be made by respondents with the intent and purpose of deceiving, misleading, and injuring members of the public, and to induce the purchase by the public of respondent's "Harmony Belt" for the substantial sums of \$65 to \$75 for use in self-treatment, and members of the public were deceived, misled, and inveigled thereby into purchasing the same, to their great loss in money, and in further consequence, into neglecting or delaying obtaining competent medical advice, with the consequence that the physical ailments or diseases to which said purchasers were subject were likely, in many instances to progress from a condition, where, if competent medical science or skill, or proper appliances in psychotherapy were used, and timely applied, might avail to relieve or cure, to a condition where the afflicted persons were beyond human aid. The respondents, by means of the conspiracies above mentioned, and the said statements and representations set forth above, made and caused by them to be made, in the sale of "Harmony Belts," caused trade in appliances used in psychotherapy to be diverted to them from competitors.

CONCLUSION

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.

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 William W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, brief filed herein by Clark Nichols, counsel for the Commission, and the Commission having made its findings as

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to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Joseph C. Bradley, John M. Schulz, William M. Ireland, Frieda E. Breslin, and A. R. Erbe, acting jointly under a common understanding, combination, and agreement, or acting separately as individuals, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the manufacture, offering for sale, sale, and distribution of an electromagnetic belt, known as the "Harmony Electro Magnetic Health Appliance," whether sold under that name or any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That the Harmony Electro Magnetic Health Appliance is an effective, safe, tested, tried, and proven therapeutic agent.

2. That electromagnetism thoroughly relaxes, strengthens vitality, assists oxidation, increases or builds up circulation, aids metabolism, stimulates the nerves, builds up the body, repels the blood, stimulates circulation, dissolves poisons in the system, sets oxygen and hydrogen free.

3. That the use of said electromagnetic belt will remove acidosis or toxicosis from the system, or in any manner aid metabolism in the body, or will put new life in the body.

4. That the use of said electromagnetic belt, identical with or similar to the Harmony Electro Magnetic Health Appliance, has any therapeutic value in treating rheumatism, stiff joints, arthritis, lumbago, neuritis, headaches, sore eyes, high blood pressure, paralysis, strokes, eczema, phlebitis, catarrh, anemic condition, high fever, asthma, bronchitis, indigestion, constipation, ulcers, acidosis, old-age troubles, kidney and bladder trouble, or any other ailment of the human body.

5. That the magnetic field created by the operation of an electromagnetic belt has any effect whatever on the iron in the blood of the human body.

6. That the use of an electromagnetic belt identical with or similar to the "Harmony Belt" is any aid whatever in removing poisons from the body, by assisting the kidneys and bowels in performing their normal functions.

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
PHILIP MORRIS & CO., LTD., INC.

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

Docket 3398. Complaint, May 4, 1938—Decision, Jan. 31, 1939

Where a corporation engaged in manufacture of cigarettes, and in sale and distribution thereof to dealers in the various States and in the District of Columbia, and in selling certain assortments thereof which were so packed and assembled as to involve use of lottery scheme when sold and distributed to consumers thereof, and which (1) were composed of number of packages of cigarettes and number of tins thereof, together with 12-section punchboard, for sale under a plan, and in accordance with said board's explanatory legend, pursuant to which (a) purchaser received for penny paid two tins, or one tin, or package of cigarettes, or nothing other than privilege of punch, in accordance with success or failure in securing one of numbers thus announced, and (b) purchaser of last punch in each of board's sections received package, or which (2) involved plans or methods varying in detail from that described aforesaid, but of principle of which plan or method above described was illustrative, and under which it furnished various punchboards and push cards with its various assortments for use in sale and distribution of its said product—

Sold to dealers, for distribution and resale to purchasing public by retailer-dealer purchasers thereof in accordance with such plan, said assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its said product in accordance with sales plan above set forth, contrary to public policy as long recognized in the common law and criminal statutes, and to an established public policy of the United States Government, and in competition with many who are unwilling to offer or sell cigarettes so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public so as to involve game of chance or any other method of sale contrary to public policy, and refrain therefrom;

With tendency and capacity to induce purchasers of cigarettes to buy its said product in preference to those and tobaccos offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of cigarettes were attracted by its 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 substantial quantities of such cigarettes thus packed and sold by it, in preference to those 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, unfairly to divert to it trade and custom from its competitors aforesaid, to exclude from said cigarette trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful, to lessen competition in said trade and create a monopoly thereof in it and in such other distributors of cigarettes as do use same or equivalent methods, to deprive purchasing

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public of benefit of free competition in such trade, and to eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use said or equivalent methods:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. George P. Brauburger, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Philip Morris & Co., Ltd., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized, existing, and doing business under the laws of the State of Virginia, with its principal office and place of business located at 119 Fifth Avenue, New York City, N. Y., and a manufacturing plant at Richmond, Va. Respondent has branch offices and warehouses located in various States of the United States. Respondent is now, and for some time last past has been, engaged in the manufacture of cigarettes and in the sale and distribution thereof to dealers located in the various States of the United States and in the District of Columbia. It causes and has caused said merchandise when sold to be shipped or transported from its places of business aforesaid, into and through the various States of the United States other than the State of origin of such shipment and into the District of Columbia, 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 various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of cigarettes 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 sells and has sold to dealers certain assortments of cigarettes so packed and assembled as to involve the

use of a lottery scheme when sold and distributed to the consumers thereof. One of respondent's assortments substantially illustrates the sales plan or method used in the sale and distribution of its products to the purchasing public, and is as follows:

This assortment consists of a number of packages of cigarettes and a number of tins of cigarettes, together with a device commonly called a punchboard. The punchboard is divided into 12 sections. Sales are 1 cent each and each purchaser is entitled to one punch from said board. When a punch is made from said board, a number is disclosed. The board bears statements informing prospective purchasers that a certain number entitles the purchaser thereof to two tins of cigarettes; that certain other numbers entitle the purchasers thereof to one tin of cigarettes; that certain other numbers entitle the purchasers hereof to one package of cigarettes; and that the purchaser of the last number in each section is entitled to one package of cigarettes. A purchaser who does not qualify by obtaining one of the numbers calling for a tin or tins or a package of cigarettes, or the last number in one of the sections, receives nothing for his money other than the privilege of punching a number from the board. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The retail value of said tins and packages of cigarettes is greater than the designated price of said punches. The said packages and tins of cigarettes are thus distributed to the purchasers of said punches from said board wholly by lot or chance.

Respondent sells and distributes various assortments of its cigarettes and furnishes various punchboards and push cards for use in the sale and distribution of such cigarettes by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. Retail dealers who purchase respondent's said cigarettes, directly or indirectly, expose 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 a means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. Said sales plan has the tendency and capacity to induce purchasers thereof to purchase respondent's said products in preference to cigarettes and tobaccos offered for sale and sold by its competitors.

PAR. 4. The sale of said products 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 a package or a tin or tins of cigarettes. The use by respondent of said method in the sale of cigarettes and the sale of said cigarettes 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 a monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude from the cigarette trade competitors who do not adopt and use the same method 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 cigarettes in competition with the respondent, as above alleged, are unwilling to offer for sale or sell cigarettes 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 any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of cigarettes are attracted by respondent's said method and manner of packing said cigarettes and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said cigarettes so packed and sold by respondent in preference to cigarettes 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 unfairly divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods, to exclude from said cigarette 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 cigarette trade, to create a monopoly of said cigarette trade in respondent and such other distributors of cigarettes as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said cigarette trade. The use of said method by respondent has a 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 methods or equivalent methods.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 4, 1938, issued, and on May 5, 1938, served, its complaint in this proceeding upon respondent, Philip Morris & Co., Ltd., 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the 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 is a corporation organized, existing, and doing business under the laws of the State of Virginia, with its principal office and place of business located at 119 Fifth Avenue, New York City, N. Y., and a manufacturing plant at Richmond, Va. Respondent has branch offices and warehouses located in various States of the United States. Respondent is now, and for some time last past has been, engaged in the manufacture of cigarettes and in the sale and distribution thereof to dealers located in the various States of the United States and in the District of Columbia. It causes and has caused said merchandise when sold to be shipped or transported from its places of business aforesaid, into and through the various States of the United States other than the State of origin of such shipment and into the District of Columbia, 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 various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of cigarettes in commerce between and among the various States of the United States and in the District of Columbia.

Findings

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of cigarettes so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of respondent's assortments substantially illustrates the sales plan or method used in the sale and distribution of its products to the purchasing public, and is as follows:

This assortment consists of a number of packages of cigarettes and a number of tins of cigarettes, together with a device commonly called a punchboard. The punchboard is divided into 12 sections. Sales are 1 cent each and each purchaser is entitled to one punch from said board. When a punch is made from said board, a number is disclosed. The board bears statements informing prospective purchasers that a certain number entitles the purchaser thereof to two tins of cigarettes; that certain other numbers entitle the purchasers thereof to one tin of cigarettes; that certain other numbers entitle the purchasers thereof to one package of cigarettes; and that the purchasers of the last number in each section is entitled to one package of cigarettes. A purchaser who does not qualify by obtaining one of the numbers calling for a tin or tins or a package of cigarettes, or the last number in one of the sections, receives nothing for his money other than the privilege of punching a number from the board. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the particular punch separated from the board. The retail value of said tins and packages of cigarettes is greater than the designated price of said punches. The said packages and tins of cigarettes are thus distributed to the purchasers of said punches from said board wholly by lot or chance.

Respondent sells and distributes various assortments of its cigarettes and furnishes various punchboards and push cards for use in the sale and distribution of such cigarettes by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. Retail dealers who purchase respondent's said cigarettes, directly or indirectly, expose 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 a means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. Said sales plan has the tendency and capacity to induce purchasers of cigarettes to purchase respondent's said products in preference to cigarettes and tobaccos offered for sale and sold by its competitors.

Findings

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PAR. 4. The sale of said products to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a package or a tin or tins of cigarettes. The use by respondent of said method in the sale of cigarettes and the sale of said cigarettes 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 a monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude from the cigarette trade competitors who do not adopt and use the same method 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 cigarettes in competition with the respondent, as above found, are unwilling to offer for sale or sell cigarettes 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 any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of cigarettes are attracted by respondent's said method and manner of packing said cigarettes and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase substantial amounts of said cigarettes so packed and sold by respondent in preference to cigarettes 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 unfairly divert to respondent trade and custom from its said competitors who do not use the same or equivalent methods, to exclude from said cigarette 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 cigarette trade, to create a monopoly of said cigarette trade in respondent and such other distributors of cigarettes as use the same or equivalent methods, and to deprive the purchasing public of the benefit of free competition in said cigarette trade. The use of said method by respondent has a 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 methods or equivalent methods.

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CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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 the Federal Trade Commission Act.

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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Philip Morris & Co., Ltd., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cigarettes or any other articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing cigarettes or any other merchandise so packed and assembled that sales of such cigarettes or any other merchandise to the general public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.
2. Supplying to, or placing in the hands of dealers, assortments of said cigarettes or other merchandise together with punchboards or other lottery devices which said punchboards or other lottery devices are to be used or may be used in selling or distributing cigarettes or other merchandise to the public.
3. Supplying to, or placing in the hands of dealers, punchboards or other lottery devices either with assortments of said products or separately, which punchboards or other lottery devices are to be used or may be used in selling or distributing cigarettes or other merchandise to the public.
4. Selling, or otherwise disposing of, cigarettes or other merchandise by the use of punchboards, or other lottery devices.

It is further ordered, That within 60 days from the date of the service of this order upon said respondent, it 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.

Complaint

28 F. T. C.

IN THE MATTER OF
THE ENDURA CORPORATION

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

Docket 3419. Complaint, May 12, 1938—Decision, Jan. 31, 1939

Where a corporation engaged in sale of its "Endura" or "Endura Permanent Wave" beauty preparation to purchasers in other States and in the District of Columbia; in issuing, publishing, and circulating advertisements thereof among the various States through printed matter, radio broadcasts, and other ways—

(a) Represented that said cosmetic preparation had been tested in the world's foremost laboratories, and that it was used in Hollywood's major movie studios and by the screen's smartest stars; and

(b) Represented that it was actually good for the hair and would benefit bleached, dyed, gray, or naturally colored hair;

Facts being it contained nothing which was actually good for the hair or which would accomplish results aforesaid, and had not been tested and was not used as above claimed, and said representations were grossly exaggerated, false, misleading, and untrue;

With effect of misleading and deceiving substantial portion of purchasing public into belief that all said representations were true, and with result, as direct consequence of mistaken and erroneous belief induced by said advertising and misrepresentation, that consuming public was caused by it to purchase substantial volume of said preparation, and trade was unfairly diverted to it from others engaged in sale of like or similar preparations intended for like and similar purposes, and who truthfully advertise their products; to the injury of competition in commerce;

Held, That such false and misleading representations, claims, and statements made as aforesaid were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition in commerce.

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Mr. Don F. Tyler, of Los Angeles, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Endura Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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PARAGRAPH 1. Respondent, The Endura Corporation, is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 4951 Sunset Boulevard, in the city of Hollywood, in the State of California. Respondent for more than 1 year last past has been and still is engaged in the sale of a certain beauty preparation known as "Endura" and sometimes designated "Endura Permanent Wave" which is sold for use by women as a self aid for the purpose of giving their hair permanent waves. In the course and conduct of its business, respondent offers said product for sale and sells 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 same 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 1 year last past, and still is, a constant course of trade in said product so distributed and sold by respondent, in commerce between and among the various States of the United States, and in the District of Columbia. Respondent is now, and for more than 1 year last past has been, engaged in substantial competition with other corporations, and with firms, partnerships, and individuals engaged in the manufacture of like and similar products or other products designed for similar usage 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 soliciting the sale of and in selling its "Endura" of "Endura Permanent Wave" and for the purpose of creating a demand upon the purchasing public for said product, the respondent now causes, and for more than 1 year last past has caused, advertisements to be issued, published and circulated to and among the people 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 false and misleading statements with reference to the alleged value and merit of said product and its alleged use in Hollywood major movie studios and by prominent screen stars. Among the statements so made and circulated by the respondent are the following:

Endura is actually good for the hair.

Tested in the World's foremost laboratories.

Used in Hollywood major movie studios.

Endura will actually benefit bleached, dyed, grey or naturally colored hair.

The screen's Smartest Stars use Endura.

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28 F. T. C.

PAR. 3. The statements and representations made by respondent, as above set forth, and others similar thereto, had and now have a tendency and capacity to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers of its product into the belief that "Endura" or "Endura Permanent Wave" is good for the hair and that it will benefit the hair; that it has been tested in the world's foremost laboratories; that it has been and is used in the major movie studios of Hollywood, and that it has been and is used by prominent movie stars.

PAR. 4. The representations made by respondent as aforesaid and others similar thereto, with respect to the nature and effect of its product when used are grossly exaggerated, false, misleading, and untrue.

In truth and in fact, respondent's product does not contain anything which is actually good for the hair or which will actually benefit bleached, dyed, gray, or naturally colored hair. Said product has not been tested in the world's foremost laboratories. It has not been, nor is it now, used in the major movie studios of Hollywood. Nor is it true that the screen's smartest stars use it or have used it.

PAR. 5. Each and all of the false and misleading statements and misrepresentations made by the respondent herein by means of advertisements, radio broadcasts, and in other ways, and in offering for sale and selling the aforesaid preparation known as "Endura" and as "Endura Permanent Wave," were and are calculated to, and had and now have a tendency and capacity to mislead and deceive, and do mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of the respondent, as aforesaid, a number of the consuming public purchases a substantial volume of said preparation known as "Endura" and as "Endura Permanent Wave," with the result that trade has been unfairly diverted from other corporations, firms, partnerships, and individuals engaged in the sale of like and similar preparations intended to be used for like and similar purposes, who truthfully advertise their preparations. As a result thereof, substantial injury has been and is now being done by the respondent herein to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's

competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 12, 1938, issued and served its complaint in this proceeding upon the respondent, The Endura Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On November 7, 1938, the respondent filed its answer to the complaint in this proceeding admitting all the material allegations of fact set forth in said complaint and waiving therein all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and answer (respondent having waived all intervening procedure and further hearing as to the said facts); and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Endura Corporation, is a corporation organized and existing under and by virtue of the laws of the State of California with its principal place of business located at 4951 Sunset Boulevard in the city of Hollywood in said State.

PAR. 2. Respondent, for more than 1 year last past, has been and still is, engaged in the sale of a certain beauty preparation known as "Endura" and sometimes designated "Endura Permanent Wave." When such sales are made, respondent transports this product from its place of business in the State of California to the purchasers thereof located in the States of the United States other than the State of California and into the District of Columbia, causing a constant course of trade in said products so distributed and sold by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. There are in the United States other corporations, firms, partnerships, and individuals engaged in the sale of like and similar products or other products designed for similar uses and in the sale thereof in commerce between and among the various States of the

United States and in the District of Columbia, the respondent being in substantial competition with such other corporations, firms, and individuals.

PAR. 4. To advertise and create a consumer demand for its product, respondent now causes and for more than 1 year last past, has caused advertisements to be issued, published, and circulated to and among the States of the United States in various forms of printed matter, radio broadcasts, and in other ways, making statements, among others, as follows:

Endura is actually good for the hair.

Tested in the world's foremost laboratories.

Used in Hollywood's major movie studios.

Endura will actually benefit bleached, dyed, gray or naturally colored hair.

The screen's smartest stars use Endura.

PAR. 5. Respondent's product does not contain anything which is actually good for the hair, or which will actually benefit bleached, dyed, gray, or naturally colored hair; it has not been tested in the world's foremost laboratories; it has not been, nor is it now, used in the major movie studios in Hollywood; the screen's foremost stars do not use it nor have they used it; and such representations made by the respondent are grossly exaggerated, false, misleading, and untrue.

PAR. 6. Each and all of the false and misleading statements and representations made by respondent as aforesaid by means of advertisements, radio broadcasts, and in other ways in offering for sale and selling the aforesaid preparation were and are calculated and have had and now have the tendency and capacity to mislead and deceive, and do mislead and deceive, a substantial portion of the purchasing public into the belief that all of said representations are true.

PAR. 7. Respondent, as a direct consequence of such mistaken and erroneous belief induced by said advertising and misrepresentations, caused the consuming public to purchase a substantial volume of said preparation known as "Endura" and as "Endura Permanent Wave," with the result that trade has been unfairly diverted from other corporations, firms, partnerships, and individuals engaged in the sale of like and similar preparations intended to be used for like and similar purposes, who truthfully advertise their products. As a result thereof, injury has been done and is now being done by respondent herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

Order

CONCLUSION

The aforesaid false and misleading representations, claims, and statements made by the respondent as herein found 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 the Federal Trade Commission Act.

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 waives 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 the Federal Trade Commission Act.

It is ordered, That the respondent, The Endura Corporation, its representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a cosmetic preparation now known as "Endurá" or as "Endura Permanent Wave," whether sold under those names or under any other names, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly representing:

1. That respondent's cosmetic preparation has been tested in the world's foremost laboratories or that it is used in Hollywood's movie studios or by the screen's smartest stars.

2. That respondent's cosmetic preparation is actually good for the hair or will benefit bleached, dyed, gray, or naturally colored hair.

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

IN THE MATTER OF
THE KNOX COMPANY

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

Docket 3430. Complaint, May 20, 1938—Decision, Jan. 31, 1939

Where a corporation engaged in the manufacture, sale, and distribution of "Nixoderm" proprietary preparation to purchasers in various States and in the District of Columbia, in substantial competition with those engaged in sale and distribution of preparations designed and intended for and used in treatment of same ailments and conditions for which it recommended its said product, and including many who do not in any manner misrepresent their respective preparations or therapeutic properties thereof, and do not make any other false statements in connection with their sale and distribution; in advertising its said product, and results that might be expected from use thereof, in newspapers, magazines, and periodicals of general circulation throughout the United States, and through continuities broadcast from radio stations of extrastate audience—

Represented, through claims there made, that its said product was an effective remedy or cure for psoriasis, eczema, athlete's foot, itch, ringworm, pimples, acne, dandruff, corns, hives, scabies, and other disorders, ailments, and diseased conditions of the skin, irrespective of the cause or type of said disorders and ailments, or the condition thereof;

Facts being its said preparation was neither a specific remedy nor effective cure or treatment for acne and the various other diseased conditions of the skin enumerated in its advertising matter, irrespective of cause of disorder or condition thereof, it was not a remedy or effective treatment for any skin disorder that arises from or is associated with systemic disturbances, in which class of disorders and ailments of the skin expert and thorough diagnosis is necessary to ascertain cause or causes and proper treatment therefor; and also was not remedy or effective treatment for all skin ailments and disorders of surface character only, irrespective of type or condition, causes of which are so varied that no single formula containing any drug or a combination of drugs is capable of providing adequate treatment for all of such diseased conditions of the skin, irrespective of the etiological agent, the stage of the diseased condition, the nature of the skin affected, the age of the patient, and other pertinent conditions, circumstances, and causes, ascertainment of which, as responsible, is essential to ascertainment of proper treatment;

With effect of misleading and deceiving substantial portion of purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that its said preparation possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of such public, by reason of such erroneous and mistaken beliefs, to purchase substantial quantities thereof, and of thereby diverting unfairly trade to it from its competitors who truthfully advertise the effectiveness in use of their respective preparations; to the injury of competition in commerce:

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

Mr. DeWitt T. Puckett for the Commission.

Mr. William P. Jacobs, of Clinton, S. Car., and *Esch, Kerr, Taylor & Shipe*, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Knox Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, The Knox Co., is a corporation doing business under the laws of the State of California. Its principal office and place of business are at 811 West Seventh Street, Los Angeles, Calif. It is engaged in the sale and distribution of a proprietary preparation for disorders of the skin called "Nixoderm."

Respondent now causes, and for more than 1 year last past has caused, its said proprietary preparation, when sold by it, to be shipped from its said place of business in Los Angeles, Calif., to the purchasers thereof, located in the various States of the United States, other than the State of California, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said proprietary product so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is, and for more than 1 year last past has been, in substantial competition with other corporations, and with individuals and partnerships, engaged in the sale and distribution of like or similar proprietary products or other products designed and intended for similar usage 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 advertised and now advertises in newspapers and magazines, by radio broadcasts and in various other ways that its said proprietary product is an effective remedy or cure for psoriasis, eczema, athlete's foot, and various other ailments, disorders, and diseased conditions of the skin. Representative of respondent's advertising claims for its said product are the following:

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Kill Itch Germs Quick.

* * * To stop the itch in 30 minutes and quickly heal your skin, just try the guaranteed prescription, Dr. Nixon's Nixoderm.

Guaranteed to quickly clear and heal your skin or money back on return of empty package.

Itch Cause Killed in 7 Minutes.

Your skin has nearly 50 million tiny seams or pores where tiny germs or parasites can hide and cause your skin to Itch, Crack, Peel, Burn, also Eczema, Ringworm, Pimples, Acne, Crotch-Itch and Foot Itch. Don't waste time with ordinary methods. You must have a penetrating treatment like the new discovery for stubborn skin troubles called Dr. Nixon's Nixoderm. It goes right in, kills the cause, and stops itch in 7 minutes. In 24 hours, you can see your face getting clear, soft, and smooth. Nixoderm is guaranteed to heal your skin in 10 days or money back on return of empty package. Ask your druggist for guaranteed Nixoderm today.

The aforesaid advertising claims for Nixoderm serve as representations on the part of respondent that said product is an effective remedy or cure for all type of psoriasis, eczema, athlete's foot, and other disorders, ailments, and diseased conditions of the skin.

PAR. 3. In truth and in fact, Nixoderm is not an effective remedy or cure for the various diseased conditions of the skin enumerated in respondent's advertising matter irrespective of the cause of the disorder or the condition thereof. Ailments and disorders of the skin arise from many causes and there is no specific remedy or treatment that is effective in all cases and under all conditions. Such ailments and disorders are, in many instances, caused by or associated with a systemic derangement and in order to effectively treat such cases it is necessary to ascertain the cause or causes of the diseased condition and treat such cause or causes together with the external manifestations thereof. A thorough diagnosis by a competent physician is necessary in order to determine the cause or causes of diseased conditions of the skin caused by or associated with a systemic derangement and the proper treatment therefor.

All diseased conditions of the skin that are of a surface character only and which have no systemic origin or connection cannot be effectively treated in the same way and by the same medicine. The proper method of treatment and the kind of medicine to be used in the treatment of diseased conditions of the skin that are of a surface character only are determined by many factors such as the age of the patient, type of skin of the patient, type of disorder from which the patient is suffering and the stage of the diseased condition. A proprietary medicine that might be effective in the treatment of a surface skin disorder while in its incipient stage might be wholly ineffective as a treatment for a disorder in a malignant stage. Furthermore, a proprietary medicine that might be effective in the

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treatment of skin disorders and ailments of infants is usually not strong enough to be effective in the treatment of skin disorders and ailments of adults and a proprietary medicine that might be an effective remedy for skin disorders of white people is usually not strong enough to be effective in the treatment of disorders suffered by persons of color.

PAR. 4. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's said product on account of such erroneous belief.

There are among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, partnerships, and individuals engaged in the sale and distribution of remedies and treatments for the same ailments and diseased conditions of the skin listed in respondent's advertising matter who do not misrepresent the therapeutic values and other attributes of their said products. By use of the aforesaid representations, trade is diverted unfairly to respondent from its aforesaid competitors. As a result thereof, 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.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 20th day of May 1938, issued and served its complaint in this proceeding upon said respondent, The Knox Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 30th day of June 1938, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in

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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, accepted, and filed, 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, the Knox Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri and having its principal office in the city of Los Angeles, State of California. Respondent is engaged in the business of manufacturing, selling, and distributing a proprietary preparation designated as "Nixoderm." The respondent's warehouse and manufacturing plant are located in the city of Buffalo, State of New York, from which location the respondent causes said preparation to be distributed by its sales agent, a partnership having the same name as respondent.

PAR. 2. The respondent is now and has been for more than 1 year last past engaged in the business of manufacturing, selling, and distributing said preparation. Respondent sells said preparation to members of the purchasing public situated in various States of the United States and causes the said preparation, when sold by it, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States in the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein, has maintained, a course of trade in commerce in said preparation between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals selling and distributing preparations designed and intended for, and used in, the treatment of the ailments and conditions of the human body for which respondent recommends the use of its said preparation. Among such competitors in said

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commerce are many who do not in any manner misrepresent their respective preparations or the therapeutic properties thereof and who do not make any other false statements in connection with the sale and distribution of their respective preparations.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its proprietary product, "Nixoderm," respondent has caused misleading advertisements containing representations and claims with respect to the properties of said proprietary product "Nixoderm," and the results that may be expected to be obtained upon the use thereof to be disseminated in commerce as defined in the Federal Trade Commission Act through the use of advertisements in newspapers, magazines, and other periodicals having a general circulation throughout the various States of the United States, through continuities broadcast from radio stations which have power to, and do, convey the programs emanated therefrom to the listeners thereto located in the various States of the United States, and through other means. Said product was advertised, as aforesaid, until about the beginning of the year 1938, as an effective remedy or cure for eczema, psoriasis, itch, ringworm, pimples, acne, dandruff, corns, hives, scabies, athlete's foot, and various other ailments, disorders, and diseased conditions of the human skin.

Among and typical of the representations contained in said false advertisements so used and disseminated, as aforesaid, are the following:

Kill Itch Germs Quick.

* * * To stop the Itch in 30 minutes and quickly heal your skin, just try the guaranteed prescription, Dr. Nixon's Nixoderm.

Guaranteed to quickly clear and heal your skin or money back on return of empty package.

Itch Cause Killed in 7 Minutes.

Your skin has nearly 50 million tiny seams or pores where tiny germs or parasites can hide and cause your skin to Itch, Crack, Peel, Burn, also Eczema, Ringworm, Pimples, Acne, Crotch-Itch and Foot Itch. Don't waste time with ordinary methods. You must have a penetrating treatment like the new discovery for stubborn skin troubles called Dr. Nixon's Nixoderm. It goes right in, kills the cause, and stops itch in 7 minutes. In 24 hours, you can see your face getting clear, soft, and smooth. Nixoderm is guaranteed to heal your skin in 10 days or money back on return of empty package. Ask your druggist for guaranteed Nixoderm today.

The aforesaid advertising claims for Nixoderm serve as representations on the part of respondent that said product is an effective remedy or cure for psoriasis, eczema, athlete's foot, itch, ringworm, pimples, acne, dandruff, corn, hives, scabies, and other disorders, ailments, and diseased conditions of the skin, irrespective of the cause or type of said disorders and ailments, or the condition thereof.

PAR. 5. In truth and in fact, Nixoderm is neither a specific remedy nor an effective cure or treatment for acne, psoriasis, eczema, pimples, dandruff, corns, and the various other diseased conditions of the skin enumerated in the respondent's advertising matter, irrespective of the cause of the disorder or the condition thereof. Ailments and disorders of the human skin, commonly referred to as "skin diseases" arise from many causes and are of two general classes; viz, those of a surface character only and those which are associated with, or arise from, a systemic disturbance. Among the disorders which are sometimes caused by systemic disturbances are eczema, acne, and psoriasis. Nixoderm is not a remedy or an effective treatment for any skin disorder that arises from or is associated with systemic disturbances. In all disorders and ailments of the human skin arising from or associated with systemic or organic disturbance, a thorough diagnosis by an expert is necessary in order to ascertain the cause or causes of the disorder or ailment and the proper treatment therefor.

Nixoderm is not a remedy or an effective treatment for all skin ailments and disorders which are of a surface character only, irrespective of the type or condition of such ailments and disorders. Not all diseased conditions of the skin that are of a surface character only, and which have no systemic origin or connection, can be treated effectively by the same method or by the same medicine. The proper method and the kind of medicine to be used in the treatment of diseased conditions of the skin that are of a surface character only are determined by many factors, the most important of which is the specific cause responsible for the disorder. These causes are so varied that no single formula containing any drug or a combination of drugs is capable of providing adequate treatment for all of such diseased conditions of the skin, irrespective of the etiological agent, the stage of the diseased condition, the nature of the skin affected, the age of the patient, and other pertinent conditions and circumstances.

PAR. 6. The use by the respondent of the foregoing false and misleading statements, representations and advertisements, disseminated as aforesaid, with respect to said preparation, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial

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quantities of respondent's said preparation. As a result trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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 the Federal Trade Commission Act.

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 entered into between the respondent herein 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 the Federal Trade Commission Act.

It is ordered, That the respondent, The Knox Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of a medicinal product now designated "Nixoderm" or of any other medicinal product containing substantially the same ingredients, or possessing the same properties, whether 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 that said preparation constitutes an adequate remedy or cure for acne, psoriasis, eczema, pimples, dandruff, corns, or any other ailment or disorder manifested by a diseased condition of the human skin, or constitutes a competent or effective treatment therefor, unless such representations are limited to those cases of such disorders and ailments which are of a surface character only and not caused by, or associated with, a systemic or metabolic disorder.

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2. Representing that said preparation constitutes an adequate remedy or cure for all cases of acne, psoriasis, eczema, pimples, or other skin ailments and disorders which are of a surface character only, or constitutes a competent and effective treatment therefor.

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

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IN THE MATTER OF

JACK BECKER, INDIVIDUALLY AND TRADING AS
TRU-VALU HOME SUPPLY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3582. Complaint, Sept. 12, 1938—Decision, Feb. 4, 1939

Where an individual engaged in sale and distribution of aluminum ware, table ware, lamps, beauty kits, jewelry, and a variety of other articles of merchandise, in commerce among the States and in the District of Columbia—
Sold and distributed said articles by means of game of chance, gift enterprise or lottery scheme, in accordance with which it distributed to representatives and prospective representatives sales circulars and pull cards designating number of items of merchandise and prices thereof, for use in sale and distribution of said products under plan in accordance with which item and price disclosed by legends variously displayed by removal of card's tabs by purchaser of chances thereon determined by chance which article of merchandise purchaser was to receive, price to be paid, and value he was thus to secure, and under which operator was compensated by premium for operation of card and sale of merchandise, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with sales plan above set forth, involving game of chance or sale of chance to procure article of merchandise at a price much less than apparent normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, 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 secure something by chance, or any 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 of such merchandise as above set forth, and were thereby induced to buy and sell his said goods in preference to those offered and sold by competitors aforesaid who do not use such or equivalent methods, and with effect, by reason of use of such method, of unfairly diverting trade and custom to him from his competitors aforesaid; to the substantial injury of competition in commerce:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Jack Becker,

individually and trading as Tru-Valu Home Supply, hereinafter referred to as respondent, has violated the provisions of 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, Jack Becker, is an individual trading under the name of Tru-Valu Home Supply, with his principal office and place of business located at 611 Broadway, New York, N. Y. Respondent is now and for some time last past has been engaged in the sale and distribution of aluminum ware, tableware, dresser sets, dinner sets, doll sets, lamps, ash trays, cigarette lighters and cases, beauty kits, dresser sets, salt and pepper sets with trays, watches, clocks, cameras, carving sets, bedding, clothing, jewelry, cosmetics, bill folds, suit cases, carpet sweepers, toasters, waffle irons, electric grills, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be shipped or transported from his aforesaid place of business in the State of New York to the purchasers thereof in the various other States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his said business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price

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thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards use and have used 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 is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. 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 method which 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 of such merchandise 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 capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method and, as a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 12, 1938, issued, and on September 13, 1938, served, its complaint in this proceeding upon respondent Jack Becker, individually and trading as Tru-Valu Home Supply, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 13, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived

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all intervening procedure and further hearing as to said facts. 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 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, Jack Becker, is an individual trading under the name of Tru-Valu Home Supply, with his principal office and place of business located at 611 Broadway, New York, N. Y. Respondent is now and for some time last past has been engaged in the sale and distribution of aluminum ware, tableware, dresser sets, dinner sets, doll sets, lamps, ash trays, cigarette lighters and cases, beauty kits, salt and pepper sets with trays, watches, clocks, cameras, carving sets, bedding, clothing, jewelry, cosmetics, bill folds, suit cases, carpet sweepers, toasters, waffle irons, electric grills, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be shipped or transported from his aforesaid place of business in the State of New York to the purchasers thereof in the various other States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof.

Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes, and has sold and distributed, various assortments of said merchandise and furnishes, and has furnished, various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said pull cards use the same, and have used the same, in

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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 is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent as above 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 method which 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 of such merchandise in the manner above found 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 capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, 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 aforesaid acts and practices of respondent as herein found are all to the the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 alle-

gations of facts set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Jack Becker, individually and trading as Tru-Valu Home Supply, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of aluminum ware, tableware, dresser sets, dinner sets, doll sets, lamps, ash trays, cigarette lighters and cases, beauty kits, salt and pepper sets with trays, watches, clocks, cameras, carving sets, bedding, clothing, jewelry, cosmetics, bill folds, suit cases, carpet sweepers, toasters, waffle irons, electric grills, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pull cards or circulars having pull tabs thereon or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof;
2. Mailing, shipping, or transporting to his agents or distributors or to members of the public pull cards or circulars having pull tabs thereon or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof;
3. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon or any other lottery device.

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
MORETRENCH CORPORATION

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

Docket 3262. Complaint, Nov. 9, 1937—Decision, Feb. 6, 1939

Where a corporation engaged in the manufacture of well points, pumps, and equipment used in dewatering wet soil during excavation work, and in sale and distribution thereof in commerce among the various States, and in substantial competition with others engaged in such sale and distribution of similar products—

- (a) Represented, by means of catalogs and other literature distributed by it to potential customers throughout the United States, that its well points had an unobstructed water-passing screen area of 350 square inches, and that its competitors' well points had only from 20 to 25 square inches, facts being such representations were misleading and deceptive in that method used for arriving at area of its said product was not used with respect to those of its competitors, quantity of discharge of water in operations involved is limited to diameter of riser pipe through which water must pass, regardless of speed with which same is pumped into well point, diameter of riser pipes of two of its competitors at time in question was larger than its own, and unobstructed water-passing screen areas of products of said two competitors was much greater than stated by it in its said catalog;
- (b) Represented, as aforesaid, that one of its well points was equal to five of those of its competitors, and that its own well points were much easier to get down than competitors', and never clogged up, facts being its well point was less efficient than that of one of its competitors, ease of sinking or jetting a well point is dependent upon many factors, including nature of soil, depth of excavation and other conditions, one well point may be more easily jetted than another under certain conditions, and more difficult under certain other conditions, both its well points and those of others, under certain conditions, will become clogged, and its various representations aforesaid were misleading and deceptive;
- (c) Represented, as aforesaid, that its well points had two valves, and that such fact added to their efficiency, and that those of its competitors had but one, facts being said circumstances do not affect relative efficiency of several well points, due to their construction upon different mechanical principles, and its statement aforesaid concerning increased efficiency thereof for reason set forth, was false and misleading; and
- (d) Represented, as aforesaid, that contractors all over the world testified that the operation costs of its well points were always 50 percent lower than those of its competitors, facts being contractors all over the world had not thus testified, though some had furnished it with testimonials containing statements attributed to them prior to the placing upon the market of such competitors' well points illustrated in its catalog;

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With effect of misleading purchasers and users of evacuation and pumping equipment into buying its said products in erroneous belief that such representations were true, and of diverting trade unfairly to it from its competitors:

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

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

Mr. William L. Pencke for the Commission.

McCole & Reid, 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 Moretrench 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. Moretrench Corporation is a corporation organized, existing, and doing business under the laws of the State of New Jersey, with its principal office and place of business located in the town of Rockaway in the State of New Jersey. Said respondent is now, and for many years immediately last past has been, engaged in the manufacture of well points, pumps, and equipment used in dewatering wet soil during excavation work, and in the sale and distribution of said products in commerce between and among the various States of the United States and the District of Columbia, causing said products, when sold, to be shipped from its place of business in the State of New Jersey to purchasers thereof located in a State or States of the United States other than the State of New Jersey. There is now, and has been at all times herein mentioned, a constant current of trade and commerce in said well points, pumps, and equipment so sold and distributed 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 its business, as aforesaid, respondent is now, and for many 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 com-

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merce between and among the various States of the United States and the District of Columbia.

PAR. 3. Well-point equipment consists of a steel tubular header which is laid around the perimeter of a proposed excavation and attached to said header and inserted into the ground below the depth to which such excavation is to be made is a piece of pipe to which is attached a well point. One or more well-point pumps are attached to said header with which a vacuum is created in the header and in the well points below the ground. The water is then pumped out of the soil and away from the excavation job. Well points are made up of a piece of fluted tubing around which is wrapped a copper screen which acts as a filter and at the bottom is attached the well-point tip or jet head. Said well-point equipment manufactured by the respondent and its competitors is sometimes leased and sometimes sold to contractors. Said manufacturers demonstrate their respective equipment to contractors whenever excavation jobs are let. There are comparatively few manufacturers of such equipment and contractors have become familiar with the equipment of the several manufacturers and can identify them without being advised of the name of the manufacturer.

PAR. 4. In the course and conduct of its business, as aforesaid, said respondent, in soliciting the sale of and selling its products, causes catalogs to be distributed among its prospective customers and customers throughout the United States, in which said catalogs various false and misleading statements and representations are made with respect to the merits of the well-point equipment manufactured by respondent and respondent's competitors. One of said representations is in the form of an illustration of five well points designated by the numbers 1 to 5, respectively, the first one in addition being identified as a Moretrench well point and the other four, although bearing only said numbers, being easily identified by the contracting trade as the respective well points manufactured by specific competitors of respondent. Said pictorial representation is accompanied by a tabulation with respect to said five well points, showing a comparison as to the unobstructed water-passing screen area, the length of screen, the kind of material in screen mesh, number of valves in jetting tip, and percentage of jetting water passing the jetting tip. In said tabulation, respondent's product is designated as "Number 1" and shaded in orange color for emphasis, and represented as excelling the four competitive well points in each of the comparisons listed in said tabulation.

In truth and in fact, said tabulation is misleading and deceptive in that the method employed in arriving at the screen area of respondent's well point was not the same as that used in arriving at the screen area of the competitors' products, as a result of which said competitive products are unfairly and misleadingly shown at great disadvantage as compared with respondent's product and are falsely shown to possess substantially smaller screen areas. The water-passing screen area in a well point constitutes one of the important factors in the efficiency of equipment for pumping subsoil water to the surface for the reason that while all well points will clog up eventually in the course of the pumping operation, a larger screen area will enable a larger quantity of water to be filtered and pumped into the header.

PAR. 5. In the course and conduct of its business, respondent publishes advertisements in trade publications which have a circulation throughout the United States. In said advertisements, among others, is made the following representation:

"One Moretrench well point is equal to five of any other points, much easier to get down, and never clogs up," say experienced contractors.

In truth and in fact, said representation is false and misleading in that respondent's well point is not equal to five well points of any other manufacturer; and in that all well points do, in fact, clog up in the course of the pumping operation.

Respondent further represents in said advertisements that "operating costs are always 50% lower. Contractors all over the world testify to this." In truth and in fact said statement is false and misleading in that the operating costs of respondent's equipment as compared with the operating costs of the equipment of competing manufacturers is not 50 percent lower nor substantially lower, and contractors all over the world are not in a position to make such comparisons and have not in fact testified as represented by respondent.

PAR. 6. In the course and conduct of its business, as hereinbefore described, respondent is, and has been, in competition with corporations, partnerships, firms, and individuals engaged in the sale and shipment in commerce between the several States of the United States and the District of Columbia of excavation pump and well-point equipment, which said competitors do not misrepresent and have not misrepresented their said products in advertisements and otherwise.

PAR. 7. The statements and representations hereinabove set forth have the capacity and tendency to and do mislead the purchasers and users of excavation and pumping equipment into buying respondent's product in the erroneous belief that said representations

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are true and that said equipment manufactured by respondent will accomplish the results represented in its said catalogs and advertisements. As a result of such false and misleading representations by respondent with respect to its said products, trade has been unfairly diverted to it from its said competitors whose ability to compete successfully with respondent has been and is lessened and injured by the methods of the respondent hereinabove set forth.

PAR. 8. 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 the Federal Trade Commission Act, the Federal Trade Commission, on November 9, A. D. 1937, issued and served its complaint in this proceeding upon the respondent, Moretrench 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 the complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by Samuel J. Reid, attorney for the respondent, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the 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 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, Moretrench Corporation, is a corporation organized and existing under the laws of the State of New Jersey. Its principal place of business is at Rockaway, N. J. The

respondent is now, and since 1930 has been, engaged in the business of manufacturing well points, pumps, and equipment used in de-watering wet soil during excavation work, and in the sale and distribution of said products in commerce between and among the various States of the United States.

PAR. 2. The respondent is now, and since A. D. 1930, has been, in substantial competition with others engaged in the sale and distribution of similar products in commerce between and among the various States of the United States.

PAR. 3. A well-point system consists of a header pipe which is laid around the perimeter of the ground that is to be excavated; riser pipes attached to the header pipe, whose length is determined by the depth of the excavation, and the well point proper. Two pumps are required for the operation of the system. One pump is used to force the water into the well point for the purpose of disintegrating the ground and sinking the point to the desired depth; the other pump is used to create a vacuum in the pipes and thus withdraw from the ground all the ground water possible into the riser and header pipes. The water is finally discharged at some distant point. The well point itself consists of a fine wire screen surrounded by a coarse protective screen, or perforated metal; a valve, or valves, designed to permit the water to be forced through the point, or to close the opening when the ground water is withdrawn, and, finally, the point itself, which in some instances is blunt and in others, sharp. The efficiency of well points depends upon the ease with which water may be pumped out of the ground without clogging up the point, and the speed with which the water may be discharged into the header pipe. The diameter of the riser pipe is, therefore, the limiting factor, other things being equal, as to the speed with which the water may be discharged.

PAR. 4. The respondent, by means of catalogs and other literature distributed by it to potential customers throughout the United States, makes the following representations:

(a) That its well points have an unobstructed water-passing screen area of 350 square inches, and that its competitors' well points have only from 20 to 25 square inches.

(b) That one of its well points is equal to five of those of its competitors.

(c) That its well points are much easier to get down than those of its competitors.

(d) That its well points never clog up.

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(e) That contractors all over the world testify that the operation costs of its well points are always 50 percent lower than those of its competitors.

PAR. 5. The efficient operation of well points, and the costs incident thereto, are largely dependent upon the matters and things concerning which the aforesaid representations are made. The representations appearing in respondent's catalog as to the water-passing screen areas are misleading and deceptive, in that the method used for arriving at the area for respondent's product is not used with respect to the products of its competitors. The respondent uses a coarse wire mesh as the outer covering for its fine-mesh inner screen, while two of its competitors use a smooth, perforated metal tube. The respondent, in determining the unobstructed water-passing screen area of its well point, deducted from the total area of the inner screen, the area of the solder points and the very fine points of immediate contact of the inner screen with the outer mesh only; but in arriving at the areas of two of its competitors' products, it deducted from the total area of the inner screen the entire area of the outer metal tube except for the perforations. The outer metal tube used by the respondent's said competitors does not constitute an obstruction, because the force of the water entering the points draws the flexible inner mesh away from the rigid metal covering. This was not given consideration by the respondent in arriving at the areas stated in its catalog. In the last analysis, the quantity of discharge of water is limited to the diameter of the riser pipe through which the water must pass, and this is true, regardless of the speed with which the water is pumped into the well point.

At the time the hearings were held in this proceeding the diameter of the riser pipes used by respondent and two of its competitors was the same, but at the time respondent distributed its catalog referred to in paragraph 4 hereof, respondent's riser pipe was smaller than those of its said two competitors. The unobstructed water-passing screen areas of the products of two of respondent's competitors are much greater than as stated by respondent in its said catalog.

PAR. 6. The statement contained in respondent's catalog that one of its well points is equal to five of those of its competitors is false and misleading. A comparative test showed that respondent's well point was less efficient than that of one of its competitors.

PAR. 7. The statement contained in respondent's catalog that its well points are much easier to get down than those of its competitors is misleading and deceptive. The operation of sinking a well point

is known as "jetting," and the ease with which this operation may be performed is dependent upon many factors—the nature of the soil, depth of excavations, and various other conditions. One well point may be more easily jetted than another under certain conditions, and more difficult to jet than the other under certain other conditions.

PAR. 8. The statement contained in respondent's catalog that its well points never clog up is false and misleading. The respondent's well points, as well as all others, under certain conditions of use, will become clogged.

PAR. 9. The statement contained in respondent's catalog that contractors all over the world testify that the operating costs of its well points are always 50 percent less than those of its competitors is false and misleading. Contractors all over the world have not testified that the operating costs of respondent's well points are always 50 percent lower than those of its competitors. Before respondent's competitors put upon the market their well points illustrated in respondent's catalog, some contractors furnished the respondent with testimonials containing the statements attributed to them by the respondent.

PAR. 10. In addition to the statements referred to in paragraph 4 hereof, respondent also states in its catalog that its well points have two valves, while those of its competitors have but one, and that this adds to the efficiency of its well points. While it is true that respondent uses two valves and its competitors but one, this does not affect the relative efficiency of the several well points, since they are constructed upon different mechanical principles. The respondent's statement concerning the increased efficiency of its well points because of the use of two valves is false and misleading.

PAR. 11. All of the aforementioned representations made by respondent are false and misleading and have the capacity and tendency to, and do, mislead the purchasers and users of evacuation and pumping equipment into buying respondent's products, in the erroneous belief that said representations are true.

PAR. 12. As a result of the above-mentioned false and misleading representations by respondent, trade has been unfairly diverted to respondent from its competitors.

CONCLUSION

The practices of respondent as set forth in the foregoing findings as to the facts are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce in violation of the Federal Trade Commission Act.

Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission, and by Samuel J. Reid, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Moretrench Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of well points and well-point systems in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Disparaging competitive products through representations that the unobstructed water-passing screen area of competitive well points is smaller than that of its own well points, which representations are based on the use of different methods of calculation, or through representations that its well points equipped with two valves are superior to competitive well points equipped with one valve when the respective well points are constructed on different mechanical principles.

2. Representing that one of its well points is equal to any given number of any competitive well points, goes down much easier and never clogs up.

3. Representing that contractors all over the world testify that operation costs of respondent's well points are always 50 percent or any other set percentage lower than those of competitive products.

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
SIROIL 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 3378. Complaint, Apr. 12, 1938—Decision, Feb. 6, 1939

Where a corporation engaged in manufacture or compounding of its "Siroll" preparation, consisting of an emulsion of water and mineral oil and other ingredients, for application to the skin and scalp, and in sale and distribution thereof to members of the purchasing public and dealers in the various States and in the District of Columbia, in substantial competition with others engaged in similar sale and distribution of preparations and products designed and intended for and used in the treatment of the same ailments and conditions for which it recommended its said product, and including many who do not in any manner misrepresent their respective preparations and therapeutic properties thereof and do not make any other false statements in connection with their sale and distribution; in advertising its said product in newspapers and other publications circulating among the various States and in said District, and in pamphlets, bulletins, and other literature disseminated by mail and otherwise to members of the purchasing public in various States and in said District—

Represented, directly or by implication, that use thereof constituted a competent and effective remedy or cure for psoriasis and dandruff, and competent and effective treatment for said ailments and conditions, facts being it was neither a competent or effective cure, remedy or treatment thereof, would not do more, in any case, than temporarily remove the scales and crusts which are symptomatic of said ailments and conditions, and would not cause skin sores and blotches to disappear permanently, and would not restore the skin to normal texture;

With effect of misleading and deceiving members of the purchasing public, as aforesaid, into the erroneous and mistaken belief that said statements, representations, and advertisements were true, and that such preparation possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial number of such members, by reason of such erroneous and mistaken belief, to purchase substantial quantities thereof, and of placing in hands of retail dealers to whom it sold said preparation for resale to members of the purchasing public, means and instrumentality whereby they mislead and deceive such members into such erroneous and mistaken belief, and into purchasing substantial quantities of said product by reason thereof, and of diverting unfairly thereby trade to it from its competitors who truthfully advertise the effectiveness of their respective preparations; to the injury of competition in commerce:

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

Mr. Carrel F. Rhodes for the Commission.

Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Siroil Laboratories, Inc., hereinafter referred to as respondent, has violated the provisions of 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, Siroil Laboratories, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its offices and principal place of business located at 1214 Griswold Street, Detroit, Mich.

PAR. 2. Respondent, Siroil Laboratories, Inc., has been for more than 1 year last past, and is now, engaged in the business of manufacturing or compounding, advertising, selling, and distributing a preparation, known and designated as "Siroil," an emulsion of water and mineral oil and other ingredients designed and intended for application to the human skin and scalp, and particularly recommended by respondent for the treatment of dandruff and psoriasis. Said respondent now causes, and for more than 1 year last past has caused, its said products to be sold to dealers and the purchasing public through various advertising mediums. Respondent has caused the same, when sold, to be transported from its principal place of business in Detroit, Mich., to purchasers thereof located at points in the various States of the United States other than the aforesaid State of Michigan and in the District of Columbia.

There is now, and has been for more than 1 year last past, a course of trade in said product, "Siroil," so sold and distributed by respondent in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business respondent is now, and has been in competition with other corporations, and with individuals and partnerships likewise engaged in the business of manufacturing various other kinds of oils, ointments, salves, tonics, and other preparations designed and intended for application to the human skin or scalp, products intended and used for the same purposes as respondent's product "Siroil," and in selling and distributing the same 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 the business set out and described in paragraphs 1 and 2 hereof, respondent, for the purpose of inducing the purchase of its product "Siroil," offered for sale and

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sold by it, has published and circulated to purchasers and prospective customers throughout the United States, by mail, newspapers, and advertisements, advertising folders, pamphlets, circulars, letters and other literature, false, and misleading statements concerning the nature, value, use and effectiveness of the various products sold by it. Among such statements and representations the following are typical examples:

Siroil relieves psoriasis embarrassment.

Siroil actually clears up psoriasis lesions.

Happiness Long Denied Her, because of Psoriasis. Few women can be glamorously attractive and win their hearts' desire if they are disfigured by psoriasis lesions. Siroil removes these crusts and scales of psoriasis and relieves other of its discomforts.

Siroil is a genuine boon. Siroil * * * relieves discomforts. You will be surprised at the efficient manner in which it clears up psoriasis lesions.

Psoriasis blemishes. So frequently the ugly lesions of psoriasis prevent charming women from dressing comfortably and becomingly. Naturally they resort to every dress expedient to conceal their psoriasis blemishes. Then these sufferers learn of Siroil—try it—and soon the whole situation is changed.

S-I-R-O-I-L has proved a blessing to thousands of women who have Psoriasis. Siroil relieves Psoriasis discomforts. It has brought untold joy to women in every walk of life. It has allowed them to enjoy again the opportunity of looking their best at all times.

* * * Do you know what Siroil is doing for men and women who have psoriasis? Thousands of them are happy and carefree again because of this remarkable product. * * * Siroil actually clears up psoriasis lesions.

* * * I had been taking treatments for over 15 years for it * * * He insisted I try Siroil * * * the results were amazing and today all scalp lesions have entirely disappeared.

By means of the foregoing statements and other similar claims, respondent has represented and does now represent that "Siroil," when used as directed by respondent, (a) is a competent and effective treatment, remedy or cure for certain ailments, diseases or conditions of the human body, to wit: psoriasis and dandruff; (b) will do more than temporarily remove in some cases, the scales, or crusts symptomatic of said ailments, diseases or conditions; and (c) causes skin sores and blotches to disappear permanently and restores the skin to normal texture.

Such representations are false, in that "Siroil," when used as directed by respondent, (a) is not a competent and effective treatment, remedy or cure for either psoriasis or dandruff; (b) will not do more than temporarily remove in some cases, the scales, or crusts symptomatic of said ailments, diseases and conditions; and (c) does not cause skin sores to disappear permanently or restore the skin to normal texture.

Findings

PAR. 4. The use by the respondent of the aforesaid false representations has had, and now has, the capacity and tendency to, and does, mislead and deceive members of the purchasing public into the mistaken and erroneous beliefs that said representations are true; that said product "Siroil" possesses such properties as to constitute it a competent and effective remedy or cure for dandruff and psoriasis lesions, scales, sores, and blotches, and that said product will cure and permanently relieve persons suffering from said complaints and will cause the skin to clear and resume its normal texture. Further, said respondent has placed in the hands of retail dealers in its products and others a means and an instrumentality whereby unscrupulous dealers may further mislead and deceive purchasers into the aforesaid mistaken and erroneous beliefs. Acting in such beliefs, induced by respondent's acts, practices and misrepresentations as herein set out, many purchasers have purchased a substantial quantity of respondent's preparation with the result that trade has been, and is, diverted unfairly to respondent from competitors likewise engaged in selling products intended and used for the same purpose in commerce among and between the various States of the United States and in the District of Columbia, who do not misrepresent the nature, character, quality, and effectiveness of their respective products. As a consequence thereof 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. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 12th day of April 1938, issued and subsequently served its complaint in this proceeding upon respondent, Siroil Laboratories, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 12th day of August 1938, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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 Siroil Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan and having its office and principal place of business at 1214 Griswold Street in the city of Detroit, State of Michigan.

PAR. 2. Respondent is now and has been for more than 1 year last past engaged in the business of manufacturing or compounding, selling, and distributing a preparation known and designated as "Siroil," which preparation consists of an emulsion of water and mineral oil and other ingredients. Such preparation is designed and intended for application to the human skin and scalp and is particularly recommended by respondent for the treatment of dandruff and psoriasis. Respondent sells said preparation to members of the purchasing public and dealers in said preparation situated in various States of the United States and in the District of Columbia, and causes said preparation, when sold by it, to be transported from its aforesaid place of business in the State of Michigan to the purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with firms, partnerships and individuals selling and distributing preparations and products designed and intended for, and used in, the treatment of the ailments and conditions of the human body for which the respondent recommends the use of its said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their respective preparations or products and the therapeutic properties thereof and who do not make any other false statements in connection with the sale and distribution of their respective preparations or products.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said preparation the respondent has caused false advertisements, containing representations and claims with respect to the properties of said preparation and the re-

sults that may be expected to be obtained from the use thereof, to be inserted in newspapers and other publications having a circulation among and between the various States of the United States and in the District of Columbia, and in pamphlets, bulletins, and other literature disseminated by respondent by mail and other means to members of the purchasing public situated in various States of the United States and in the District of Columbia. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Siroil relieves psoriasis embarrassment.

Siroil actually clears up psoriasis lesions.

Happiness Long Denied Her, because of Psoriasis. Few women can be glamorously attractive and win their hearts' desire if they are disfigured by psoriasis lesions. Siroil removes these crusts and scales of psoriasis and relieves other of its discomforts.

Siroil is a genuine boon. Siroil * * * relieves discomforts. You will be surprised at the efficient manner in which it clears up psoriasis lesions.

Psoriasis blemishes. So frequently the ugly lesions of psoriasis prevent charming women from dressing comfortably and becomingly. Naturally they resort to every dress expedient to conceal their psoriasis blemishes. Then these sufferers learn of Siroil—try it—and soon the whole situation is changed.

S-I-R-O-I-L has proved a blessing to thousands of women who have Psoriasis. Siroil relieves Psoriasis discomforts. It has brought untold joy to women in every walk of life. It has allowed them to enjoy again the opportunity of looking their best at all times.

* * * Do you know what Siroil is doing for men and women who have psoriasis? Thousands of them are happy and carefree again because of this remarkable product. * * * Siroil actually clears up psoriasis lesions.

* * * I had been taking treatments for over 15 years for it * * * He insisted I try Siroil * * * the results were amazing and today all scalp lesions have entirely disappeared.

Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in the treatment of the aforesaid ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that the use of such preparation is a competent and effective remedy or cure for certain ailments, diseases and conditions of the human body, to wit, psoriasis and dandruff; that the use of such preparation is a competent and effective treatment for the aforesaid ailments and conditions of the human body; that the use of such preparation will do more, in some cases, than temporarily remove the scales or crusts symptomatic of said ailments, diseases, and conditions; and that the use of such preparation will cause skin sores and blotches to disappear permanently and restore the skin to normal texture.

PAR. 5. The aforesaid representations, used and disseminated by the respondent in the manner above described, are false, misleading, and untrue. In truth and in fact the use of such preparation is not a competent or effective cure or remedy for psoriasis or dandruff. The use of such preparation is not a competent or effective treatment for psoriasis or dandruff. The use of such preparation will not do more, in any case, than temporarily remove the scales or crusts which are symptomatic of said ailments and conditions of the human body. The use of such preparation will not cause skin sores and blotches to disappear permanently and will not restore the skin to normal texture.

PAR. 6. The use by the respondent of the foregoing false and misleading statements, representations, and advertisements, used and disseminated as aforesaid, with respect to said preparation, has had, and now has, the capacity and tendency to, and does, mislead and deceive members of the purchasing public situated in various States of the United States and in the District of Columbia into the erroneous and mistaken belief that said statements, representations, and advertisements are true and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated and causes a substantial number of said members of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation.

The use by the respondent of the aforesaid false and misleading statements and representations, disseminated as aforesaid, places in the hands of retail dealers, to whom respondent sells said preparation for resale to members of the purchasing public, a means and instrumentality whereby such dealers mislead and deceive members of the purchasing public into the aforesaid erroneous and mistaken belief and into purchasing substantial quantities of respondent's preparation because of such erroneous and mistaken belief.

As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations or products. 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 and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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 the Federal Trade Commission Act.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer filed herein on the 12th day of August 1938 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Siroil Laboratories, Inc., its officers, representatives, agents, and employees, in connection with their offering for sale, sale and distribution of its medicinal product now designated "Siroil" or any other product containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said preparation removes dandruff, or is a cure or remedy for dandruff or psoriasis, or will clear up psoriasis lesions, or cause skin sores or blotches to disappear permanently.

2. Representing that said preparation removes the crust, scales, lesions, and blemishes caused by psoriasis and relieves other of its discomforts unless such representations are specifically restricted to removing such crusts, scales, lesions, and blemishes in those cases where such conditions are external in character and are located solely in the outer layer of the 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.

IN THE MATTER OF

ROSE R. SCOTT, TRADING AS KOSKOTT COMPANY

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

Docket 3575. Complaint, Sept. 3, 1938—Decision, Feb. 6, 1939

Where an individual engaged in sale and distribution of a line of hair preparations which were made for her and designated by numbers, and known as "Koskott" line; in advertising her said various preparations in magazines and newspapers of general circulation throughout the United States—

- (a) Represented, directly or by implication, that said products were effective cures for thin and falling hair, and that they constituted competent cures for ringworm, barbers' itch, pimples, eczema, and scalp disorders; and
- (b) Represented that they constituted competent cures for baldness, and that they would grow hair, and that growth could be expected to begin within a few days after use thereof, and that they were scientific remedies which stimulated the blood circulation and afforded nutrition to the hair roots, and that latter were rejuvenated and so affected as to cause hair to grow therefrom, and that preparation would impart a natural shade and color to the hair and succeed where other products failed;

Facts being said products were not effective cures for thin or falling hair, use thereof would not prevent same from falling out or being brushed or combed from the head, they were not competent cures for cause of dandruff or various other ailments and conditions set out, and would not accomplish above results claimed therefor, and did not stimulate blood circulation, etc., and would not succeed where others failed;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such false and misleading representations were true, and with result, as direct consequence of such mistaken and erroneous belief induced by such advertising and representations, that number of the purchasing public bought substantial quantity of her said products and trade was unfairly diverted to her from others likewise engaged in sale of preparations for the head and hair, and who truthfully represent their products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Charles S. Cox for the Commission.

Mr. J. Bond Smith, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Rose R. Scott, trad-

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ing as Koskott Company, hereinafter referred to as respondent, has violated the provisions of the 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, Rose R. Scott, is an individual trading and doing business as Koskott Co., with her office and principal place of business at 223 West Thirty-third Street, New York, N. Y.

PAR. 2. Respondent is now and for more than 10 years last past has been engaged in the business of distributing and selling a line of hair preparations known as "Koskott." Respondent causes said products when sold to be transported from her place of business in the State of New York to customers located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said hair preparations 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 her business, respondent is in active and substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of hair preparations 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 said business and for the purpose of inducing the purchase of said hair preparations, respondent, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers, circulated generally throughout the United States, has made many representations concerning the character and nature of said hair preparations and concerning the results obtainable from their use. Among said representations made by respondent are the following:¹

All of said statements, together with similar statements and advertising literature, purport to be descriptive of respondent's products and of their effectiveness in use. In all of her advertising literature and through other means, respondent directly or by inference, through statements and representations herein set out and other statements of similar import and effect, represents that said preparations are effective cures for thin or falling hair, and that the use thereof will prevent hair from falling out or being brushed or combed from the head; that

¹ The quoted matter set forth at length in the complaint at this point, in which respondent purports to describe the qualities and effectiveness of her said preparations, is also set forth in the findings, *infra*, at page 318, and for that reason is here omitted in the interest of brevity.

said preparations are competent cures for the cause of dandruff; that said preparations are competent cures for ringworm, barbers' itch, pimples, eczema, and scalp disorders; that said preparations are competent cures for baldness; that said preparations will grow hair; and that the growth of the hair can be expected to begin a few days after using said preparations; that said preparations are scientific remedies and will stimulate the blood circulation, and afford nutrition to the hair roots; that by using said preparations the hair roots are rejuvenated and so affected as to cause hair to grow therefrom; that the use of said preparations will impart a natural shade and color to hair; and that respondent's preparations succeed where others fail.

PAR. 5. The representations made by respondent with respect to the nature and effect of her products when used are grossly exaggerated, and untrue. In truth and in fact, respondent's preparations are not effective cures for thin or falling hair and the use of the same will not prevent hair from falling out or being brushed or combed from the head. Said preparations are not competent cures for the cause of dandruff. Said preparations are not competent cures for ringworm, barbers' itch, pimples, eczema, and scalp disorders. Said preparations are not competent cures for baldness, will not grow hair and the use of the same will not increase the length of the hair. Users of said preparations cannot procure a growth of hair within a few days or any other period of time from the use of said preparations. By using said preparations the blood circulation is not so stimulated as to afford nutrition to the hair roots. By using said preparations the hair roots are not rejuvenated and so affected as to cause hair to grow therefrom. Said preparations will not impart a natural shade and color to the hair. Respondent's preparations do not succeed where others fail.

PAR. 6. There are among respondent's competitors many who distribute and sell hair preparations who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by respondent in describing her hair products and their effectiveness when used, as hereinabove set out, were and are calculated to, and have 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 direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to respondent from competitors who are engaged in the business of dis-

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tributing and selling hair preparations, and who truthfully advertise and represent their respective products and the effectiveness thereof when used. As a consequence thereof, 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. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 3, 1938, issued and served its complaint, in this proceeding upon the respondent, Rose R. Scott, trading as Koskott Co., charging her with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of said act.

After issuance of said complaint, the respondent filed her answer thereto, admitting all the material allegations of fact set forth in said complaint and waiving hearing and all intervening procedure. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Rose R. Scott, is an individual trading and doing business as Koskott Co., with her office and principal place of business at 223 West Thirty-third Street, New York, N. Y. Respondent is now, and for more than 10 years last past has been, engaged in the business of selling and distributing a line of hair preparations known as "Koskott" preparations, designated by numbers, all of which are manufactured for respondent, are sold and shipped by her to purchasers in States other than the State in which respondent's place of business is located and from which said shipments are made. In the course and conduct of her business, respondent has been and is presently in competition with other individuals, partnerships and corporations engaged in the sale and distribution of like or similar

products 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 her said business, respondent, in the sale of her various preparations and in inducing the public to purchase said preparations, has, by means of various advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers circulated generally throughout the United States, made statements and representations concerning the character and nature of said preparations and concerning the results obtained from their use. Among the said representations made by the respondent are the following:

SOME OF THE HIRSUTAL CONDITIONS WHEREIN KOSKOTT METHOD HAS PROVED HIGHLY EFFECTIVE.

Falling Out, or Combing Out of Hair.

Dandruff, otherwise known as seborrhea or scurf. A diseased condition of the scalp which must be remedied or all hair will be lost.

Hair Brushing Out. It sticks to the brush instead of remaining fast to the scalp, thereby proving the absolute need of prompt attention to save it.

Hair Falling in Patches. (*Alopecia Areata*.)

Hair Turning Gray—or already gray, or white. Should be darkened gradually to natural shade of youth * * *.

Thin Hair on Upper Lip, or no hair at all where a good mustache is desired.

Ringworm, Barbers' Itch, Little Pimples and other scalp disorders.

Baldness. In one large spot or in several places.

Hair Disappearing Mysteriously.

The above troubles are some of the most common conditions in which the Koskott Method is asserting its real merit.

* * * * *

Lovely Hair Growth. * * * This famous preparation * * * has often started hair growth in a few days.

* * * * *

Use Koskott To Grow Hair. Overcome Baldness. Eliminate Dandruff. Stop the Falling Out of Hair. Make the Hair Grow Long, Thick and Lustrous.

KOSKOTT IS A SCIENTIFIC SUCCESSFUL REMEDY

We recommend Koskott for the hair, because it * * * contains the right ingredients * * * to stimulate the direct blood nutrition of the hair, roots in their follicles. * * * It is exactly suited according to the best authorities and latest scientific trials, to eradicate dandruff, overcome the germs of baldness and promote all possible growth of new hair where such a result is therapeutically possible. * * * Research has revealed the cause of dandruff, etc., and the same light of knowledge has made possible the preparation, of the proper remedy. Koskott is guaranteed to remove the spores just described.

* * * The pharmacopela has been literally ransacked in Koskott Laboratory's successful search for a group of ingredients with the power to react through the scalp upon the blood circulation which feeds the hair follicles. Such is the formula for Koskott. That is why it "makes good" in so large a

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percentage of cases. * * * Koskott tends to make the hair grow longer and more plentiful, or to promote hair growth where there has been baldness * * *. Koskott is aimed * * * to remedy the subnormal state inside by waking up the cells and tissues to renewed life. The arousing takes place because the therapeutical properties of Koskott consist of stirring up the circulation of the blood as the application is rubbed in. The circulation being thus restored, the hair roots in the scalp should be so revived as to push forth new hair growth. The follicles also gain strength to throw off any parasites that may nestle into the glands around the hair roots.

* * * * *
Dandruff, Thin or Splitting Hairs, Falling Hairs, Ordinary Baldness, need Koskott Nos. 1, 2, and 3.

Baldness in Patches, Ringworm, Barbers' Itch, Eczema on Scalp, require Koskott Nos. 2, 3, and 5 * * *.

* * * * *
Your Hair Will Grow Again!

* * * * *
Why Others Fail and Koskott Succeeds.

* * * * *
Koskott No. 1 is the hair stimulator or feeder which gives timely aid to the hair shaft when it is visible above the scalp. * * * Koskott Method is efficacious in many cases where all else has failed.

Koskott to Encourage Hair Growth.

* * * * *
This famous preparation is for dandruff, thinning hair, and hair loss preceding several forms of baldness * * *.

PAR. 3. The said statements, together with similar statements and representations, serve as representations to members of the purchasing public as properly descriptive of respondent's products and of their effectiveness in use. The use of such statements misleads members of the purchasing public into the erroneous and mistaken belief that respondent's products are effective cures for thin and falling hair; that the use thereof will prevent hair from falling out or being brushed or combed from the head; that said preparations are competent cures for the cause of dandruff; that said preparations are competent cures for ringworm, barbers' itch, pimples, eczema, and scalp disorders; are competent cures for baldness; will grow hair; that the growth of hair can be expected to begin a few days after using said preparations; that said preparations are scientific remedies and will stimulate the blood circulation, and afford nutrition to the hair roots; that the hair roots are rejuvenated and so affected as to cause hair to grow therefrom; said preparation will impart a natural shade and color to the hair; and will succeed where other preparations fail.

PAR. 4. The representations made by the respondent with respect to the nature and effect of the products when used are false and misleading in that respondent's preparations are not effective cures for thin or falling hair and the use of same will not prevent hair from

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falling out or being brushed or combed from the head. Said preparations are not competent cures for the cause of dandruff. Said preparations are not competent cures for ringworm, barbers' itch, pimples, eczema, and scalp disorders. Said preparations are not competent cures for baldness, will not grow hair on bald heads, and the use of same will not increase the length of the hair. Users of said preparations cannot procure a growth of hair within a few days of its use or any other period of time from the use of said preparations. By using said preparations the blood circulation is not so stimulated as to afford nutrition to the hair roots. By using the said preparations the hair roots are not rejuvenated and so affected as to cause hair to grow therefrom. Said preparations will not impart a natural shade and color to the hair. Said preparations will not succeed where others fail.

PAR. 5. Each and all of the false, misleading, and untrue representations made by respondent in offering for sale and selling her 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 said representations are true. Further, as a direct consequence of such mistaken and erroneous belief, induced by the advertising and representations of the respondent, as aforesaid, a number of the purchasing public have purchased a substantial quantity of said products, with the result that trade has been unfairly diverted from other corporations, individuals, firms, and partnerships likewise engaged in the sale of preparations for the head and hair who truthfully advertise their products.

CONCLUSION

The aforesaid acts, representations, and practices of the respondent, Rose R. Scott, trading as Koskott Co., as herein found, have been and are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and states that she waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and con-

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clusion that said respondent has violated the provisions of the Federal Trade Commission Act,

It is ordered, That the respondent, Rose R. Scott, individually and trading as Koskott Co., or trading under any other name, her agents, servants, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any of her cosmetic preparations now designated by the name Koskott, or any other cosmetic preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or under any other name, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparations, which advertisements, represent, directly or by implication, that said preparations will stop falling hair or prevent baldness, or will grow hair or have any effect on the growth of hair; that said preparations constitute a remedy or cure for dandruff, pimples, eczema, barbers' itch or ringworm, or other scalp disorders, or a competent or effective treatment for any of said conditions; that said preparations are of the highest medical, pharmaceutical or scientific efficiency; that said preparations will rejuvenate the hair roots or will stimulate the circulation, or will have any substantial beneficial effect on either hair roots or circulation; or that said preparations will impart a natural shade or color to the hair or will act in any manner other than as a hair dye.

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

IN THE MATTER OF
EXCELSIOR LABORATORY, INC.

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

Docket 3648. Complaint, Nov. 8, 1938—Decision, Feb. 6, 1939

Where a corporation engaged in preparation, sale, and distribution of its so-called D. Gosewisch's Garlic Tablets, D. Gosewisch's Garlic Tablets with Vitamin E Added, and D. Gosewisch's Garlic Tablets with Vitamin B-G Added, to members of the purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of medicinal and other preparations designed and intended for and used in treatment of same ailments and conditions for which it recommended use of its said products, and including many who do not in any manner misrepresent their respective preparations or therapeutic properties thereof and who do not make any other false statements in connection with their sale and distribution—

- (a) Represented in false advertisements which is disseminated and caused to be disseminated through the mails and in commerce and otherwise, directly and by implication, that vitamin E is the "Vitality Vitamin," and that, of all the elements discovered by science, none is so vital as said vitamin E, and that such vitamin had been added to its said "Garlic Tablets," and that use of its preparations could be relied upon to help maintain and improve muscle function, abdominal strength, and vital resistance;
- (b) Represented, as aforesaid, that use thereof stimulated the appetite and growth and strengthened intestines and toned up nerve system and fortified the system against the onslaught of old-age ailments and normalized glandular action;
- (c) Represented, as aforesaid, that use thereof purified the blood stream and supplied body building elements for mothers and growing children and minerals needed by the body, and gave results impossible to be had from garlic in any other form; and
- (d) Represented, as aforesaid, that use of said preparations constituted effective remedies for insomnia, dizzy spells, rising blood pressure, bad memory, and general debility, and that they were antiseptics and guaranteed;

Facts being vitamin E cannot be properly designated as the "Vitality Vitamin" and is not the most vital of all the elements discovered by science, the many ailments and symptoms for which it recommended its said preparations are caused by various physical disorders unrelated to deficiencies in the various ingredients of which it claims its preparations to be composed, and use thereof cannot be relied upon to help maintain and improve muscle functions, abdominal strength, and vital resistance, or to accomplish various other results above set forth, preparations in question are not antiseptics, many others give equally great beneficial results, it does not guarantee its preparations as to effectiveness in use, but its guarantee is limited to refund of purchase price, and its said representations were grossly exaggerated and misleading and constituted false advertisements, use of which induces or is likely to induce, directly or indirectly, purchase of its said preparations; and

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(e) Represented to prospective purchasers in various States and in the District of Columbia, that it would give to such purchasers a specified amount of said preparations free of charge, facts being it does not thus give any of its said products to purchasers but price of such purported free goods is included in price of those purchased;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that its preparations possessed properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of said public, because of such erroneous and mistaken beliefs, to purchase substantial quantities of its said products, and of thereby diverting unfairly trade to it from its competitors in commerce as aforesaid, who truthfully advertise the effectiveness in use of their respective preparations; to the injury of competition in commerce:

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

Mr. William L. Pencke for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Excelsior Laboratory, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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. Excelsior Laboratory, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its home office and principal place of business located at 205 East 42nd Street, New York, N. Y. Respondent is now and has been for some years last past engaged in the business of preparing, distributing, and selling in commerce as herein set out certain preparations designated D. Gosewisch's Garlic Tablets, D. Gosewisch's Garlic Tablets with Vitamin E Added, and D. Gosewisch's Garlic Tablets with Vitamin B-G Added.

PAR. 2. Said respondent while engaged in business as aforesaid causes said products when sold 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 of New York and in the District of Columbia. At all times since the organization of respondent's corporation it has maintained a course of trade in said products sold and distributed by it 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 respondent is now and has been at all times herein mentioned in substantial competition with other corporations and with firms and individuals likewise engaged in the business of preparing, distributing, and selling in commerce between and among the various States of the United States and in the District of Columbia products prepared, distributed, and sold for the same purpose and use for which respondent's products are prepared, distributed, and sold.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has disseminated and caused to be disseminated false advertisements—

1. By the United States mails and in commerce by other means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the aforesaid preparations; and

2. By other means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase in commerce of said preparations.

Among and typical of representations thus made by the respondent are the following:

Is your blood pressure like a jumping jack?—thousands report 50 to 75 points drop in blood pressure, nerves steadier, new strength and energy taking D. Gosewisch's Garlic Tablets—the only pleasant, effective way to take garlic for High Blood Pressure, Dizziness, Nerves, Sleeplessness.

D. Gosewisch's Garlic Tablets combat deficiency ailments by supplying vital minerals and ridding system of toxins.

Garlic builds and fortifies the system against the onslaught of old age ailments by supplying the body with rich, vital minerals and purifying the blood stream of toxins.

When exhaustion of essential minerals * * * gastric disorders * * * intestinal putrefaction * * * and other distressing symptoms bring about premature aging, garlic will have a definite happy effect.

Iodine to normalize glandular action.

First they purify the blood stream by counteracting toxins.

Third they actually supply those minerals necessary for proper bodily function.

One Box Free With Each Dozen at \$8.00.

It is the most powerful of natural antiseptics to neutralize poisons in the system.

Vitality Vitamin—

Of all the elements discovered by science none is so vital as Vitamin E now added to D. Gosewisch's Garlic Tablets—helps to maintain and improve muscle function, abdominal strength and vital resistance. Also important where Vitamin E deficiency results in abnormal functional weakness and debility.

Vitamin B-G now contained in D. Gosewisch's Garlic Tablets is another garlic vitamin combination: stimulates appetite and growth, tones up the system, sup-

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plies body building elements for expectant mothers, convalescents and growing children.

Tones up the nerve system.

Strengthens the intestines.

Standard plus "nerve Vitamin B".

All of said statements together with many other similar statements appearing in respondent's advertising purport to be descriptive of respondent's products, D. Gosewisch's Garlic Tablets, D. Gosewisch's Garlic Tablets, Vitamin E Added, and D. Gosewisch's Garlic Tablets, Vitamin B-G Added. In all of respondent's advertising matter herein set out and through other statements of like import and effect the respondent represents that vitamin E is the "Vitality Vitamin" and that of all the elements discovered by science none is so vital as vitamin E. Respondent further represents that its products can be relied upon to help maintain and improve muscle function; to help maintain and improve abdominal strength; to help maintain and improve vital resistance; to stimulate the appetite and growth; to strengthen the intestines; to tone up the nerve system; to fortify the system against the onslaught of old-age ailments; to normalize glandular action; to purify the blood stream; to supply body-building elements for expectant mothers and growing children; to supply minerals needed by the body; to give results impossible to obtain from garlic in any other form; that its products are effective remedies for insomnia, dizzy spells, rising blood pressure, bad memory and general debility, and that its products are antiseptics, and are guaranteed.

PAR. 5. The representations made by the respondent with reference to the therapeutic value of its products when used are grossly exaggerated, false, and misleading. In truth and in fact vitamin E cannot be properly designated as the "Vitality Vitamin" and is not the most vital of all the elements discovered by science. Respondent's products cannot be relied upon to help maintain and improve muscle functions, abdominal strength, and vital resistance. Neither will they stimulate growth or strengthen the intestines. Said products are not effective as nerve remedies and cannot be relied upon to tone up the nerve system. Said products will in no way ward off the onslaught of old age nor fortify the system against the loss of vitality. Said products will not remove impurities from the blood stream, neither will they correct abnormal glandular action. Said products are not effective treatments nor adequate remedies for insomnia, dizzy spells, rising blood pressure, bad memory, or general debility. Said products are not antiseptics. Many other preparations which are sold give beneficial results as great as the results

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obtained from the use of respondent's products. Respondent does not guarantee its products as to their effectiveness, but the guarantee is limited to the refund of the purchase price.

The many ailments and symptoms hereinabove set out for the treatment of which the respondent recommends its products are caused by various physical disorders unrelated to deficiencies of the various ingredients of which respondent claims its products are composed.

PAR. 6. The use of the aforesaid false advertisements disseminated in the manner above described induces or is likely to induce, directly or indirectly, the purchase of drugs, to wit: Respondent's preparations.

PAR. 7. The respondent, for the purpose of inducing the purchase of its products represents that it will give to purchasers of its products a specified amount of its products free of charge. Such representation is false and misleading, for in truth and in fact the respondent does not give any of its products to purchasers but the price of the purported free goods is included in the price of the goods purchased.

PAR. 8. There are among respondent's competitors many who prepare, distribute, and sell preparations which are prepared, distributed, and sold for the same purpose and use for which respondent's products are prepared, distributed, and sold and who do not misrepresent the quality or therapeutic value of their respective products, or represent that any of their products are given free.

PAR. 9. Each and all of the false and misleading statements and representations made by the respondent in designating and describing its products and the therapeutic value thereof as hereinabove set out, were and are calculated to, and have 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 the said representations are true. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts, advertisements, and misrepresentations of respondent as hereinabove detailed, a number of the purchasing public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to the respondent from individuals, firms, and corporations likewise engaged in the business of manufacturing, distributing, and selling products prepared, intended, and sold for the same and similar purposes for which respondent prepares and sells its products. As a result thereof substantial injury has been and is now being done by respondent to competition in commerce

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

PAR. 10. The aforesaid acts and practices of respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 8th day of November 1938, issued, and subsequently served its complaint in this proceeding upon respondent, Excelsior Laboratory, Inc., charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 30th day of November 1938, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, Excelsior Laboratory, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and formerly having had its office and principal place of business at 205 East Forty-second Street, in the city of New York, State of New York, and being now located at 70 Spring Hill Avenue, St. George, Staten Island, N. Y.

PAR. 2. The respondent is now, and has been for some years last past, engaged in the business of preparing, selling, and distributing certain preparations designated as D. Gosewisch's Garlic Tablets, D. Gosewisch's Garlic Tablets with Vitamin E Added, and D. Gosewisch's Garlic Tablets with Vitamin B-G Added. Respondent sells said preparations to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes the said preparations, when sold by it, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States

of the United States other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparations among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with firms, partnerships, and individuals selling and distributing medicinal and other preparations designed and intended for, and used in, the treatment of the ailments and conditions of the human body for which respondent recommends the use of its said preparations. Among such competitors in said commerce are many who do not, in any manner, misrepresent their respective preparations or the therapeutic properties thereof, and who do not make any other false statements in connection with the sale and distribution of their respective preparations.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent has disseminated and caused to be disseminated false advertisements—

1. By the United States mails and in commerce among and between the various States of the United States and in the District of Columbia by other means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the aforesaid preparations; and

2. By other means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States and in the District of Columbia of said preparations.

Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Is your blood pressure like a jumping Jack?—thousands report 50 to 75 points drop in blood pressure, nerves steadier, new strength and energy taking D. Gosewisch's Garlic Tablets—the only pleasant, effective way to take garlic for High Blood Pressure, Dizziness, Nerves, Sleeplessness.

D. Gosewisch's Garlic Tablets combat deficiency ailments by supplying vital minerals and ridding system of toxins.

Garlic builds and fortifies the system against the onslaught of old age ailments by supplying the body with rich, vital minerals and purifying the blood stream of toxins.

"When exhaustion of essential minerals * * * gastric disorders * * * intestinal putrefaction * * * and other distressing symptoms bring about premature aging, garlic will have a definite happy effect.

Iodine to normalize glandular action.

First they purify the blood stream by counteracting toxins.

Third they actually supply those minerals necessary for proper bodily function.

One Box Free With Each Dozen at \$8.00.

It is the most powerful of natural antiseptics to neutralize poisons in the system.

Vitality Vitamin. Of all the elements discovered by science none is so vital as Vitamin E now added to D. Gosewisch's Garlic Tablets—helps to maintain and improve muscle function, abdominal strength and vital resistance. Also important where Vitamin E deficiency results in abnormal functional weakness and debility.

Vitamin B-G now contained in D. Gosewisch's Garlic Tablets is another garlic vitamin combination; stimulates appetite and growth, tones up the system, supplies body building elements for expectant mothers, convalescents and growing children.

Tones up the nerve system.

Strengthens the intestines.

Standard plus "nerve Vitamin B".

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparations and their effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that vitamin E is the "Vitality Vitamin" and that of all the elements discovered by science, none is so vital as vitamin E; that the use of such preparations can be relied upon to help maintain and improve muscle function, abdominal strength, and vital resistance; that the use of such preparations stimulates the appetite and growth, strengthens the intestines, tones up the nerve system, fortifies the system against the onslaught of old-age ailments, and normalizes glandular action; that the use of such preparations purifies the blood stream, supplies body building elements for expectant mothers and growing children, and supplies minerals needed by the body; that the use of such preparations gives results impossible to obtain from garlic in any other form; that the use of such preparations constitutes effective remedies for insomnia, dizzy spells, rising blood pressure, bad memory, and general debility; and that such preparations are antiseptics and are guaranteed.

PAR. 6. The aforesaid representations by the respondent relative to the therapeutic value of said preparations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading, and constitute false advertisements. In truth and in fact vitamin E cannot be properly designated as the "Vitality Vitamin" and is not the most vital of all the elements discovered by

science. The use of respondent's said preparations cannot be relied upon to help maintain and improve muscle functions, abdominal strength, and vital resistance. The use of such preparations will not stimulate growth or strengthen the intestines. The use of such preparations is not effective as nerve remedies and cannot be relied upon to tone up the nerve system. The use of such preparations will in no way ward off the onslaught of old age or fortify the system against the loss of vitality. The use of such preparations will not remove impurities from the blood stream, nor will it correct abnormal glandular function. Said preparations are not effective treatments or adequate remedies for insomnia, dizzy spells, rising blood pressure, bad memory, or general debility. Said preparations are not antiseptics. Many other preparations which are sold give beneficial results as great as the results obtained from the use of respondent's said preparations. Respondent does not guarantee its preparations as to their effectiveness in use, but the guarantee is limited to the refund of the purchase price.

The many ailments and symptoms hereinabove set out, for the treatment of which the respondent recommends its said preparations, are caused by various physical disorders unrelated to deficiencies in the various ingredients of which respondent claims its preparations are composed.

PAR. 7. The use of the aforesaid false advertisements, disseminated in the manner above described, induces, or is likely to induce, directly or indirectly, the purchase of drugs, to wit: Respondent's preparations.

PAR. 8. The respondent, for the purpose of inducing the purchase of its said preparations, represents to prospective purchasers of such preparations, situated in various States of the United States and in the District of Columbia, that it will give to such purchasers a specified amount of such preparations free of charge. Such representation is false and misleading, for, in truth and in fact, the respondent does not give any of its preparations to purchasers free of charge, but the price of the purported free goods is included in the price of the goods purchased.

PAR. 9. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparations, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and that respondent's said preparations possess the properties claimed and represented, and will accom-

plish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparations.

As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations. 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 and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 that, without further evidence or other intervening procedure, the case might proceed to final hearing upon the record, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Excelsior Laboratory, Inc., its officers, representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of a medicinal preparation in tablet form designated by the names of D. Gosewisch's garlic tablets, D. Gosewisch's garlic tablets with vitamin E added, and D. Gosewisch's garlic tablets with vitamin B-G added, or any other medicine composed of substantially similar ingredients, whether sold under those names or under any other name, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, the purchase in commerce, as commerce is defined in the

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Federal Trade Commission Act, of said tablets, which advertisements represent, directly or through implication, that such garlic tablets constitute a remedy or cure for high blood pressure, loss of vitality, impurities of the bloodstream, abnormal glandular functions, or will help maintain and improve muscle functions or give abdominal strength or vital resistance, or will stimulate growth or strengthen the intestines, or be an effective nerve remedy or tone up the nerve system or ward off the onslaught of old age, or that it is a remedy for insomnia, dizzy spells, rising blood pressure, bad memory, or general debility, or that such garlic tablets constitute a competent, effective treatment for any such diseases or ailments other than as an aid in soothing the nervous system, or that they are antiseptic, or that they are guaranteed unless such guarantee is limited to the refund of the purchase price; that "Vitamin E is the Vitality Vitamin" or is the most vital of all elements discovered by science.

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

MORRIS WHITE MFG. CO., INC., AND STYLECRAFT
LEATHER GOODS 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 3052. Complaint, Feb. 8, 1937—Decision, Feb. 7, 1939*

Where a corporation and its subsidiary engaged in manufacture of leather handbags, and in sale thereof to purchasers in various States, in substantial competition with others engaged in manufacture, and in sale and distribution in interstate commerce of leather goods, including leather handbags—

- (a) Represented certain group of leather handbags or purses manufactured and marketed by them as being made from "imported French glove leather," facts being that, while kind of leather used was occasionally employed in manufacture of such articles, it was not that leather known to trade and accredited by industry as "glove leather," but lacked proper pliability usually credited to such last-named leather; and
- (b) Placed within leather handbags folder bearing words "THE FIFTH AVENUE VANITY, a Ladies' Vanity and Bag. Pat. No. 297634," facts being no patent had been applied for or issued on said product and figure given was that of a registration number owned by them;

With effect of misleading and deceiving portion of purchasing public into the erroneous beliefs that said products, as case might be, were made from same leather as gloves and were "glove leather," and that they were patented, and with result that, acting in such erroneous beliefs, said public was induced to purchase, and purchased, their said products and thereby diverted trade to them from competitors, among whom there are dealers and distributors of similar products used for similar purposes who do not in any way misrepresent the same to purchasers thereof:

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

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

Mr. Alden S. Bradley for the Commission.

Mr. Archibald Palmer, 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 Morris White Mfg. Co., Inc., and Stylecraft Leather Goods Co., Inc., have been and are now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Com-

mission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Morris White Mfg. Co., Inc., is a corporation organized in 1932, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business at 362 Fifth Avenue, New York City, and its factory located at Bridgeport, Conn.

PAR. 2. Respondent, Stylecraft Leather Goods Co., Inc., is a corporation organized in 1933, existing and doing business under and by virtue of the laws of the State of New York, with its factory located at Scranton, Pa., and its principal place of business at 362 Fifth Avenue, New York City, N. Y.

PAR. 3. Both of said corporations are under one ownership and management, and both are engaged in the manufacture of ladies' handbags at the factories hereinabove designated. They occupy the same offices.

PAR. 4. In the course and conduct of said businesses, respondents ship, or cause to be shipped or transported their said products, when sold, from the said State of New York or the State of origin of the shipment, to purchasers thereof located at points in various States of the United States other than the State of New York, or in the State of origin of such shipment. There is now, and has been during all the times herein mentioned, a constant current of trade in commerce in the said products so sold by the respondents between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of their said business, respondents are now and have been during all the time herein mentioned, engaged in substantial competition with various other corporations, firms, and individuals selling or offering for sale ladies' handbags to members of the general public in the manner set out in the preceding paragraph hereof in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. In the course and conduct of its business respondent, Morris White Mfg. Co., Inc. manufactured in its said factory at Bridgeport, Conn., ladies' leather hand bags and placed therein a folder bearing the following words:

THE FIFTH AVE. VANITY
A Handy Vanity Handbag
Pat. No. 297634

and delivered said products to said respondent, Stylecraft Leather Goods Co., Inc., which last-named company sold, shipped, and delivered

the same containing such folder to customers residing in States outside of the State of New York or in the State of the origin of such shipment. In truth and in fact, no patent has been applied for or issued on said product.

PAR. 7. The respondent, Morris White Mfg. Co., Inc. manufactures ladies' leather hand bags in several designs, to which product it causes to be attached a tag reading: "Imported French Glove Leather," and so tagged, labeled, designated, and represented, sold, and distributed said products among its said customers in various States of the United States. In truth and in fact, the products so tagged, labeled, designated, and represented are not and were not made of glove leather as the term is generally understood by the purchasing public.

PAR. 8. The above and foregoing representations of respondents, Morris White Mfg. Co., Inc., and Stylecraft Leather Goods Co., Inc., as described in paragraph 6 above have and have had 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 such products are patented, when such is not the fact; and, acting in such erroneous belief, the said purchasing public have been induced to purchase and have purchased respondents' products, thereby diverting trade to the respondents from their said competitors.

PAR. 9. The use of the words "Glove Leather" as a brand, stamp, or label for the products of the respondent, Morris White Mfg. Co., Inc., as described in paragraph 7 above, has and has had 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 the leather of which such products are manufactured is the same as that from which gloves are generally made and is glove leather, when such is not the fact; and, acting in such erroneous belief, the said purchasing public have been induced to purchase and have purchased respondent's products, thereby diverting trade to the respondent from its said competitors.

PAR. 10. There are among the competitors of respondent, mentioned in paragraph 5 hereof, dealers, and distributors of products similar in kind and used for the same purpose, who do not in any way misrepresent their said products to purchasers thereof.

PAR. 11. The above acts and things done or caused to be done by the said respondents were and are each and all to the prejudice of the public and of respondent's said competitors, and each and all 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 the Federal Trade Commission Act, the Federal Trade Commission, on February 8, 1937, issued and served its complaint in this proceeding upon respondents Morris White Mfg. Co., Inc., and Stylecraft Leather Goods Co., Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents, through counsel, filed their answer to said complaint, which answer was received by the Commission February 27, 1937. Thereafter, on June 27, 1938, a hearing in New York City was set before a trial examiner theretofore duly appointed, and at said hearing respondents, Morris White Mfg. Co., Inc., and Stylecraft Leather Goods Co., Inc., being present by their respective presidents and vice presidents, and by their attorney of record, tendered a statement for the record in lieu of, and in substitution for all sworn evidence, and the attorney for the Commission having agreed to the entrance upon the record of said statement in lieu of, and in substitution for the taking of testimony, a stipulation, as shown in the record, was made and entered into.

Thereafter this proceeding came on for final hearing upon the record, and brief of the attorney for the Commission, respondents having filed no brief herein, although opportunity was given them therefore, and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Morris White Mfg. Co., Inc., is a corporation organized in 1932, under the laws of the State of New York. Respondent, Stylecraft Leather Goods Co., Inc., is a corporation organized in 1933 under and by virtue of the laws of the State of New York. Both of said corporations are under one ownership and management, and both are engaged in the manufacture of leather handbags at factories owned and operated by respondents located at Scranton, Pa., and Bridgeport, Conn. Respondents occupy the same offices, located at 362 Fifth Avenue, New York City, N. Y. Morris White is president of each respondent corporation, while Abe White is vice president of each. When sales of respondents' leather handbags are made, respondents cause said handbags to be transported from the place of manufacture thereof to the purchasers thereof located in various States of the United States.

In the course and conduct of their business, respondents Morris White Mfg. Co., Inc., and Stylecraft Leather Goods Co., Inc., are in substantial competition with other persons, copartnerships, and corporations likewise engaged in manufacturing, selling, and distributing leather goods, including leather handbags, in interstate commerce.

PAR. 2. The respondent, Morris White Mfg. Co., Inc., owns the principal amount of capital stock issued by respondent Stylecraft Leather Goods Co., Inc. Respondent, Stylecraft Leather Goods Co., Inc., is effectually a subsidiary corporation of respondent Morris White Mfg. Co., Inc., having the same principal office, the same principal address, and conducting a manufacturing business in the identical industry.

PAR. 3. Respondents, Morris White Mfg. Co., Inc. and Stylecraft Leather Goods Co., Inc., in 1935 manufactured and marketed certain leather handbags or purses designated by respondents as "Catalogue No. 606." These handbags or purses were manufactured at respondents' place of business in Bridgeport, Conn., and shipped from that point by respondents through use of common public carrier to respondents' customers, some of which were located in States other than the State of Connecticut. This particular group of leather handbags or purses were further represented as being made from "imported French glove leather." The leather used in the manufacture of this particular group of handbags or purses, although occasionally used in the manufacture of such articles, is not that leather known to the trade and accredited by the industry as "glove leather." The distinction between the leather used in the manufacture of said articles and "glove leather" is that such leather lacks the proper pliability usually accredited to "glove leather."

PAR. 4. Respondent Morris White Mfg. Co., Inc., in the course and conduct of its business, manufactured in its factory located at Bridgeport, Conn., ladies' leather handbags and placed within said ladies' leather handbags a folder bearing the following words: "THE FIFTH AVENUE VANITY a Ladies' Vanity and Bag. Pat. No. 297634." In truth and in fact no patent had been applied for or issued on said product. The number "297634" is that of a registration number owned by the respondent corporations.

PAR. 5. The Commission finds that the representations of respondents Morris White Mfg. Co., Inc., and Stylecraft Leather Goods Co., Inc., had, and now have the capacity and tendency to mislead and deceive, and have misled and deceived a portion of the purchasing public into the erroneous belief that such products are patented,

when such is not the fact; and, acting in such erroneous belief, the said purchasing public have been induced to purchase, and have purchased respondents' products, thereby diverting trade to the respondents from their competitors.

PAR. 6. The Commission further finds that the use by respondent Morris White Mfg. Co., Inc., of the words "Glove Leather" as a brand, stamp, or label, to describe its products, had, and now has the capacity and tendency to mislead and deceive, and has misled and deceived a portion of the purchasing public into the erroneous belief that the leather of which such products are manufactured is the same as that from which gloves are generally made, and is "Glove Leather," when such is not the fact; and, acting in such erroneous belief, the said purchasing public have been induced to purchase, and have purchased respondent's products, thereby diverting trade to respondent from its said competitors.

PAR. 7. There are, among the competitors of respondents, dealers and distributors of similar products used for similar purposes who do not in any way misrepresent their said products to purchasers thereof.

CONCLUSION

The aforesaid acts and practices of said respondents as herein found are all to the injury and prejudice of the public, and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before W. W. Shepard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief on behalf of the Commission filed herein by Alden S. Bradley, counsel for the Commission (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 have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Morris White Mfg. Co., Inc., and Stylecraft Leather Goods Co., Inc., their respective officers, representatives, agents, and employees, directly or through any corporate

or other device, in connection with the offering for sale, sale, and distribution of leather goods in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist:

(a) From representing, through the use of the words "Imported French Glove Leather," as descriptive of the leather of which their leather goods are made, that such leather is "glove leather" or has the pliability of "glove leather" unless and until "glove leather" is actually used in making such leather goods.

(b) From representing, through the use of the word "Pat.," in connection or conjunction with a number or numbers attached to or affixed upon leather goods, that the particular leather goods to which the same are attached or affixed, are patented, unless and until the same are actually patented.

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

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IN THE MATTER OF
**ARGO PEN-PENCIL COMPANY, INC., AND HARRY
 SACHNOFF**

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

Docket 8169. Complaint, July 7, 1937—Decision, Feb. 7, 1939

Where a corporation and an individual engaged at same address in assembling fountain pens and pencils, and in selling assembled products to jobbers and dealers in other States, in competition with fountain pens and pencils of other dealers, assemblers, and manufacturers also engaged in interstate commerce—

Caused to be stamped or imprinted upon certain of the pen points used by them in the fountain pens which they assembled, figure and letters "14K" or "14KT," in prominent and conspicuous type, together with words "Durium" or "Duripoint," as case might be, and words "Gold plate" in type of approximately half the size of numbers and letters "14KT," and at a distance therefrom so as to be completely, or almost completely, obscured through insertion of pen points to sufficient degree within barrel of pens, and thus imitated and simulated the stamping or marking on gold pen points of 14 karat fineness and carried false impression that their said products were composed of some kind of gold or of gold alloy of such fineness, facts being they were made from stainless steel thinly gold plated;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into the erroneous belief that all said representations were true, and with result, as direct consequence of such belief thus induced, that a number of the consuming public purchased a substantial volume of its said products, and trade was unfairly diverted to it from those engaged in preparation, distribution and sale of fountain pens in commerce, and who truthfully brand or label the same; to the injury of competition in commerce among the States and in the District of Columbia:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Morton Nesmith for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the Argo Pen-Pencil Co., Inc., a corporation, and Harry Sachnoff, an individual, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said

act, 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, Argo Pen-Pencil 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 place of business at 220 Broadway, in the city of New York, State of New York. The respondent, Harry Sachnoff, is an individual, doing business at the same address. The respondents, Argo Pen-Pencil Co., Inc., and Harry Sachnoff, are engaged in the business of assembling, selling, and distributing fountain pens and pencils at wholesale, between and among the different States of the United States. The respondent, Harry Sachnoff, is the president of, and owner of virtually all of the capital stock of, the Argo Pen-Pencil Co., Inc. In the course and conduct of their said business the respondents have caused and still cause the fountain pens and pencils in which they deal to be transported from their said place of business in New York into and through other States of the United States to various retailers located at points in such other States. Said respondents are in competition with other individuals, partnerships and corporations engaged in the business of assembling, selling, and transporting fountain pens and pencils in commerce between and among the several States of the United States.

PAR. 2. The respondents, Argo Pen-Pencil Co., Inc., and Harry Sachnoff, in the course and conduct of their said business as aforesaid, in soliciting the sale of and selling their fountain pens and pencils in interstate commerce, have caused and still cause to be stamped or imprinted upon certain of the pen points which they use in the fountain pens so assembled by them, the following:

Duripoint

14

KT.

Gold plate

Said fountain pens so assembled with the above-described and imprinted pen point, have been and are sold by the respondents in commerce as herein described. The words "Gold plate" appearing on the above-described pen points are imprinted or stamped below and at such a distance from the figures and letters "14 KT." that when the pen points are inserted to a sufficient degree within the barrel of the pens, the said words "Gold plate" are completely or almost completely obscured or concealed. As a result, when the pen point is inserted to a sufficient degree in the barrel of the pen with only the remaining letters, words, and figures, "Duripoint, 14 KT." appearing, said words, letters, and figures imitate and simulate the stamping and marking on solid

gold pen points of 14 carat fineness and carry the impression that respondents' products are composed of some kind of gold or gold alloy of 14 carats in fineness.

PAR. 3. In truth and in fact the pen points which respondents cause to be imprinted or stamped "Duripoint 14 KT. Gold plate" are manufactured from steel or chrome rustless steel, thinly electroplated by a gold wash process. Said points are not composed of gold or a gold alloy and are not 14 carats in fineness.

PAR. 4. The respondents, Argo Pen-Pencil Co., Inc., and Harry Sachnoff, ship and deliver to their retail customers their fountain pens with the pen points so branded and stamped and said retailers resell said products to the consuming public so branded and stamped.

PAR. 5. There are among the competitors of the respondents many persons, firms, and corporations who manufacture, assemble, sell, and distribute fountain pens and pencils in interstate commerce and who truthfully brand or label their products.

PAR. 6. The acts, practices, and representations of the respondents herein detailed, in connection with the offering for sale and sale of its fountain pens, were calculated to, had and now have the capacity and tendency to mislead and deceive the purchasing public into the erroneous and mistaken belief that said pen points are made of gold or some gold alloy of the equivalent of 14 carats in fineness and into the purchase of respondents' fountain pens in and on account of such beliefs so induced. Further, the branding or stamping of said pen points by the respondents in the manner herein described places in the hands of retail dealers of their products an instrument and a means whereby such dealers may commit a fraud upon purchasers by inserting the pen points into the barrels of the pens to such an extent that the words "Gold plate" become wholly or partially concealed and not clearly readable if such had not theretofore been done and thus mislead and deceive said purchaser into the erroneous belief above described and into the purchase of said products on account thereof. As a result trade has been unfairly diverted from respondents' competitors and said competitors have been otherwise injured as a result of respondents' practices in interstate commerce.

PAR. 7. 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 7th day of July 1937, issued and served its complaint in this proceeding upon respondent Argo Pen-Pencil Co., Inc., and Harry Sachnoff, 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 failure of respondent to file answer thereto, testimony and evidence in support of the allegations of said complaint were introduced by Morton Nesmith, attorney for the Commission, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and evidence and brief in support of complaint (respondent having waived filing of brief); and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Harry Sachnoff is an individual doing business under the trade name and style of Argo Pen-Pencil Co., Inc. The respondent Argo Pen-Pencil Co., Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. The principal place of business of both respondents is located at 220 Broadway, city of New York, State of New York. Said respondent Harry Sachnoff is an individual doing business at the same address. Said respondents Argo Pen-Pencil Co., Inc. and Harry Sachnoff are engaged in the business of assembling and selling fountain pens and pencils at wholesale; said fountain pen parts are and were purchased from various manufacturers and dealers of said pens and assembled by respondents and sold and shipped from said respondents' place of business located in the State of New York to jobbers and dealers in various States of the United States other than the State of New York, and are sold in competition with fountain pens and pencils of other dealers, as-

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semblers, and manufacturers who are also engaged in interstate commerce.

PAR. 2. Said respondents, Argo Pen-Pencil Co., and Harry Sachnoff, in the course and conduct of their business as aforesaid, in soliciting the sale of and selling their fountain pens and pencils in interstate commerce, have caused and still cause to be stamped or imprinted upon certain of the pen points which they use in the fountain pens so assembled by them, the following:

Durium 14

K

Gold Plate

and

Duripoint

14Kt.

Gold Plate

Said fountain pens so assembled, with the above described and imprinted pen points, have been and are sold by respondents in commerce as herein described. The words "Gold plate" appearing on the above-described pen points are imprinted or stamped below and at such distance from the figures and letters "14Kt." that when the pen points are inserted to a sufficient degree within the barrel of the pens, the said words "Gold plate" are completely or almost completely obscured and concealed. As a result, when the pen point is inserted to a sufficient degree in the barrel of the pen with only the remaining letters, wording and figures "Durium 14K" and "Duripoint 14Kt." appearing, said words, letters, and figures imitate and simulate the stamping or marking on gold pen points of 14 karat fineness and carry the impression that said respondents' products are composed of some kind of gold or gold alloy of 14 carat in fineness.

In truth and in fact, the pen points which said respondents cause to be imprinted or stamped "Duripoint 14" and "Durium 14K" are not composed of gold or gold alloy and are not 14 carat fineness, but are manufactured from stainless steel and are thinly gold plated. Also, on said pen points the number and letters "14Kt." are in prominent and conspicuous type, and the words "Gold plate" are in type approximately half the size of said numbers and letters "14Kt."

PAR. 3. Each and all of the false and misleading statements and representations made by respondents as heretofore set forth in offering for sale and selling their products 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 these mistaken and erroneous beliefs induced by the acts and misrepresentations of said respondents as heretofore enumerated, a number of the consuming public purchased a substantial volume of respondents' products with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of preparing, distributing, and selling fountain pens in commerce among and between the various States of the United States who truthfully brand or label such fountain pens. In consequence 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.

CONCLUSION

The practices of said respondents under the conditions and circumstances described in the foregoing findings as to the facts are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 of the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Argo Pen-Pencil Co., Inc., a corporation, its officers, and respondent, Harry Sachnoff, and their respective agents and employees, directly or through any corporate or other device, in connection with the assembling, offering for sale, sale, and distribution of fountain pens and fountain pen points or nibs in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of brands, marks or stamping containing the letters "K" or "KT" either alone or in conjunction with any other letters, figures, words, or designs indicative of gold carat fineness, or through any other means or device, or in any manner that their plated fountain pen points or nibs are gold of any specific carat fineness or are gold.

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2. Using brands, marks, or stamping containing the letters "K" or "KT" in conjunction with other letters or words indicative of gold plating on their plated fountain pen points or nibs unless such letters or words indicative of gold plating appear in immediate conjunction with the letters "K" or "KT" in equally prominent and conspicuous type and are so located on said fountain pen points or nibs as to be incapable of being concealed.

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

Complaint

IN THE MATTER OF

THEODORE H. KOOLISH, INDIVIDUALLY AND TRADING
AS UNIVERSAL SPECIALTIES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3184. Complaint, July 22, 1937—Decision, Feb. 7, 1939*

Where an individual engaged in offer and sale of various articles of merchandise, including, among others, rotary and pendulum clocks, radios, electric shavers, and cameras; in soliciting and distributing his said products through various devices and plans of merchandising which he furnished and which involved operation of games of chance, gift enterprises, or lottery schemes through which such merchandise was distributed to consumers wholly by lot or chance—

Distributed to public certain literature, instructions, and sales outfits including paper push cards, order blanks, and advertisements depicting his merchandise, and certain circulars explaining his plan of selling same, under which merchandise premiums or prizes were allotted to operators of the cards, and in accordance with which, as case might be, customers paid for chances amounts determined by numbers pushed, or nothing, and as extra winners, in case of some, received for certain numbers Ever Sharp Pencils, and received clock or other item being thus distributed, in accordance with success or failure in selecting feminine name corresponding to that concealed under card's master disk, and thereby conducted lotteries, and placed in the hands of others means of conducting lotteries, in sale of his said merchandise, contrary to public policy as long established by the common law and criminal statutes and to an established policy of the United States Government, and in competition with those engaged in sale and distribution in similar commerce of like and similar articles and who do not sell their merchandise by use of lotteries or games of chance;

With result that many purchasers were attracted by element of chance involved in his said sales method, and were thereby induced to buy his said products in preference to same or similar goods of competitors who did not and do not use such or equivalent methods, and public, by reason of such preference, purchased substantial volume of his said goods and trade was unfairly diverted to him from competitors aforesaid:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, 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 Theodore H. Koolish, individually and trading as Universal Specialties Co., 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:

PARAGRAP^H 1. Respondent is an individual trading under the name and style, Universal Specialties Co., with his principal office and place of business located at 538 South Dearborn Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in offering for sale and selling various articles of merchandise, including, among others, clocks, radios, food mixers, toasters, roasters, washing machines, cameras, and automatic razors, to purchasers thereof located in various States of the United States. He causes said merchandise when sold to be shipped and transported from his 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 his business, respondent is in competition with other individuals and with partnerships and corporations 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 his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing his 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 his 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 disks marked "Push" below each of which is printed one of the feminine

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names printed alphabetically elsewhere on the cards. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the cards. The push cards have a master disk, 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:

Name Under Seal Receives
VENUS ROTARY CLOCK
 A New Modern Time Piece

| |
|--------------|
| Rotary Clock |
|--------------|

Beautiful
 Accurate
 Dependable

 No Hands
 No Face

| | |
|-----------------------|--------|
| NUMBER 33 RECEIVES | A |
| Fountain Pen Desk Set | \$5.00 |
| | VALUE |

NUMBERS 1 TO 29
 Pay what you draw
 NUMBERS OVER 29
 Pay Only 29¢
 NO HIGHER

| |
|------------|
| (Desk Set) |
|------------|

| |
|--------|
| (Seal) |
|--------|

The other push cards bear similar legends, but vary in detail. Such variations cover the merchandise to be distributed, the quantity thereof and the price to be paid therefor. 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 amount which a customer pays for a particular push is also determined wholly by lot or chance.

PAR. 3. Respondent, in selling his 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 his 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 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.

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 his 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 the Federal Trade Commission Act, the Federal Trade Commission, on July 22, 1937, issued, and on July 23, 1937, served its complaint in this proceeding upon the respondent, Theodore H. Koolish, individually and trading as Universal Specialties Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the said complaint, testimony, and other evidence in support of the allegations of the complaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by John A. Nash, attorney for the respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and

said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence, brief in support of the complaint (respondent not having filed brief), and oral argument not having been requested; 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 Theodore H. Koolish, is an individual trading under the name and style of Universal Specialties Co. with his principal office and place of business located at 538 South Dearborn Street, city of Chicago, State of Illinois.

Respondent is now and has been since September 1936, engaged in the business of offering for sale, selling, and distributing various articles of merchandise, including, among others, clocks, radios, food mixers, toasters, roasters, washing machines, cameras, and automatic razors, to purchasers thereof located in the various States of the United States and in the District of Columbia.

Respondent causes said merchandise, when sold, to be transported from his place of business in the State of Illinois to the purchasers thereof located at various points in States of the United States other than the State of Illinois and in the District of Columbia.

Respondent is now and has been in substantial competition with other individuals and with partnerships and with corporations likewise engaged in the sale and distribution of similar articles of merchandise 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 and distributing his merchandise respondent furnishes various devices and plans of merchandising which involves the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is distributed to the consumers wholly by lot or chance.

The methods used by respondent to sell his merchandise are as follows:

Respondent distributes to the public certain literature, instructions, and sales outfits, including paper push cards. Along with the foregoing the respondent also encloses order blanks and advertisements which contain illustrations and pictures of his merchandise. Respondent also encloses certain circulars which explain his plan of

selling the merchandise and of allotting it as premiums or prizes to the operators of the push cards.

Each of the aforesaid push cards bears a number of feminine names and on the reverse side of each card is a number of blank spaces opposite an alphabetical list of girls names for writing in the names of customers who purchase chances on the card.

Each push card has a corresponding number of partially perforated disks marked "Push." Below each disk is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. Each push card has a master disk, concealed within which is one of the feminine names.

When all the disks have been selected and the master seal removed, the person who selected the name corresponding to the name under the master seal receives the article of merchandise specified without further charge. In this manner respondent's merchandise was distributed to the public. Among the items so distributed by means of the push card are the following: The New Roxboro Pendulum Clock, the Venus Rotary Clock, the Automatic Vibro Shaver, V-16 Candid Camera, and the Marvel Electric Dry Shaver.

Customers pay in cents the amount of money indicated by the number revealed when the disk is punched or "pushed" by them.

On some of the cards customers selecting numbers higher than 29 paid only 29 cents and on other cards customers selecting numbers higher than 35 paid only 35 cents.

Many of the cards also designated four numbers as "Extra Winners" and customers selecting any one of the four numbers so designated on the face of said cards received Wahl Ever Sharp Pencils and other items of merchandise.

Customers selecting names which do not correspond with the name under the master seal receive nothing but the privilege of making a selection for the money which they pay, except customers selecting those numbers which are "Extra Winners," or the numbers designated on the card as free numbers.

In this manner the public is induced and persuaded into purchasing chances from said push cards in the hope of selecting a prize winning name or number and thus obtaining an article of merchandise for the price of 29 cents or 35 cents or less, or free of charge.

Respondent's merchandise is thus distributed to the purchasing public wholly by lot or chance, and the amount which a customer pays for a chance, or whether the same is free of charge is determined wholly by lot or chance.

By use of the method above described, the respondent has sold between 2,000 and 3,000 Rotary Clocks; between 1,000 and 1,200 Pendulum Clocks; between 300 and 400 Radios; between 2,000 and 3,000 Electric Shavers; and between 500 and 600 Cameras.

Sales by respondent of said merchandise have averaged between \$5,000 and \$6,000 monthly.

PAR. 3. The Commission finds that the respondent in selling his said merchandise in connection with the above-described push cards, conducted lotteries and placed in the hands of others the means of conducting lotteries in the sale of his merchandise.

The Commission further finds that the sale of the respondent's merchandise to the purchasing public, as hereinabove described, involves a game of chance, or the sale of a chance to procure respondent's merchandise, and that the use of said lottery method in the distribution of merchandise 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 policy of the Government of the United States.

PAR. 4. There are among the competitors of respondent, individuals, firms, partnerships, and corporations also engaged in the business of selling and distributing in similar commerce, like and similar articles of merchandise, who do not sell their merchandise by use of lotteries or games of chance.

Many purchasers of respondent's merchandise were attracted by the element of chance involved in respondent's sales method and were thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who did not and who do not use the same or equivalent methods.

Because of the said preference the public has purchased a substantial volume of respondent's merchandise with the result that trade has been unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent, as hereinabove found, 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 the Federal Trade Commission Act.

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 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, brief filed herein by counsel for the Commission (respondent having filed no brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Theodore H. Koolish, individually and trading as Universal Specialties Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with offering for sale, sale, and distribution of clocks, radios, food mixers, toasters, roasters, washing machines, cameras, and automatic razors, or any other articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of, others push or pull cards, punchboards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents or to distributors or members of the public push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable such persons to sell or distribute any merchandise by the use thereof.

3. Selling, or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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

Syllabus

IN THE MATTER OF
MASTER DISTRIBUTING CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914*Docket 3401. Complaint, May 5, 1938—Decision, Feb. 7, 1939*

Where a corporation engaged in offer and sale of compacts, flashlights, clocks, cameras, and various other articles of merchandise, to purchasers in the various States and in the District of Columbia; in soliciting sale of and selling its said products through various devices and plans of merchandising which it furnished and which involved operation of games of chance, gift enterprises, or lottery schemes through which such merchandise was distributed to ultimate consumers thereof wholly by lot or chance—

Distributed to purchasing public certain advertising literature including cards, order blanks, advertisements depicting its said products, and circulars and instructions and suggestions relative to and explaining its said plans of selling such products, under which merchandise was allotted as premiums or prizes to operators of the cards, and in accordance with which, and card's explanatory legend, customer paid for chance varying amounts in accordance with number pushed, and certain numbers and last punch or push entitled customer to "\$2.00 value" pen set, and customer secured camera or other item being thus disposed of, in accordance with success or failure in selecting feminine name corresponding to that concealed under card's master seal, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its merchandise in accordance with such or similar plan involving game of chance or sale of a chance to procure an article of merchandise without cost or at a price much less than normal retail price thereof and of a value, in any event, exceeding cost of single push, and plan under which the various articles were distributed to purchasing public wholly by lot or chance and amount paid by customer was thus determined, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use such 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 persons were attracted by its said method and by element of chance involved in sale of such merchandise as above set forth, and were thereby induced to buy and sell its said products in preference to those offered and sold by such competitors who do not use such or equivalent methods, and with effect, by reason of such game of chance, of unfairly diverting substantial trade and custom in such commerce to it from its competitors aforesaid:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Mr. Saul S. Goldman, of New York City, for respondent.

Complaint

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Master Distributing Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 18 East Forty-eighth Street, New York, N. Y. Respondent is now, and for some time last past has been, engaged in offering for sale and selling compacts, flashlights, clocks, cameras, cigarette cases, razors, watches, and other articles of merchandise, to purchasers thereof located in the various States of the United States and in the District of Columbia. It causes and has caused said merchandise when sold to be shipped or transported from its place of business in the State of New York into and through the various States of the United States and the District of Columbia, to 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 various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is in competition with other corporations, and with individuals and partnerships engaged in the sale and distribution of like and similar articles of merchandise 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 in selling and distributing its merchandise through 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 method and sales plan adopted and used by respondent was, and is, substantially as follows:

Respondent causes and has caused to be distributed to the purchasing public in interstate commerce certain advertising literature, including, among other things, push cards, order blanks, advertise-

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ments containing illustrations of merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to operators of the push cards. Such 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, on 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 card. The push cards have a master seal, 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:

Push out squares with pencil

The only ALL PURPOSE CAMERA

Takes 16 M. M. movies.

Takes Snapshots

Takes Movie Books

do not remove
seal until all
are punched
[SEAL]

IT'S SENSATIONAL

\$17.50
nothing like
it at any
price!

| |
|------------------------------------------------------------------------------------------------|
| Name under seal receives \$17.50 Movie Camera 11¢ to 35¢ numbers over 35 pay only 35¢ |
|------------------------------------------------------------------------------------------------|

\$2.00 value
numbers 25, 50
and last punch
receive pen set

WRITE YOUR NAME OPPOSITE NAME YOU SELECT IN SPACE ON
BACK OF CARD

Sales of respondent's products by means of said push cards are made in accordance with the specified legends or instructions. Said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of greater value than the cost of a single push from said push cards. The purchasing public is thus induced and persuaded to purchase pushes from said cards in the hope that they may select a prize winning name or number and thus obtain an article of merchandise of greater value than the amount paid therefor. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is determined wholly by lot or chance.

Respondent furnishes his representatives with additional printed instructions or suggestions for using such push cards. One of the printed instructions bears the following legend, to wit:

INSTRUCTIONS

There are 76 numbers in this card printed from 11 upward. Numbers 11 to 35 pay what numbers call for. All numbers over 35 pay only 35 cents. When card is completely sold, open large seal and party who selected the corresponding name receives one \$17.50 3-in-1 Moviematic Camera.

Respondent furnishes or sells various push cards for use in the sale and distribution of its merchandise by means of a game of chance, gift enterprise, or lottery scheme. Said push cards are similar, varying only in detail, and the above-described sales plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its 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 is contrary to the established public policy of the Government of the United States and in violation of criminal laws.

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 an article of merchandise without cost or at a price much less than the normal retail price thereof. 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 of such merchandise 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, unfairly divert substantial trade and custom in said commerce 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 prejudice of the public and of respondent's competitors and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 5, 1938, issued, and on May 7, 1938, served its complaint in this proceeding upon respondent, Master Distributing 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, 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the 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 is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 18 East Forty-eighth Street, New York, N. Y. Respondent is now, and for some time last past has been, engaged in offering for sale and selling compacts, flash-lights, clocks, cameras, cigarette cases, razors, watches, and other articles of merchandise, to purchasers thereof located in the various States of the United States and in the District of Columbia. It causes and has caused said merchandise when sold to be shipped or transported from its place of business in the State of New York into and through the various States of the United States and the District of Columbia, to purchasers thereof at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is in competition with other corporations, and with individuals and partnerships engaged in the sale and distribution of like and similar articles of merchandise 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 in selling

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and distributing its merchandise, 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 method and sales plan adopted and used by respondent was, and is, substantially as follows:

Respondent causes and has caused to be distributed to the purchasing public certain advertising literature, including, among other things, push cards, order blanks, advertisements containing illustrations of merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to operators of the push cards. Such 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, on 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 card. The push cards have a master seal, 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:

Push out squares with pencil

The only ALL PURPOSE CAMERA

Takes 16 M.M. movies

Takes Snapshots

Takes Movie Books

do not remove
seal until all
are punched
[SEAL]

IT'S SENSATIONAL

\$17.50
Nothing like
it at any
price!

Name under seal receives
\$17.50 Movie Camera
11¢ to 35¢ numbers over
35 pay only 35¢

\$2.00 value num-
bers 25, 50 and
last punch receive
pen set

WRITE YOUR NAME OPPOSITE NAME YOU SELECT IN SPACE ON BACK OF CARD

Respondent furnishes his representatives with additional printed instructions or suggestions for using such pushcards. One of the printed instructions bears the following legend, to wit:

INSTRUCTIONS

There are 76 numbers in this card printed from 11 upward. Numbers 11 to 35 pay what numbers call for. All numbers over 35 pay only 35 cents. When card is completely sold, open large seal and party who selected the corresponding name receives one \$17.50 3-in-1 Moviematic Camera.

Sales of respondent's products by means of said push cards are made in accordance with the specified legends or instructions. Said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of greater value than the cost of a single push from said push cards. The purchasing public is thus induced and persuaded to purchase pushes from said cards in the hope that they may select a prize-winning name or number and thus obtain an article of merchandise of greater value than the amount paid therefor. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is determined wholly by lot of chance.

Respondent furnishes or sells various push cards for use in the sale and distribution of its merchandise by means of a game of chance, gift enterprise or lottery scheme. Said push cards are similar, varying only in detail, and the above-described sales plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its 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 is contrary to the established public policy of the Government of the United States and in violation of criminal laws.

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 an article of merchandise without cost or at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above 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 of such merchandise 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, be-

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cause of said game of chance, has the tendency and capacity to, and does, unfairly divert substantial trade and custom in said commerce to respondent from its said competitors who do not use the same or an equivalent method.

CONCLUSION

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 the Federal Trade Commission Act.

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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Master Distributing Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of, compacts, flashlights, clocks, cameras, cigarette cases, razors, watches, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to its agents or to distributors, or to members of the public, push cards or other lottery devices so prepared or printed as to enable such persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push cards or other lottery devices.

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

Syllabus

IN THE MATTER OF
AARON N. SAUER TRADING AS NATION-WIDE
DISTRIBUTORS

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

Docket 3407. Complaint, May 6, 1938—Decision, Feb. 7, 1939

Where an individual engaged in sale and distribution of electric razors, pen and pencil sets, leather wallets, chinaware, and various other articles of merchandise, to purchasers in other States and in the District of Columbia, in competition with others engaged in sale and distribution of like and similar articles of merchandise in commerce and in said District—

- (a) Advertised in magazines of interstate circulation, and distributed or caused to be distributed to representatives and prospective representatives, in selling and distributing his said articles by means of a game of chance, gift enterprise, or lottery scheme, among other advertising literature, sales circulars including list of number of items of merchandise and pull cards for distribution of said products under a plan or scheme in accordance with which particular article of merchandise and price to be paid therefor and value or apparent value to be secured were dependent upon legend revealed by removal of tab of card selected by chance by purchaser and under which operator of card was compensated by premium for sale of merchandise, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of his said products in accordance with aforesaid or similar plans as above set forth, involving game of chance or sale of a chance to procure articles of merchandise at a price much lower than apparent normal retail price thereof, contrary to established public policy of the United States Government, and in violation of the criminal laws, 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 any 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 of said products as above described, and thereby induced to buy and sell such merchandise in preference to that offered and sold by competitors who do not use same or equivalent method, and with effect of unfairly diverting trade and custom to him from his said competitors, and with tendency and capacity to exclude from novelty merchandise trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful; to the substantial injury of competition in commerce; and

- (b) Made such false, deceptive, and misleading statements and representations in his aforesaid advertising matter as "Gifts or cash yours *absolutely* without cost," "Extra Surprise Gift," "Special Offer—2 Extra Gifts Free," and thereby misled and deceived substantial part of purchasing public in the several States and in said District, through inducing them mistakenly to believe that he was giving away certain articles of merchandise without cost to such representatives, facts being none of said premiums or so-called

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gifts were given away free or without cost, but they were either purchased by said representatives with labor or price thereof was included in that of other articles which representatives were required to sell or procure sale of before said premiums or so-called gifts could be secured by them; With effect of misleading and deceiving substantial portion of purchasing public into the erroneous belief that such statements and representations were true, and into purchase of substantial quantities of said products as a result of such erroneous belief, and of unfairly diverting trade to him from competitor manufacturers and distributors of like and similar products who do not make such false, deceptive and misleading statements and representations concerning the method of sale and distribution of their goods; to the substantial injury of competition in commerce:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Mr. Bernard Austin, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Aaron N. Sauer, individually and trading as Nation-Wide Distributors, hereinafter referred to as respondent, has violated the provisions of the 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 Aaron N. Sauer is an individual doing business under the trade name of Nation-Wide Distributors, with his principal office and place of business located at 401 Broadway, New York City, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of electric toasters, watches, pen and pencil sets, jewelry ensembles, leather wallets, silverware sets, chinaware, dresser sets, cameras, cosmetics, razor blades, cigarette lighters, and other articles of novelty merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be shipped or transported from his place of business in the State of New York to purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States

and in the District of Columbia. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations likewise engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and distributes said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondent inserts advertisements in magazines of interstate circulation and distributes or causes to be distributed to representatives and prospective representatives, certain advertising literature, including, among other things a sales circular. Respondent's merchandise is distributed to purchasers thereof in the following manner: A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the respective prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached the tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and higher prices of some of said articles of merchandise as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article of greater value than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance. When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the

amounts called for and remitted the said sums to the respondent, the said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium which the representative receives as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull cards in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes various assortments of said merchandise and furnishes various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes the said pull cards 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 said merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which is contrary to the established public policy of the Government of the United States and which is in violation of the criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in commerce in competition with respondent as alleged above 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 method which 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 of said products 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 unfairly divert trade and custom to respondent from his said competitors and to exclude from the novelty merchandise trade all com-

petitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful. As a result thereof substantial injury is being and has been done to competitors of said respondent.

PAR. 5. In the course and conduct of his business as hereinabove related, respondent has caused various false, deceptive, and misleading statements and representations to appear in his advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Gifts or cash yours *absolutely* without cost.

Extra Surprise Gift.

Special Offer—2 Extra Gifts Free.

The effect of the foregoing false, deceptive and misleading statements, and representations of the respondent in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and in the District of Columbia, by inducing them to mistakenly believe that respondent is giving away certain of its said articles of merchandise without cost to the said representatives.

In truth and in fact, none of the respondent's premiums or so-called "gifts" are given away "free" or without cost, but said premiums or so-called "gifts" which are represented as being "free" to said representatives are either purchased with labor by them or the price of said premiums or so-called "gifts" is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before said premiums or so-called "gifts" can be procured by them.

PAR. 6. The use by respondents of the false, deceptive, and misleading statements and 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 statements and representations are true, and into the purchase of substantial quantities of said respondent's products as the result of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning the method of sale and distribution of their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and as a result thereof substantial injury is being done and has been done by

respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitutes unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 6, 1938, issued, and on May 13, 1938, served its complaint in this proceeding upon Aaron N. Sauer, individually and trading as Nation-Wide Distributors, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 7, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Aaron N. Sauer is an individual doing business under the trade name of Nation-Wide Distributors, with his principal office and place of business located at 401 Broadway, New York City, N. Y. Respondent is now, and for some time past has been, engaged in the sale and distribution of electric toasters, watches, pen and pencil sets, jewelry ensembles, leather wallets, silverware sets, chinaware, dresser sets, cameras, cosmetics, razor blades, cigarette lighters, and other articles of novelty merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be shipped or transported from his place of business in the State of New York to purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business,

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respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and distributes said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondent inserts advertisements in magazines of interstate circulation and distributes or causes to be distributed to representatives and prospective representatives, certain advertising literature, including, among other things a sales circular. Respondent's merchandise is distributed to purchasers thereof in the following manner: A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the respective prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached the tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and higher prices of some of said articles of merchandise as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article of greater value than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance. When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for and remitted the said sums to the respondent, the said respondent thereupon ships to said representative the mer-

chandise designated on said card, together with a premium which the representative receives as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull cards in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes various assortments of said merchandise and furnishes various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes the said pull cards 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 said merchandise and through the use thereof and by the aid of said method, is a practice of the sort which is contrary to the established public policy of the Government of the United States and which is in violation of the criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in said commerce in competition with respondent as found above 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 method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents said method and by the element of chance involved in the sale of said products 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 unfairly divert trade and custom to respondent from his said competitors and to exclude from the novelty merchandise trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful. As a result thereof substantial injury is being and has been done to

competition 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 hereinabove described, respondent has caused various false, deceptive, and misleading statements and representations to appear in his advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Gifts or cash yours *absolutely* without cost.

Extra Surprise Gift.

Special Offer—2 Extra Gifts Free.

The effect of the foregoing false, deceptive, and misleading statements and representations of the respondent in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and in the District of Columbia, by inducing them to mistakenly believe that respondent is giving away certain of its said articles of merchandise without cost to the said representatives.

In truth and in fact, none of the respondent's premiums or so-called "gifts" are given away "free" or without cost, but said premiums or so-called "gifts" which are represented as being "free" to said representatives are either purchased with labor by them or the price of said premiums or so-called "gifts" is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before said premiums or so-called "gifts" can be procured by them.

PAR. 6. The use by respondent of the false, deceptive, and misleading statements and 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 statements and representations are true, and into the purchase of substantial quantities of said respondent's products as the result of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive and misleading statements and representations concerning the method of sale and distribution of their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and as a result thereof substantial injury is being done 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.

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CONCLUSION

The aforesaid acts and practices of respondent as herein found 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 the Federal Trade Commission Act.

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 fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Aaron N. Sauer, individually and trading as Nation-Wide Distributors, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of electric toasters, watches, pen and pencil sets, jewelry ensembles, leather wallets, silverware sets, chinaware, dresser sets, cameras, cosmetics, razor blades, cigarette lighters, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of others, pull cards or circulars having pull tabs thereon, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon, or any other lottery device.

4. Using the terms "free" or "without cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing respondent's merchandise unless all of the terms and conditions of such offer are clearly and unequivocally stated.

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cally stated in equal conspicuousness and in immediate connection or conjunction with the terms "free" or "without cost" or any other terms of similar import or meaning and there is no deception as to the price, quality, character, or any other feature of such merchandise or as to the services to be performed in connection with obtaining such merchandise.

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
**LINWOOD SALES CO., INC., AND BERNARD ABRAMS AND
ABE S. WILLNER**

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

Docket 3414. Complaint, May 10, 1938—Decision, Feb. 7, 1939

Where a corporation and two individuals, officers thereof and in direction and control of its sales policies and business activities, acting together and in cooperation, and engaged in sale and distribution of razor blades, watches, china and silverware, umbrellas, and other articles of novelty merchandise to purchasers in other States and in the District of Columbia, in competition with others engaged in sale and distribution of similar and like articles in commerce and in said District—

- (a) Distributed or caused to be distributed to representatives and prospective representatives, in selling and distributing said products by means of a game of chance, gift enterprise, or lottery scheme, among other advertising literature, sales circulars including list of number of items of merchandise and respective prices thereof, and pull cards for distribution of said merchandise to purchasers under a plan or scheme in accordance with which particular article of merchandise and price to be paid therefor and apparent value to be secured, and additional article to be possibly received therewith as prize without additional cost, were dependent upon legend or disclosure revealed by removal of tab of card selected by chance by purchaser, and under which operator of card was compensated by premium for sale of merchandise thereby, and thereby supplied to and placed in the hands of others the means of conducting a lottery in the sale of their merchandise in accordance with aforesaid or other similar plans involving game of chance or sale of a chance to procure article of merchandise at price much less than apparent normal retail price thereof, and to procure additional article as prize without additional cost, contrary to the established public policy of the United States Government and in violation of criminal laws, 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 any other method contrary to public policy and refrain therefrom;

With the result that many persons were attracted by their said method and by element of chance involved in the sale of such merchandise as above described, and were thereby induced to buy and sell same in preference to that offered and sold by said competitors who do not use such or equivalent method, and with effect of unfairly diverting trade and custom to them from their said competitors, and with capacity and tendency to exclude from novelty merchandise trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful; to their substantial injury;

- (b) Made and caused to be made such statements and representations in their advertising matter as "Free—Beautiful and Useful Gifts—Free," "Beautiful, Useful Household Gifts at Absolutely No Cost," and others of similar tenor,

and "We Pay All Shipping Charges," and thereby misled and deceived substantial part of purchasing public in several States and in said District, through inducing them mistakenly to believe that they were giving away certain of their said articles without cost to their representatives, and that they prepaid all charges on their said articles;

Facts being none of said premiums or so-called gifts were given away free or without cost, but they were either purchased with labor by said representatives or price thereof was included in that of other articles which representatives had to sell or procure sale of before such premiums or so-called gifts could be obtained by them, and, in event of a number thereof, certain sums of money were also required to be paid by such representatives in addition to their labor or services, and said corporation and individuals did not prepay all of the charges on their said articles, but required payment of certain specified sums or shipping charges on a number thereof;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such statements were true and into purchase of substantial quantities of such products as a result thereof, and of unfairly diverting trade to them from competitor manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements concerning the method of sale and distribution thereof; to the substantial injury of competition in commerce:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Linwood Sales Co., Inc., a corporation, and Bernard Abrams and Abe S. Willner, individually and as officers of Linwood Sales Co., Inc., hereinafter referred to as respondents, have violated the provisions of the 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 Linwood Sales Co., Inc., 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 located at 101 Prince Street, New York, N. Y. Respondent Bernard Abrams is the president, and respondent Abe S. Willner is the secretary-treasurer of the corporate respondent, both of whom have their offices at the same place of business as said corporation. The individual respondents direct and control the sales policies and business activities of the corporate respondent and all of said respondents act together and in cooperation with each other in doing the acts and things hereinafter

alleged. Respondents are now, and for some time last past have been, engaged in the sale and distribution of razor blades, watches, china and silverware, clocks, cosmetics, dresser sets, umbrellas, bedding, and other articles of novelty merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be shipped or transported from their place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are in competition with other corporations and individuals and with partnerships 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 and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondents distribute, or cause to be distributed, to their representatives and prospective representatives, certain advertising literature including, among other things, a sales circular. Respondents' merchandise is distributed to the purchasers thereof in the following manner: A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the respective prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached the tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. The purchaser pulling the tab calling for a certain article of merchandise is entitled to and receives said article of merchandise, together with an additional article of merchandise as a prize without additional cost. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distrib-

uted to the purchaser for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise as compared to the prices the customer would be required to pay in the event he secures said articles, together with the chance of securing the prize given without extra charge to the person securing a specified article, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise having greater values and higher regular prices than the designated prices to be paid therefor. The fact as to which article of merchandise a purchaser receives, the amount to be paid, whether the article purchased is one which has greater value and a higher regular price than the amount to be paid, and whether the purchaser receives an additional article of merchandise as a prize without additional cost, are thus determined wholly by lot or chance.

When a person or representative operating a pull card had succeeded in selling all the tabs or chances, collected the amounts called for and remitted the said sums to the respondents, the said respondents thereupon ship to said representative the merchandise sold by means of said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card. Respondents sell and distribute various assortments of said merchandise and furnish various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plans or methods vary in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish the said pull cards use the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting a lottery in the sale of said merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their 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 is contrary to the established public policy of the Government of the United States and which is in violation of criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof, and to procure an

additional article of merchandise as a prize without additional cost. Many persons, firms, and corporations who sell and distribute merchandise in commerce as hereinabove defined in competition with the respondents 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 which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of such merchandise in the manner above described and are thereby induced to buy and sell respondents' merchandise in preference to 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 method by respondents, because of said game of chance, has the capacity and tendency to and does unfairly divert trade and custom to respondents from their said competitors and to exclude from the novelty merchandise trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful. As a result thereof substantial injury is being and has been done to said competitors of respondent.

PAR. 5. In the course and conduct of their business as hereinabove related, respondents cause and have caused various false, deceptive, and misleading statements and representations to appear in their advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Free—Beautiful and Useful Gifts—Free.

2 Extra Surprise Gifts Free.

Beautiful, Useful Household Gifts at Absolutely No Cost.

Now Everyone Can Get a Valuable Prize Absolutely Free.

We Pay All Shipping Charges.

The effect of the foregoing false, deceptive, and misleading statements and representations of the respondents in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and in the District of Columbia, by inducing them to mistakenly believe (1) that respondents give away certain of their said articles of merchandise without cost to their said representatives, and (2) that respondents prepay all charges on all of their said articles of merchandise.

PAR. 6. In truth and in fact, none of respondents' premiums or so-called gifts are given away "free" or "without cost," but said premiums or so-called gifts which are represented as being "free" to said representatives are either purchased with labor by them, or

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the price of said premium or so-called gift is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before the said premiums or so-called gifts can be procured by them. For a number of premiums or so-called gifts, certain sums of money must be paid by said representatives in addition to the labor performed or services rendered by them. Respondents do not prepay all of the charges on their said products, but require the payment of certain specified sums of money as shipping charges on a number of respondents' said articles of merchandise.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements and 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 statements are true, and into the purchase of substantial quantities of said respondents' products as the result of such erroneous belief. There are among the competitors of respondents, as mentioned in paragraph 1 hereof, manufacturers and distributors of like or similar products, who do not make such false, deceptive, and misleading statements concerning the method of sale and distribution of their products. By the statements aforesaid, trade is unfairly diverted to respondents from such competitors, and as a result thereof substantial injury is being done and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 10, 1938, issued, and thereafter served its complaint in this proceeding upon respondents Linwood Sales Co., Inc., and Bernard Abrams and Abe S. Willner, individually and as officers of Linwood Sales Co., Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, the respondents filed their answer, in which they admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and the

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answer thereof, 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 Linwood Sales Co., Inc., 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 located at 101 Prince Street, New York, N. Y. Respondent Bernard Abrams is the president and respondent Abe S. Willner is the secretary-treasurer of the corporate respondent, both of whom have their offices at the same place of business as said corporation. The individual respondents direct and control the sales policies and business activities of the corporate respondent and all of said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been, engaged in the sale and distribution of razor blades, watches, china and silverware, clocks, cosmetics, dresser sets, umbrellas, bedding, and other articles of novelty merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be shipped or transported from their place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are in competition with other corporations and individuals and with partnerships 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 and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondents distribute, or cause to be distributed, to their representatives and prospective representatives, certain advertising literature including, among other things, a sales circular. Respondents' merchandise is distributed to the purchasers thereof in the fol-

lowing manner: A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the respective prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached the tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. The purchaser pulling the tab calling for a certain article of merchandise is entitled to and receives said article of merchandise, together with an additional article of merchandise as a prize without additional cost. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the purchaser for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise as compared to the prices the customer would be required to pay in the event he secures said articles, together with the chance of securing the prize given without extra charge to the person securing a specified article, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise having greater values and higher regular prices than the designated prices to be paid therefor. The fact as to which article of merchandise a purchaser receives, the amount to be paid, whether the article purchased is one which has greater value and a higher regular price than the amount to be paid, and whether the purchaser receives an additional article of merchandise as a prize without additional cost, are thus determined wholly by lot or chance.

When a person or representative operating a pull card has succeeded in selling all the tabs or chances, collected the amounts called for and remitted the said sums to the respondents, the said respondents thereupon ship to said representative the merchandise sold by means of said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card. Respondents sell and

distribute various assortments of said merchandise and furnish various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plans or methods vary in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish the said pull cards use the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting a lottery in the sale of said merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their 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 is contrary to the established public policy of the Government of the United States and which is in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof, and to procure an additional article of merchandise as a prize without additional cost. Many persons, firms, and corporations who sell and distribute merchandise in commerce as hereinabove defined in competition with the respondents 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 which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of such merchandise in the manner above described and are thereby induced to buy and sell respondents' merchandise in preference to 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 method by respondents, because of said game of chance, has the capacity and tendency to and does unfairly divert trade and custom to respondents from their said competitors and to exclude from the novelty merchandise trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful. As a result thereof substantial injury is being and has been done to said competitors of respondent.

PAR. 5. In the course and conduct of their business as hereinabove described, respondents cause and have caused various false, deceptive, and misleading statements and representations to appear in their ad-

vertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Free—Beautiful and Useful Gifts—Free.

2 Extra Surprise Gifts Free.

Beautiful, Useful Household Gifts at Absolutely No Cost.

Now Everyone Can Get a Valuable Prize Absolutely Free.

We Pay All Shipping Charges.

The effect of the foregoing false, deceptive, and misleading statements and representations of the respondents in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and in the District of Columbia, by inducing them to mistakenly believe (1) that respondents give away certain of their said articles of merchandise without cost to their said representatives, and (2) that respondents prepay all charges on all of their said articles of merchandise.

PAR. 6. In truth and in fact, none of respondents' premiums or so-called gifts are given away "free" or "without cost," but said premiums or so-called gifts which are represented as being "free" to said representatives are either purchased with labor by them, or the price of said premium or so-called gift is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before the said premiums or so-called gifts can be procured by them. For a number of premiums or so-called gifts, certain sums of money must be paid by said representatives in addition to the labor performed or services rendered by them. Respondents do not prepay all of the charges on their said products, but require the payment of certain specified sums of money as shipping charges on a number of respondents' said articles of merchandise.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements and representations found 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 statements are true, and into the purchase of substantial quantities of said respondents' products as the result of such erroneous belief. There are among the competitors of respondents, as mentioned in paragraph 1 hereof, manufacturers and distributors of like or similar products, who do not make such false, deceptive, and misleading statements concerning the method of sale and distribution of their products. By the statements aforesaid, trade is unfairly diverted to respondents from such competitors, and as a result thereof substantial injury is being done and has been done by re-

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spondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

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 material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Linwood Sales Co., Inc., its officers, and Bernard Abrams and Abe S. Willner, individually, their respective representatives' agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of razor blades, watches, china and silverware, clocks, cosmetics, dresser sets, umbrellas, bedding, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, pull cards or circulars having pull tabs thereon or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to their agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon or any other lottery device.

4. Using the terms "free" or "without cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing respondents' merchandise

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unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the terms "free" or "without costs," or any other terms of similar import or meaning and there is no deception as to the price, quality, character, or any other feature of such merchandise, or as to the services to be performed in connection with obtaining such merchandise.

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
PREMIO SALES COMPANY, INC., AND ROSE SOMMERS,
INDIVIDUALLY AND AS AN OFFICER OF PREMIO
SALES 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 8489. Complaint, July 12, 1938—Decision, Feb. 7, 1939

Where a corporation and an individual, president and treasurer and principal stockholder thereof, who formulated, controlled, and directed its practices and policies, acting together and in cooperation and engaged in sale and distribution of clocks, watches, cameras, silverware, and various other articles of merchandise to purchasers in the various States and in the District of Columbia, in competition with others engaged in similar sale and distribution of similar or like articles—

- (a) Distributed to representatives and prospective representatives, in selling and distributing their said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme, among other advertising literature, sales circulars consisting of lists on which were designated a number of items of merchandise and prices thereof, and pull card for distribution of said products under a plan or scheme in accordance with which particular article of merchandise and price to be paid therefor and value or apparent value to be secured were dependent upon matter disclosed by removal of particular tab of card selected by chance by customer, and operator of card was compensated by premium for sale of merchandise, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their merchandise in accordance with aforesaid or other similar sales plan, involving game of chance or sale of a chance to procure an article of merchandise at a price much less than apparent normal retail price thereof, contrary to an established public policy of the United States Government, and in violation of criminal laws, 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 any method contrary to public policy, and refrain therefrom;

With result that many were attracted by their said method and element of chance involved in sale of such merchandise as above described and were thereby induced to buy and sell their said merchandise in preference to that offered and sold by said competitors who do not use same or equivalent method and substantial trade and custom were unfairly diverted to them from their competitors aforesaid;

- (b) Caused to appear in their advertising matter such statements as "EXTRA SPECIAL SURPRISE GIFT WORTH HAVING FREE," "HOW TO GET YOUR FREE GIFTS," and "FREE—GIFTS FOR ALL—FREE"; facts being none of their so-called premiums or gifts were given away free or without cost but such so-called premiums or gifts thus represented as free or without cost to the said representatives were either purchased with their labor or prices thereof were included in the prices of other articles of merchandise which they had to sell or procure sale of before said so-called premiums or gifts could be procured by them;

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With effect of misleading substantial portion of the purchasing public into the erroneous belief that such statements and representations were true and into purchase of substantial quantities of their products as a result of such erroneous belief, and with result that substantial trade was unfairly diverted to them from competitor manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning the same; to the substantial injury of competition in commerce:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Premio Sales Co., Inc., a corporation, and Rose Sommers, individually and as an officer of Premio Sales Co., Inc., hereinafter referred to as respondents, have violated the provisions of the 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 Premio Sales Co., Inc., 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 located at 427 Broadway, New York, N. Y. Respondent Rose Sommers is the president and treasurer of, and the principal stockholder in the respondent Premio Sales Co., Inc., and formulates, controls, and directs its practices and policies. Respondent Rose Sommers has her offices at the same address as that of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been engaged in the sale and distribution of clocks, watches, cameras, bedding, clothing, cigarette lighters and cases, silverware, chinaware, jewelry, dolls, kitchenware, pocketknives, pen and pencil sets, cosmetics, razor blades, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products when sold to be shipped or transported from their place of business aforesaid, to purchasers thereof located in the various States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade

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by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other corporations and individuals and with partnerships 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 and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondents distribute or cause to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondents' merchandise is and has been distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and

the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondents, said respondents thereupon ship to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute and have sold and distributed various assortments of said merchandise and furnish and have furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish and have furnished the said pull cards use and have used the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their merchandise and the sales of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal law.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondents, 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 method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of such merchandise in the manner above described, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the

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same or an equivalent method. The use of said method by respondents, because of said game of chance, has the capacity and tendency to, and does, unfairly divert trade and custom to respondents from their said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of their business as hereinabove related, respondents cause and have caused various false, deceptive, and misleading statements to appear in their advertising matter as aforesaid, of which the following are examples, but are not all-inclusive:

EXTRA SPECIAL SURPRISE GIFT WORTH HAVING FREE
HOW TO GET YOUR FREE GIFTS
FREE—GIFTS FOR ALL—FREE

PAR. 6. In truth and in fact, none of respondents' so-called premiums or gifts are given away "free," or without cost, but said so-called premiums or gifts which are represented as being "free" or without cost to said representatives are either purchased with labor by said representatives or the prices thereof are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements and representations aforesaid, 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 statements and representations are true, and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are, among the competitors of respondents, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondents from such competitors, and as a result thereof substantial injury is being done, and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 12, 1938, issued and thereafter served its complaint in this proceeding upon respondents, Premio Sales Co., Inc., a corporation, and Rose Sommers, individually and as an officer of Premio Sales Co., Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 7, 1939, the respondents filed their answer in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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. Respondent Premio Sales Co., Inc., 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 located at 427 Broadway, New York, N. Y. Respondent Rose Sommers is the president and treasurer of, and the principal stockholder in the respondent Premio Sales Co., Inc., and formulates, controls and directs its practices and policies. Respondent Rose Sommers has her offices at the same address as that of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been engaged in the sale and distribution of clocks, watches, cameras, bedding, clothing, cigarette lighters and cases, silverware, chinaware, jewelry, dolls, kitchenware, pocket-knives, pen and pencil sets, cosmetics, razor blades, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products when sold to be shipped or transported from their place of business aforesaid, to purchasers thereof located in the various States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in such merchandise in commerce between and

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among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other corporations and individuals and with partnerships 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 and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondents distribute or cause to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondents' merchandise is and has been distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull-card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondents, said respondents thereupon ship to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute and have sold and distributed various assortments of said merchandise and furnish and have furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish and have furnished the said pull cards use and have used the same in purchasing, selling and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their merchandise and the sales of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondents, as above 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 method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of such merchandise in the manner above described, and are thereby induced to buy and sell respondents' merchandise in preference to 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 method by respondents, because of said game of chance, has the capacity and tendency

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to, and does, unfairly divert substantial trade and custom to respondents from their said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of their business as hereinabove described, respondents cause and have caused various false, deceptive, and misleading statements to appear in their advertising matter as aforesaid, of which the following are examples, but are not all-inclusive:

**EXTRA SPECIAL SURPRISE GIFT WORTH
HAVING FREE
HOW TO GET YOUR FREE GIFTS
FREE — GIFTS FOR ALL — FREE**

PAR. 6. In truth and in fact, none of respondents' so-called premiums or gifts are given away "free," or without cost, but said so-called premiums or gifts which are represented as being "free" or without cost to said representatives are either purchased with labor by said representatives or the prices thereof are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements and representations aforesaid, 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 statements and representations are true, and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are, among the competitors of respondents, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid substantial trade is unfairly diverted to respondents from such competitors, and as a result thereof substantial injury is being done, and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the injury and prejudice of the public and of respondents'

competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Premio Sales Co., Inc., a corporation, its officers, and Rose Sommers, individually and as an officer of Premio Sales Co., Inc., and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of, clocks, watches, cameras, bedding, clothing, cigarette lighters and cases, silverware, chinaware, jewelry, dolls, kitchenware, pocket-knives, pen and pencil sets, cosmetics, razor blades, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to our placing in the hands of others, pull cards or circulars having pull tabs thereon or any other lottery device for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting, to their agents, or to distributors, or to members of the public, pull cards or circulars having pull tabs thereon or any other lottery device so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon or any other lottery device.

4. Using the terms "free" or "without cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing respondents' merchandise unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the terms "free" or "without cost," or any other terms of similar import or meaning and there is no deception

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as to the price, quality, character, or any other feature of such merchandise, or as to the services to be performed in connection with obtaining such merchandise.

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

Complaint

IN THE MATTER OF

THEODORE G. MILLER, INDIVIDUALLY, AND TRADING
AS AMERICAN SPORTSWEARCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3508. Complaint, July 22, 1938—Decision, Feb. 7, 1939*

Where an individual engaged in sale and distribution of clothing, radios, pen and pencil sets, and other articles of merchandise—

Furnished his customers with devices and plans involving operation of games of chance, gift enterprises, or lottery schemes in distribution of said merchandise to ultimate consumers wholly by lot or chance, and including explanatory circulars, order blanks, and push cards for use in distribution thereof under a plan or scheme in accordance with which customers paid for chance, amount determined by number pushed by chance, and person pushing certain number received certain pen and pencil set and person who succeeded in selecting from a list of 75 feminine names one corresponding to that concealed under card's master seal secured article of merchandise being thus disposed of, and operators of cards were compensated by premiums or prizes, and thereby placed in the hands of others means of conducting lotteries in the sale of his said merchandise, contrary to the established public policy of the United States Government and in competition with many who refrain from disposing of their merchandise by a method involving lottery or a game of chance as contrary to public policy;

With result that many persons were attracted by his said sales plan or method of distribution of his merchandise by element of chance involved therein, and were thereby induced to buy and sell his said products in preference to those offered and sold by his competitors who do not use such or similar methods of distribution and trade was thereby unfairly diverted to him from them:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Theodore G. Miller, individually, and trading as American Sportswear, has violated the provisions of 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, Theodore G. Miller, is an individual doing business under the name of American Sportswear, with his principal office and place of business located at 216 West Jackson Boulevard, Chicago, Ill. He is now and for some time last past has been engaged in the sale and distribution of clothing, radios, pen and pencil sets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be transported from his principal place of business aforesaid and from the city of Milwaukee, Wis., to purchasers thereof located in the various States of the United States and in the District of Columbia. There is now, and for some time last past has been, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing the merchandise in commerce, furnishes and 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 method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes, and has distributed, to the purchasing public in commerce certain literature and instructions including, among other things, push cards, order blanks, circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 75 feminine names with ruled columns on the reverse side thereof for recording the name of the customer opposite the feminine name selected. Said push card has 75 partially perforated disks marked "Push," below each of which is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal concealed in which is one of the feminine names appearing on the reverse side of said card. The push card bears printed legends or instructions as follows:

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Person Selecting
Name under Seal
Receives Choice of:

Do Not
Remove
Seal
Until
All
Sold

MEN'S GENUINE ELKSKEIN SPORT JACKET
or
LADIES' SPORT JACKET
With Beret to Match

Nos. 1 to 25 Pay What You Draw
Those Over 25 Pay Only 25¢

—EXTRA WINNER—

No. 33 Receives Fountain Pen and Pencil Set

Write Purchaser's Name Opposite Name Selected in Space Provided on the
Reverse Side of This Card

Respondent furnishes, and has furnished, his representatives with additional printed instructions or suggestions for using said push card which are as follows:

HOW TO USE SALES CARD

There is a number under each girl's name. These numbers range from one upwards but the person selecting the number pays only 1¢ to 25¢ according to the numbers selected. If 1 is punched 1¢ is paid. If 10 is punched 10¢ is paid, or if 50 is punched only 25¢ is paid. **NOTHING HIGHER THAN 25¢.** Total \$9.85.

When all names have been taken and collections made, the large seal at the top of the card is opened. The person who has selected the name corresponding to the name under that seal is entitled to one Ladies' or Men's Jacket.

The person selling the card also receives one Ladies' or Men's Jacket.

The person who has selected No. 33 receives the Fountain Pen and Pencil Set illustrated below.

Sales of respondent's products by means of said push card are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent furnishes, and has furnished, various push cards accompanied by a set of order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such push cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, said push cards use, and have used, 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 a 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 is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein 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 a tendency and capacity to, and does, unfairly divert trade to the respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of the respondent, as alleged herein, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent of meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 22, A. D., 1938, issued and served its complaint in this proceeding upon the respondent, Theodore G. Miller, trading as American Sportswear, 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 thereto, admitting all the material allegations of fact set forth in said complaint and waiving hearing and all intervening procedure.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Theodore G. Miller, is an individual doing business under the trade name of American Sportswear, and having his principal office and place of business at 216 West Jackson Boulevard, Chicago, Ill. Respondent is now, and for some time past has been, engaged in the sale and distribution of clothing, radios, pen and pencil sets, and other articles of merchandise, all of which are sold and shipped by him to purchasers in States other than the State in which respondent's place of business is located and from which said shipments are made. In the course and conduct of his business respondent has been and is in competition with other individuals, partnerships, and corporations engaged in the sale and distribution of like or similar articles of merchandise 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 said business, respondent furnishes and has furnished to his customers various devices and plans of merchandising which involve the operation of games of chance, gift enterprise, or lottery schemes, by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by the respondent is as follows:

Respondent furnishes his customers with push cards, order blanks, and circulars explaining his plan of selling merchandise and allotting his premiums or prizes, to the operators of said push cards. On said push cards appear 75 partially perforated disks marked "Push," below each of which is printed one of the feminine names appearing on the reverse side of the push card. The push card also contains a large master seal which conceals one of the feminine names. Respondent furnishes his representatives or customers with instructions for using said push cards, the method outlined being as follows:

The customer pushes the disk over the feminine name selected by him, thus disclosing a number which determines the amount to be paid by him in cents. These numbers range from 1 to 50, but those punching 25 or above are required to pay no more than 25 cents.

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When all the disks have been punched the master seal is broken and the person who has punched the disk over the same feminine name as that disclosed by the removal of the master seal receives choice of a "Man's Genuine Elkskin Sport Jacket," or "Lady's Sport Jacket with Beret to Match." The one who has punched the disk which discloses the number 33 receives a fountain pen and pencil set, and the person operating the push board, or selling the pushes, receives a lady's or man's jacket.

PAR. 3. The various other articles of merchandise sold and distributed by the respondent are sold by means of push cards similar to that hereinabove described, varying only in minor detail, and all of respondent's products are sold and distributed solely by lot or chance.

PAR. 4. Respondent, by the methods hereinabove described, places in the hands of others the means of conducting lotteries in the sale of his said merchandise, and the said method of sale and distribution of his products is contrary to the established public policy of the Government of the United States and is in violation of the criminal law.

PAR. 5. Many persons are attracted by respondent's sales plan or method of distribution of his merchandise by the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by respondent's competitors who do not use the same or similar methods of distribution. Many of respondent's competitors refrain from disposing of their merchandise by a method involving a lottery or game of chance, because such method is contrary to public policy, and, as a result, trade is unfairly diverted from such competitors to the respondent.

CONCLUSION

The practices of the respondent, as set forth in the aforesaid finding of facts, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce in violation of the Federal Trade Commission Act.

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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and

the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Theodore G. Miller, individually and trading as American Sportswear, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of clothing, radios, pen and pencil sets, or any other articles of merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents or to distributors or to members of the public push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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

IN THE MATTER OF
MILTON MEYER, TRADING AS REPUBLIC PRODUCTS
COMPANY AND INTER-COMMUNICATION SYSTEM OF
AMERICA

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

Docket 3537. Complaint, Aug. 16, 1938—Decision, Feb. 7, 1939

Where an individual engaged in sale and distribution in commerce of a line of dress materials, handkerchiefs, tableware, hosiery, quilting materials, and its "Flash-A-Call" intercommunicating system, to customers in other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of such various goods and products in commerce among the various States and in said District, and including those who do not in any manner misrepresent their business status or the quality or character of the dress materials and other goods and articles dealt in by them, as aforesaid, but make truthful representations in connection with sale and distribution of their merchandise; in advertising his said goods and products through circulars, postcards, folders, and other media circulated throughout the United States, and through newspapers and periodicals of general interstate circulation—

- (a) Represented as a "Bargain Sale" and "Special Introductory Offer" to secure new customers, offer of certain designated merchandise, including, among other items, "5 YARDS" of "LOVELY LARGE PRINTS AND FLORAL DESIGN QUILT PIECES," and handkerchiefs, for \$1.23, and that, as "A Special Offer" and "AN EXTRA GIFT FOR PROMPTNESS" in sending order and including 10 names and addresses of friends living at a distance, he would include certain yardage of "DRESS MATERIAL EXTRA AS AN ADDED GIFT" and added further "LIMIT—NOT MORE THAN TWO ORDERS OF ABOVE TO ANY ONE PERSON," facts being said \$1.23 offer was not a special introductory one, but was a continuous and standing one, and such price was charged for designated merchandise at all times, and the dress material referred to was not included for prompt acceptance of the offer, but was sent to any and all customers and there was no limitation whatsoever on number of orders which one purchaser could obtain, and he did not include said print and floral design quilt pieces;
- (b) Represented as among the items and material included in aforesaid so-called special offer, "BEAUTIFUL SILK OR VELVET QUILT PIECES" and "EMBROIDERED HANDKERCHIEFS," facts being said pieces were not made up of silk or velvet materials, but were composed entirely of rayon, and handkerchiefs were not embroidered but were cheap, inexpensive, and unembroidered; and
- (c) Included in his said advertisements statement "We are the largest sole manufacturers of intercommunicating units" and "Formerly sold \$100.00 up," facts being he did not manufacture his said "Flash-A-Call" intercommunicating units, but purchased same from others who did, and said system never sold for \$100 or more, or for more than its current price of \$12.50;

Complaint

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that said statements and representations were true, and with result that public, acting under mistaken and erroneous belief induced by such false and misleading statements and representations, purchased substantial volume of his said products and trade was diverted unfairly to him from his competitors who truthfully represent the dress materials and other goods and articles, as aforesaid, which they offer and sell:

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

Mr. S. Brogdyne Teu, II for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Milton Meyer, an individual trading as Republic Products Co. and Inter-Communication System of America, hereinafter referred to as respondent, has violated the provisions of the 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. Milton Meyer is an individual trading as Republic Products Co. and Inter-Communication System of America, with his principal office and place of business located at 2440 Lincoln Avenue, city of Chicago, State of Illinois.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the business of distributing and selling a line of dress materials, handkerchiefs, tableware, hosiery, quilting materials and an intercommunicating system designated and sold under the trade name "Flash-A-Call." Respondent causes said products when sold to be transported from his place of business in the State of Illinois to his customers located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products sold and distributed by him in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent is in active and substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of dress materials, handkerchiefs, tableware, hosiery, quilting materials,

and intercommunicating systems 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 said business and for the purpose of inducing the purchase of said dress materials, handkerchiefs, tableware, hosiery, quilting materials, and intercommunicating systems, respondent has made representations concerning the character, quality, and quantity of the products sold by him, and regarding his business status, by means of circulars, postcards, folders, and other advertising media circulated generally throughout the United States, and by means of advertisements inserted in newspapers and magazines having a general interstate circulation. Among said representations made by respondent the following are representative:

BARGAIN SALE! SPECIAL INTRODUCTORY OFFER!

DEAR MADAM:

To get new customers, we are offering the following for only \$1.23. We guarantee complete satisfaction or your money back. Send No Money! We will gladly ship C. O. D. plus postage.

YOU GET ALL THIS!

5 YARDS ($\frac{1}{8}$ lb.) LOVELY LARGE PRINTS AND FLORAL DESIGN QUILT PIECES

5 YARDS ($\frac{1}{8}$ lb.) BEAUTIFUL SILK OR VELVET QUILT PIECES.

Fast colors—excellent quality.

15 LOVELY PATTERNS

3 EMBROIDERED HANDKERCHIEFS

10 SPOOLS OF THREAD (State No. and Color)

1 SEWING OUTFIT

1 PAIR LADIES' PURE SILK HOSE (any size, any color)

This is A Special Offer

AN EXTRA GIFT FOR PROMPTNESS

For promptness in sending us your order and 10 names and addresses of your friends (All who live at a distance) we will include

4 YARDS OF BEAUTIFUL DRESS MATERIAL EXTRA AS AN ADDED GIFT

Suitable for Making Lovely Dresses



When sending in your order, mark

Yours truly,

here for the beautiful 3 PIECE REPUBLIC PRODUCTS CO.

TABLEWARE SET. This will be sent DEPT. 705,

with your order.

Box 716

Chicago, Ill.

LIMIT—NOT MORE THAN TWO ORDERS OF ABOVE TO ANY ONE PERSON

* * * * *
We are the largest sole manufacturers of inter-communicating units.
Formerly sold \$100.00 up.

All the said statements, together with similar statements appearing in respondent's advertising literature and newspaper advertisements, purport to be descriptive of respondent's products, his busi-

ness status, and the price of respondent's products. In all of his said advertising literature and newspaper advertisements and through other means, respondent, directly or by inference, represents: That he is making a special offer of certain designated merchandise for the price of \$1.23; that 5 yards of large print and floral design quilt pieces are included in the special offer; that 5 yards of silk or velvet quilt pieces are included in the special offer; that embroidered handkerchiefs are included in the special offer; that for promptness in accepting the special offer and forwarding the names and addresses of 10 friends there will be included in the special offer 4 yards of beautiful dress material as an extra added gift; that not more than 2 orders will be accepted from any one person; that he is the largest sole manufacturer of intercommunicating units, and that his "Flash-A-Call" intercommunicating system formerly sold for \$100 and up.

PAR. 5. The aforesaid representations made by respondent with respect to his products are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the respondent is not making a special introductory offer of certain designated merchandise for \$1.23. He does not include in his offer 5 yards of prints and floral design quilt pieces, nor does he include 5 yards of silk or velvet quilt pieces in his so-called special offer. Embroidered handkerchiefs are not included in the special offer. Four yards of dress material are not given as an added gift for prompt acceptance of the so-called special offer. More than two orders will be accepted from any one person. Respondent is not the manufacturer of intercommunicating units, and respondent's "Flash-A-Call" intercommunicating system did not formerly sell for \$100 or more.

PAR. 6. The true facts are, the so-called special offer of the respondent is not a special offer, but the \$1.23 is the price charged for the said products at all times. The 5 yards of so-called silk or velvet quilt pieces are not silk or velvet, but are rayon. The handkerchiefs are not embroidered handkerchiefs, but are cheap, inexpensive, unembroidered handkerchiefs. The respondent sends to any and all customers the so-called 4 yards of dress material whether the offer is promptly accepted or not. Anyone can place as many orders with respondent as they desire to do so, and the respondent does not limit any one purchaser to two orders. The respondent is not the largest manufacturer of intercommunicating units. He is not a manufacturer of intercommunicating units, but has the unit which he sells and distributes made for him by a manufacturer. The "Flash-A-Call" intercommunicating system of respondent never sold for more than the current price of \$12.50.

PAR. 7. There are among respondent's competitors many who do not in any way misrepresent the quality or character of their respective products or their business status.

PAR. 8. Each and all the false and misleading statements and representations made by the respondent in designating or describing his products and his business status as hereinabove set out were and are calculated to, and have had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. On account of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing dress materials, handkerchiefs, tableware, hosiery, quilting materials, and intercommunicating systems, who do not misrepresent the character and quality of their respective products or their true business status. As a consequence thereof 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. 9. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 16, 1938, issued, and on August 18, 1938, served, its complaint in this proceeding upon the respondent, Milton Meyer, trading as Republic Products Co. and Inter-Communication System of America, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 7, 1938, the respondent filed his answer, in which he admitted all the material allegations set forth in said complaint and waived all intervening procedure and further hearings as to the facts. 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 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, Milton Meyer, is an individual trading as Republic Products Co. and Inter-Communication System of America, with his principal office and place of business located at 2440 Lincoln Avenue, city of Chicago, State of Illinois.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the business of selling and distributing in commerce a line of dress materials, handkerchiefs, tableware, hosiery, quilting materials, and an intercommunicating system designated and sold under the trade name "Flash-A-Call." Respondent causes said products when sold to be transported from his place of business in the State of Illinois to his customers located in the State of Illinois and to his customers located in other States of the United States and in the District of Columbia.

The respondent maintains, and for more than 1 year last past has maintained, a course of trade in said products sold and distributed by him in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In conducting his business, respondent is in active and substantial competition with other individuals and with partnerships, firms, and corporations who are likewise engaged in the sale and distribution of dress materials, handkerchiefs, tableware, hosiery, quilting materials, and intercommunicating systems in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of his business and in order to induce the purchase of said dress materials, handkerchiefs, tableware, hosiery, quilting materials, and intercommunicating systems, respondent has made and now makes representations concerning the character, quality, and quantity of the products sold by him. Respondent also makes certain representations regarding his business status. All of these representations are made by means of circulars, postcards, folders, and other advertising media circulated generally throughout the United States, and also by means of advertisements inserted in newspapers and magazines having a general interstate circulation.

Said representations made by respondent are as follows:

BARGAIN SALE! SPECIAL INTRODUCTORY OFFER!

DEAR MADAM:

To get new customers, we are offering the following for only \$1.23. We guarantee complete satisfaction or your money back. Send No Money! We will gladly ship C. O. D. plus postage.

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YOU GET ALL THIS!

5 YARDS ($\frac{1}{3}$ lb.) LOVELY LARGE PRINTS AND FLORAL DESIGN QUILT
PIECES

5 YARDS ($\frac{1}{3}$ lb.) BEAUTIFUL SILK OR VELVET QUILT PIECES

Fast colors—excellent quality

15 LOVELY PATTERNS

3 EMBROIDERED HANDKERCHIEFS

10 SPOOLS OF THREAD (State No. and Color)

1 SEWING OUTFIT

1 PAIR LADIES' PURE SILK HOSE (any size, any color)

This is A Special Offer

AN EXTRA GIFT FOR PROMPTNESS

For promptness in sending us your order and 10 names and addresses of your friends (All who live at a distance) we will include—

4 YARDS OF BEAUTIFUL DRESS MATERIAL EXTRA AS AN ADDED
GIFT

Suitable for Making Lovely Dresses



When sending in your order, mark here
for the beautiful 3 PIECE TABLEWARE
SET. This will be sent with your order.

Yours truly,
REPUBLIC PRODUCTS
CO.,
DEPT. 705,
Box 716, Chicago, Ill.

LIMIT—NOT MORE THAN TWO ORDERS OF ABOVE TO ANY ONE
PERSON

* * * * *

We are the largest sole manufacturers of intercommunicating units.
Formerly sold \$100.00 up.

The Commission finds that all the above statements, together with similar statements appearing in respondent's advertising literature and newspaper advertisements, purport to be descriptive of respondent's products, his business status, and price of respondent's products.

The Commission further finds that in all of his said advertising literature, respondent, directly or by inference, has represented and now represents: That the offer to sell certain designated merchandise for the price of \$1.23 is a special offer; that 5 yards of large print and floral design quilt pieces are included in the special offer; that 5 yards of silk or velvet quilt pieces are included in the special offer; that embroidered handkerchiefs are included in the special offer; that for promptness in accepting the special offer and forwarding the

names and addresses of 10 friends there is included in the special offer 4 yards of beautiful dress material as an extra added gift; that not more than 2 orders are accepted from any 1 person; that he is the largest sole manufacturer of intercommunicating units, and that his "Flash-A-Call" intercommunicating system formerly sold for \$100 and up.

PAR. 5. The Commission finds that respondent's representations as set forth in paragraph 4 hereof are grossly exaggerated, false, misleading, and untrue.

In truth and in fact, the respondent's offer to sell certain designated merchandise for \$1.23 is not a special introductory offer. The offer to sell said designated merchandise for \$1.23 is a continuous and standing offer and the \$1.23 is the price charged for said certain designated merchandise at all times by respondent. Respondent does not include in said offer 5 yards of print and floral design quilt pieces, nor does he include 5 yards of quilt pieces which are composed of silk or velvet materials. The 5 yards of so-called silk or velvet quilt pieces referred to in respondent's so-called special offer are not made up of silk or velvet materials but are composed entirely of rayon material. The handkerchiefs which respondent offers as embroidered handkerchiefs are not embroidered but are cheap, inexpensive, and unembroidered handkerchiefs. Respondents does not include in said offer 4 yards of dress material for prompt acceptance of the offer, but sends the four yards of dress material to any and all customers. Respondent also accepts more than two orders from any one person and, in truth and in fact, no limitation whatsoever is placed on the number of orders one purchaser can obtain from respondent. Respondent does not manufacture inter-communicating units designated by respondent as "Flash-A-Call" but purchases said units from others who manufacture them. The "Flash-A-Call" intercommunication system of respondent never sold for the price of \$100 or more. In truth and in fact, said system never sold for more than the current price of \$12.50.

PAR. 6. There are among respondent's competitors individuals, firms, partnerships, and corporations who do not in any way misrepresent their business status or the quality and character of the dress materials, handkerchiefs, tableware, hosiery, quilting materials, and intercommunicating systems sold by them, but who make truthful representations in connection with the sale and distribution of their merchandise.

PAR. 7. The use by respondent of the acts and practices above found and set forth in offering for sale and selling his products, has had and now has, the tendency and capacity to, and does, mislead a

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substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true. Acting under the mistaken and erroneous belief induced by the false and misleading statements and representations herein above set forth, the public has purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to respondent from his competitors who truthfully represent the dress materials, handkerchiefs, tableware, hosiery, quilting materials, and intercommunication systems they offer for sale and sell.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Milton Meyer, individually, trading as Republic Products Co. and Inter-Communications System of America, or under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of dress materials, handkerchiefs, tableware, hosiery, quilt material, and intercommunicating systems in interstate commerce or in the District of Columbia do forthwith cease and desist from:

1. Representing that his usual and customary method of doing business by means of various combination offers of merchandise is a special introductory or other special or unusual sale.
2. Representing that purchasers will receive a larger number of items or quantity of merchandise than the number or quantity actually sold and shipped, or will receive merchandise of a different character or quality than that actually sold and shipped.

3. Representing that items of merchandise which are regularly included in respondent's combination offer are given as an added inducement for prompt purchase or service rendered.

4. Representing that the handkerchiefs sold by him or included in any combination offer are embroidered.

5. Using the word "silk" or any other word or words of similar import or meaning, to describe or designate fabrics or products which are not composed wholly of unweighted silk, the product of the cocoon of the silkworm.

6. Using the word "velvet" or any other word or words of similar import or meaning, to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, unless such descriptive word or words are used to designate the type of weave or construction, in which case such word shall be qualified by using in immediate connection and conjunction therewith, in letters of at least equal size and conspicuousness, a word or words clearly naming or describing the fiber or materials from which said product or fabric is made.

7. Advertising, offering for sale, or selling fabrics or any other products composed in whole or in part of rayon without clearly disclosing the fact that such fabrics or products are composed of rayon, and when such fabrics or products are composed in part of rayon and in part of other fibers or materials, such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

8. Representing that he is a manufacturer of intercommunicating systems or that his intercommunicating systems formerly sold for prices up to \$100 or for any price in excess of \$12.50.

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

ALBERT A. BACH AND JACK WALD, INDIVIDUALLY AND
TRADING AS NU-DEAL PREMIUM CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3578. Complaint, Sept. 9, 1938—Decision, Feb. 7, 1939*

Where two individuals engaged as partners in sale and distribution of bedding, clothing, dolls, chinaware, and numerous other articles of merchandise—
Distributed or caused to be distributed, in selling and distributing their said products by means of a game of chance, gift enterprise, or lottery scheme, to representatives and prospective representatives, among other advertising literature, sales circulars including list of number of items of merchandise and prices thereof and pull cards for use in distribution and sale of said products under a plan or scheme in accordance with which particular article of merchandise and price to be paid therefor and apparent value to be secured by purchasers of chance were dependent upon matter disclosed by removal of particular tab of cards selected by chance by purchaser and representative was compensated with premium for operation of card and sale of merchandise, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their merchandise in accordance with aforesaid sales plan involving game of chance or sale of a chance to procure article of merchandise at price much less than apparent normal retail price thereof, contrary to established public policy of the United States Government and in violation of criminal laws and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of chance to win by chance or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by their said method and by element of chance involved in sale of their said merchandise as above described and were thereby induced to buy and sell such merchandise in preference to that offered and sold by their said competitors who do not use such or equivalent method, and of thereby unfairly diverting trade and custom to them from their competitors aforesaid; to the substantial injury of competition in commerce:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Mr. Jack Desner, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Albert A. Bach

and Jack Wald, individually, and trading as copartners under the name of Nu-Deal Premium Co., hereinafter referred to as respondents, have violated the provisions of 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, Albert A. Bach and Jack Wald, are individuals doing business as copartners under the name of Nu-Deal Premium Co., with their principal office and place of business located at 2 West Twentieth Street, New York, N. Y. Respondents are now, and for some time last past have been, engaged in the sale and distribution of bedding, clothing, dolls, aluminum ware, tableware, chinaware, kitchenware, jewelry, cosmetics, watches, clocks, cameras, scales, suitcases, dresser sets, smoking stands, manicure sets, razor sets, lamps, ashtrays, cigarette cases, leather wallets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be shipped or transported from their place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other partnerships and individuals and with corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and distribute and have sold and distributed said products by means of a game of chance, gift enterprise, or lottery scheme. The respondents distribute or cause to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondents' merchandise is and has been distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set-out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of

merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives an article which has an apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondents, said respondents thereupon ship to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute and have sold and distributed various assortments of said merchandise and furnish and have furnished various pull cards for use in the sale and distribution of said merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish and have furnished the said pull cards use and have used the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others a means of conducting lotteries in the sale

of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their 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 is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondents, 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 which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of such merchandise in the manner above described, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use by respondents of said method, because of said games of chance, has the capacity and tendency to and does unfairly divert trade and custom to respondents from their said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 9, 1938, issued and thereafter served its complaint in this proceeding upon respondents Albert A. Bach and Jack Wald, individually and trading as copartners under the name of Nu-Deal Premium Co., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of

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the provisions of the said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order issued herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Albert A. Bach and Jack Wald, are individuals doing business as copartners under the name of Nu-Deal Premium Co., with their principal office and place of business located at 2 West Twentieth Street, New York, N. Y. Respondents are now, and for some time last past have been, engaged in the sale and distribution of bedding, clothing, dolls, aluminum ware, tableware, chinaware, kitchenware, jewelry, cosmetics, watches, clocks, cameras, scales, suitcases, dresser sets, smoking stands, manicure sets, razor sets, lamps, ashtrays, cigarette cases, leather wallets, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be shipped or transported from their place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other partnerships and individuals and with corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and distribute and have sold and distributed said products by means of a game of chance, gift

enterprise, or lottery scheme. The respondents distribute or cause to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondents' merchandise is and has been distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives an article which has an apparent greater value and higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondents, said respondents thereupon ship to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

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Respondents sell and distribute and have sold and distributed various assortments of said merchandise and furnish and have furnished various pull cards for use in the sale and distribution of said merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish and have furnished the said pull cards use and have used the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others a means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their 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 is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondents, as above 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 which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of such merchandise in the manner above described, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use by respondents of said method, because of said games of chance, has the capacity and tendency to and does unfairly divert trade and custom to respondents from their said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in com-

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merce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Albert A. Bach and Jack Wald, individually and trading as copartners under the name of Nu-Deal Premium Co. or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of bedding, clothing, dolls, aluminum ware, tableware, chinaware, kitchenware, jewelry, cosmetics, watches, clocks, cameras, scales, suitcases, dresser sets, smoking stands, manicure sets, razor sets, lamps, ashtrays, cigarette cases, leather wallets, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pull cards or circulars having pull tabs thereon or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to their agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon or other lottery devices so prepared or printed as to enable such persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon or any other lottery device.

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
JACOB ROTHMAN TRADING AS NEW YORK 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 3584. Complaint, Sept. 14, 1938—Decision. Feb. 7, 1939

Where an individual engaged in sale and distribution of watches, clocks, silver sets, smoking sets, and various other articles of merchandise—

Distributed to representatives and prospective representatives, in selling and distributing his said articles by means of a game of chance, gift enterprise, or lottery scheme, among other advertising literature, a sales circular including a list of a number of items of merchandise and prices thereof and pull card for use in sale and distribution of said products under a plan or scheme in accordance with which particular article of merchandise and price to be paid and apparent value to be secured by purchaser were dependent upon matter disclosed by removal of particular tab selected by chance by customer and representative was compensated by premium for operation of card and sale of said merchandise, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his said merchandise in accordance with aforesaid or similar sales plan, contrary to established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by his said method and by element of chance involved in the sale of his said merchandise as above described and were thereby induced to buy and sell such merchandise in preference to that offered and sold by said competitors who do not use such or equivalent methods; to the substantial injury of competition in commerce:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Jacob Rothman, individually, and trading as New York Sales Co., hereinafter referred to as respondent, has violated the provisions of the 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, Jacob Rothman, is an individual trading under the name of New York Sales Co. with his principal office and place of business located at 873 Broadway, New York, N. Y. Respondent is now and for some time last past has been engaged in the sale and distribution of watches, clocks, men's jackets, sets of china, silver sets, lamps, carving sets, smoking stands, stockings, tooth brushes, tooth paste, men and boys' ties, hair clippers, cigarette lighters, and other articles of merchandise, in commerce, between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be shipped or transported from his aforesaid place of business in the State of New York to purchasers thereof in the various other States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise 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 referred to in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, the said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes certain advertising literature, including a sales circular, to representatives and prospective representatives. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list in which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a "pull card." The said pull card consists of a number of tabs under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some

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of said articles of merchandise have purported retail values greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induce members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise the purchaser is to receive, and the amount of money which he is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amount called for, and remitted the said sums to respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull cards, in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme, but all of said cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said pull cards use, and have used, 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 said 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 said merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States, and in violation of the criminal laws.

PAR. 4. Many persons, firms, and corporations, who sell and distribute merchandise in competition with respondent, as above alleged.

are unwilling to adopt and use said method or any method which 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 of such merchandise 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 capacity and tendency to and does unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method and as a result thereof substantial injury is being done, and has been done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 14, 1938, issued and on September 15, 1938, served its complaint in this proceeding upon respondent, Jacob Rothman, individually and trading as New York Sales Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 7, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of the fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, Jacob Rothman, is an individual trading under the name of New York Sales Co., with his principal office and place of business located at 873 Broadway, New York, N. Y. Respondent is now and for some time last past has been

engaged in the sale and distribution of watches, clocks, men's jackets, sets of china, silver sets, lamps, carving sets, smoking stands, stockings, tooth brushes, tooth paste, men and boys' ties, hair clippers, cigarette lighters, and other articles of merchandise, in commerce, between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be shipped or transported from his aforesaid place of business in the State of New York to purchasers thereof in the various other States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise 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 referred to in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, the said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes certain advertising literature, including a sales circular, to representatives and prospective representatives. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list in which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a "pull card." The said pull card consists of a number of tabs under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported retail values greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices

of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induce members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise the purchaser is to receive, and the amount of money which he is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amount called for, and remitted the said sums to respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull cards, in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme, but all of said cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said pull cards use, and have used, 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 said 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 said merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States, and in violation of the criminal laws.

PAR. 4. Many persons, firms, and corporations, who sell and distribute merchandise in competition with respondent, as above found, are unwilling to adopt and use said method or any method which 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 of such merchandise in the

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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 capacity and tendency to and does unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method and as a result thereof substantial injury is being done, and has been 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 aforesaid acts and practices of respondent, as herein found, 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 the Federal Trade Commission Act.

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 fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Jacob Rothman, individually, and trading as New York Sales Co., or trading under any other name, his representatives, agents, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of watches, clocks, men's jackets, sets of china, silver sets, lamps, carving sets, smoking stands, stockings, tooth brushes, tooth paste, men and boys' ties, hair clippers, cigarette lighters, or any other articles of merchandise, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, pull cards or circulars having pull tabs thereon, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents or distributors, or to members of the public, pull cards or circulars having pull tabs

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thereon, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon, or any other lottery device.

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
FASHION ORIGINATORS GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., AND THEIR RESPECTIVE OFFICERS, DIRECTORS AND MEMBERS

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

Docket 2769. Complaint, Apr. 16, 1936—Decision, Feb. 8, 1939¹

Where a membership corporation which—

- (1) Was composed of manufacturers of women's garments and of textiles used in manufacture thereof, engaged in selling and shipping their products to dealers in other States and, as thus engaged, in competition among themselves and with other manufacturers who likewise sell and ship similar products; and
 - (2) Garment manufacturing members of which constituted a dominant factor in the women's garment manufacturing industry, with their products in such demand by the trade and the purchasing public that all retail dealers in women's garments, in order to meet competition and demand of consuming public, were compelled to stock and handle some of the lines made by said members; and
 - (3) Initial purpose or program of which, namely, the preventing of the copying for sale in commerce of alleged original creations in fashions and styles of women's garments, was later expanded and enlarged to cover designs of textiles used in manufacture of such garments and other practices and policies as below set forth; and
 - (4) Which instituted, as a part of its said program, a Design Registration Bureau for the registration of alleged original designs and styles of its women's garment manufacturer members, who were required to submit, on blank application forms furnished them, description of design and style of garments to be registered, together with sketch thereof and affidavit setting forth that it was applicant's original design, appointed so-called "piracy committee" to pass on issue of garments challenged as copies of styles and designs registered by its members, and employed "shoppers" in the principal cities to visit stores of cooperating retailers, check sale of garments declared by its aforesaid committee as such copies, request removal thereof from sale on the part of the particular retailer, and report failure so to do, and to visit also stores of noncooperating retailers, without disclosing identity, to ascertain whether or not such dealers have on sale copies of alleged original designs and styles of its members, and, if so, to report thereon;
- (a) Entered into and carried out agreements with three local guilds, members of which were respectively composed of retail dealers in women's wearing apparel located in the cities of Chicago, Minneapolis, and Baltimore, co-

¹ Order published as modified by Commission order dated March 29, 1939, which deleted one of the paragraphs in the original order.

operation of which it had sought and secured in furtherance of its objectives, under which such membership corporation or Fashion Guild agreed that its members would not (1) sell their products in the cities in which said local guilds were located to retailers who were not members in good standing of the latter, or who did not conform to their standards and regulations; (2) sell at retail to individual consumers or to persons conducting their business in residences, residential quarters, or in hotels or apartment buildings; (3) conduct off-price promotion sales or clearance sales prior to dates fixed by local guild; or (4) sell to any member of the local guild who violated any of the provisions of the agreement until such member was restored to good standing; and (5) agreed to suspend from membership any of its members breaching any of the provisions of such agreement; and

Where three local guilds of retail dealers in women's garments in the cities of Chicago, Minneapolis, and Baltimore, as aforesaid and in accordance with objectives above set forth—

- (b) Entered into and carried out agreements with said Fashion Guild, as above set forth, under which such respective local guilds agreed that their members would not (1) purchase from manufacturers who did not conform to the standard of ethics and regulation of said Fashion Guild; or (2) knowingly buy or sell copies of legitimately registered styles, and that they would (3) return any such copies as were found in their stock; (4) accept the decision of the "style piracy" division of said Fashion Guild on all questions of alleged design piracy; (5) stamp all their orders for merchandise with latter's warranty clause, which provided that the order was placed upon the seller's warranty that the garments in question were not copies of styles originated by members of such Fashion Guild, and purchaser reserved right to return any merchandise not as warranted; and (6) that they would suspend from membership any member violating any of the provisions of the agreement; and (7) agreed to refrain from purchasing from any member of the Fashion Guild who violated any of the provisions of the agreement, until such time as such member was restored to membership in good standing in said Fashion Guild; and

Where said Fashion Guild, following determination that its objectives would be best accomplished by securing cooperation of individual retailers in women's garments in territories which had no local guild, and distribution to retailers throughout the United States, for their signature, of its so-called "Declaration of Cooperation," under which retailer undertakes not to buy any copies of merchandise created by members of said Fashion Guild, to abide by decisions of its "piracy committee" and return such garments as are adjudged copies of its registered styles, to cooperate with it to the fullest extent in helping it to remove such copies from the market, to furnish it with such information in his possession as it may desire, and to affix to all of his apparel orders the aforesaid warranty clause, and, after attempting to secure voluntary cooperation of the retailers and their signatures through representing advantages thus to be derived, and having secured a number of such voluntary signatures—

- (c) Coerced, constrained, and compelled retail dealers to sign such declarations of cooperation under the threat that unless they did so the members of said Guild would refuse to sell to such retailers their products or to allow them to inspect their lines of merchandise, with result that such garment manufacturing members did refuse thus to exhibit or sell their goods to

retailers who failed or refused to sign such declarations or, having signed same, failed to comply with the requirements thereof; and

Where some 12,000 retail dealers in women's garments, and including well-known stores in the largest cities throughout the country, as a result, in the case of the majority thereof, of aforesaid coercive activities—

- (d) Signed such declarations of cooperation and returned same to the aforesaid Guild and thereafter refused to purchase garments which were determined by it to be copies of original registered styles or designs of its members, and generally complied with the terms of such declaration; and
- Where said Fashion Guild, after it had secured the cooperation of a large number of retailers—
- (e) Sought to and did induce many retailers not only to refuse to purchase alleged copies of original designs of its members, but also to refuse to purchase any of their requirements from manufacturers who copied original styles or designs of such Fashion Guild members;
 - (f) Entered, on a white card in a card index system which it inaugurated and maintained in order effectively to prevent purchase by retailers of alleged copies of original styles and designs registered by its members, names of cooperating retailers who had signed declaration of cooperation, and sent to each member duplicates of such cards, and prohibited its members from selling to any retail merchant whose name was not thus carded;
 - (g) Entered on a red card, duplicate of which was sent to each of its members, names of retailers who failed or refused to sign its said declaration, or who, having signed, failed or refused to take off sale garments adjudged by its "piracy committee" to be copies of registered original designs of a member, with result that members to whom such red-card duplicates were sent, in compliance with its regulations and requirements, refused to sell such red-carded retailers;
 - (h) Distributed also among its members lists of retailers who had failed or refused to sign its declaration or who, having signed same, failed or refused to remove from sale copies of alleged original designs or styles registered by the members, or who failed to comply with its rules and regulations, along with instructions that members receiving such lists were not to sell their merchandise to those whose names appeared thereon, with result that the members did thereafter refuse thus to sell such persons;
 - (i) Included also on its red-carded list, on which at one time appeared names of over 400 retail dealers located at various places throughout the United States, retailers who refused to disclose names of manufacturer from whom they purchased alleged copies, notwithstanding such retailers' removal of alleged copies from sale; and

Where the garment manufacturing members and the textile members of such Fashion Guild—

- (j) Entered into and carried out agreement that the former would not buy textiles which were not registered in the Industrial Design Registration Bureau maintained as a clearing house for registration of textile designs by said textile members' corporation, and textile members agreed to sell only to such garment manufacturers as became parties to said agreement; and

Where said textile corporation—

- (k) Notified manufacturers and converters of textiles used in the women's garment manufacturing industry, in trade journal advertisement, that

members of said Fashion Guild and other nonmember manufacturers of women's garments had signed pledges to use only textile designs which had been registered in said textile corporation's Industrial Design Registration Bureau; and

Where said Fashion Guild—

- (1) Passed a resolution that, as a means of preventing style piracy, its members would not buy from textile manufacturers who sold to retailers who entered into agreements with manufacturers to manufacture styles, and that they would not sell to retailers who resorted to such practice; and
- (m) Prohibited its members from participating in any manner whatsoever in any retail advertising, and fixed expulsion from the organization as penalty for violation of such resolution, which was complied with, and fixed definite maximum discount to be allowed by members, and prohibited members from selling at retail, by resolution, which they respected;
- (n) Cooperated, as above indicated, with aforesaid local guilds and in policies and programs above set forth, including attempt to prevent special sales except upon days designated by Guild, and refused to continue its affiliation with any retailer who failed to obey its rule prohibiting participation by retailers with dress manufacturers in promoting fashion shows unless merchandise used therein was actually purchased and delivered, and denied to such offending retailer all the privileges resulting from said affiliation, with result that, in compliance with its policy and program, its members refused to sell their garments at retail as aforesaid, or to persons conducting business in residences, residential quarters, hotels or apartment houses, and refrained from participating in fashion shows sponsored by retailers; and
- (o) Employed auditors who audited books of its members to ascertain whether they were selling red-carded retailers or violating any of its regulations, policies or programs, and imposed and collected fines on members shown by its auditors' reports or otherwise to have sold such retailers or to have violated any of its policies or programs, and notified membership that fine of \$1,500, collected in one instance, would be followed by one of \$5,000 in case of future violation;

With result that—

(1) Retail dealers in women's garments who had failed or refused to cooperate with said Fashion Guild or who, having signed its declaration, had failed or refused to remove from sale garments declared by it to be copies of registered original designs or styles of its members, were occasioned loss of good will and great financial loss by refusal of garment manufacturing members to sell such retailers their merchandise;

(2) Nonmember manufacturers of women's garments selling their products in interstate commerce were occasioned such financial loss due to return by retailers, in compliance with requirements of said Fashion Guild, of garments declared by it as copies of registered original styles or designs of members; and

(3) Manufacturers declared by said Fashion Guild as being confirmed copyists suffered great financial loss through the refraining, on the part of retail dealers induced and constrained so to do by said Fashion Guild, from purchasing any of their requirements from such manufacturers; and

With the results and effects, as a result of the cooperation with one another by said Fashion Guild and members, local guilds and retailers, and textile

corporation, in the conduct and consummation of aforesaid policies and programs of such Fashion Guild, and in pursuance of the understandings, arrangements, etc., above indicated, as entered into jointly and severally by them, and by reason thereof, that—

(1) Competitors of members of said Guild and said textile corporation were prevented from making sales of their products and shipments in interstate commerce, and competition therein in sale and shipment of women's garments and textiles used in manufacture thereof was substantially lessened, hindered and suppressed;

(2) Retail dealers in such products throughout the United States were prevented from buying their requirements from manufacturers boycotted by said Fashion Guild, and competition in such commerce in purchase and sale of said products was substantially lessened, hindered, and suppressed;

(3) Control over the business practices of a majority of the manufacturers and distributors of women's garments and textiles used in manufacture thereof, and power to exclude from the industry those manufacturers and distributors who do not conform to their rules and regulations, were obtained and exercised by said Fashion Guild and textile corporation, with tendency thereby to create in themselves a monopoly in such industries;

(4) Retail dealers in women's garments throughout the United States were constrained, coerced, and compelled to declare their intention to cooperate with said Fashion Guild in its policies and programs by signing the declaration of cooperation submitted by it, and those dealers in such products who failed or refused thus to sign, or who, having signed, failed to remove from sale garments found by said Guild to be copies of styles or designs registered as original creations of its members, were caused to suffer great financial loss and loss of good will because of refusal of members of Guild to sell their merchandise to them;

(5) Garment manufacturing members had the amount of discounts to be given by them to retail dealers fixed by it, and were prohibited from participating in retailers' fashion shown, and prevented from subsidizing retail advertising, and were fined by it for violation of its policies and programs; and

(6) Such members refused to sell their merchandise at retail or to persons conducting business in residences, residential quarters, hotels, or apartment houses, to buy from textile manufacturers that sold to retailers who entered into agreements with manufacturers to manufacture styles, or to retail dealers who entered into contracts with manufacturers for such purpose, or to purchase textiles from manufacturers who did not register their designs with the aforesaid registration bureau of said Textile Federation, or to sell to retail dealers in Chicago, Minneapolis, and Baltimore who were not members of the local guilds of said respective cities, or who did not conform to the rules and regulations of such guilds;

(7) Members of said local guilds confined their purchases of women's garments to members of said Fashion Guild and those manufacturers who conformed to its regulations, programs, and policies; and

(8) Textile members of said Fashion Guild refused to sell their products to manufacturers who entered into agreements with retail dealers to manufacture styles or to manufacturers who did not agree to purchase only from textile manufacturers who registered their designs with the Industrial Design Registration Bureau of said textile corporation:

Held, That such acts, policies, and practices as above set forth and indicated, and under the circumstances set forth therein, were to the prejudice of the public and competitors and constituted unfair methods of competition in commerce and tended to create monopoly within intent and meaning of Federal Trade Commission Act.

Before *Mr. John W. Bennett, Mr. Edward M. Averill, and Mr. Charles F. Diggs*, trial examiners.

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

Weisman, Quinn, Allen & Spett, of New York City, for Fashion Originators Guild of America, Inc., and its officers and members of respondent's board of governors, and, along with *Goldwater & Flynn*, of New York City, for *Austin M. DeLisser*, and *Duryee, Zunino & Amen*, of New York City, for *G. H. Conze*.

McLanahan, Merritt & Ingraham, of New York City, for National Federation of Textiles, Inc., and *Peter Van Vorn and Irene L. Blunt*.

Bondy & Schloss, of New York City, for *A. Traina Gowns, Inc.*

Reed, Smith, Shaw & McClay, of Pittsburgh, Pa., for *Joseph Horne Co.*

Taylor, Miller, Busch & Boyden, of Chicago, Ill., for *Mandel Bros., Inc.*

Saul, Ewing, Remick & Saul, of Philadelphia, Pa., for *John Wanamaker*.

Sundheim, Folz & Sundheim, of Philadelphia, Pa., for *Lit Brothers, Inc.*

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that each and all of the parties named in paragraphs 1 to 8, both inclusive 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, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Fashion Originators Guild of America, Inc., hereinafter referred to as respondent F. O. G. A., is a membership corporation organized March 7, 1932, under the laws of the State of New York, and is now existing under the laws of said State with its principal office and place of business located at 512 Seventh Avenue, in the city of New York, in said State. The membership of said corporation is divided into three groups as follows: (1) Ladies' Garment

Manufacturers, (2) Textile Merchants, and (3) Affiliated Members, consisting of retail dealers in ladies' garments and accessories. The following named individuals of the said city of New York are executive officers of respondent F. O. G. A. and as such are designated as respondents herein: Maurice Rentner, president and treasurer, 498 Seventh Avenue; Herbert Sondheim, first vice president, 530 Seventh Avenue; Charles Gumprecht, second vice president, 36 West Forty-seventh Street; J. A. Livingston, secretary, 498 Seventh Avenue; Albert M. Post, executive director, 512 Seventh Avenue; and James M. Golby, executive secretary, 512 Seventh Avenue.

The said respondent F. O. G. A. was organized for the ostensible purpose of establishing fair trade practices among its members and to carry out a style protective program to protect the originators of fashions and styles of ladies' garments against copying and piracy. As the organization of said respondent F. O. G. A. expanded to include textile merchants and retail dealers, it also sought to protect the originators of designs of fabrics and in addition to its regular membership established a division known as "Protective Affiliates" for those nonmember ladies' garment manufacturers who cooperated in the style protective program of the said respondent F. O. G. A.; and also designated the Industrial Design Registration Bureau of the respondent National Federation of Textiles, Inc., as its agency to register the designs of fabrics submitted by members of its said Textile Merchants Group.

PAR. 2. The membership of said Ladies' Garment Manufacturers Group of said respondent F. O. G. A. is divided into the following divisions: Dress Division, composed exclusively of manufacturers of ladies' and misses' dresses; Coat Division, composed exclusively of manufacturers of ladies' and misses' coats; Junior Miss Division, composed exclusively of manufacturers of junior misses' dresses; and the Sportswear Division, composed exclusively of manufacturers of ladies' sportswear.

From time to time the membership of said Ladies' Garment Manufacturers Group of said respondent F. O. G. A. and the aforesaid divisions thereof, is increased by the addition of new members, so that all the members of said group at any given point of time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impractical to name them all as individual respondents herein. Wherefore, the officers hereinbefore named as respondents as such officers, and the other members of the board of governors of said Ladies' Garment Manufacturers Group, hereinafter named, are also made respondents as representing all members of said group engaged in their respective lines of business, including those members not herein

specifically named. The following named individuals of New York City, compose the board of governors of the Ladies' Garment Manufacturers Group of respondent F. O. G. A. and as such are named as respondents herein:

Dress Division: William Bass, representing William Bass Dress Corporation, 550 Seventh Avenue; David Bender, representing Bender & Hamburger, Inc., 530 Seventh Avenue; Louis J. Brenner, representing Brenner, Morris, Inc., 498 Seventh Avenue; Theodore Racoosin, representing Germaine Monteil, Inc., 1440 Broadway; Miss Jo Copeland, representing Jo Copeland, Inc., 15 West 47th Street; Charles Lang, representing Charles Lang, Inc., 498 Seventh Avenue; William Fox, representing Suttre-Fox, Inc., 498 Seventh Avenue; Samuel Kass, representing Kass-Sutton, Inc., 498 Seventh Avenue; Joseph Halpert, representing Joseph Halpert, Inc., 530 Seventh Avenue; D. Eli Lahm, representing Rose Barrack & Lahm, 530 Seventh Avenue; and Charles Miller, representing Strauss-Miller, Inc., 498 Seventh Avenue.

Coat Division: Louis M. Wersba, representing Deitsch, Wersba & Coppola, 512 Seventh Avenue; Kallman Carmel, representing Carmel Bros., Inc., 530 Seventh Avenue; and Leo A. Del Monte (alternate), representing Del Monte Hickey Co., 530 Seventh Avenue.

Junior Miss Division: Louis J. Mallas, representing Jane Junior Dresses, 498 Seventh Avenue.

Sportswear Division: David M. Goodstein, representing David M. Goodstein, Inc., 530 Seventh Avenue; and Matthew Kane (alternate), representing Kane-Weill, Inc., 498 Seventh Avenue.

The aforesaid members of the said Ladies' Garment Manufacturers Group of said respondent F. O. G. A., consisting of approximately 180 individuals, copartners, and corporations, are located in various States of the United States, but principally in the city of New York, State of New York, in the city of Chicago, State of Illinois, and in the city of Boston, State of Massachusetts. Most of the said members are engaged in the business of designing and manufacturing ladies', misses', and junior misses' dresses, suits, and other similar garments of high quality, and in the sale of said garments at wholesale in the higher priced lines to retail dealers located in States other than the States of manufacture, causing said garments when so sold to be transported from their respective places of manufacture to the purchasers thereof, and there has been and now is a constant current of interstate trade and commerce in said products between the members of said Ladies' Garment Manufacturers Group of respondent F. O. G. A. and retail dealers in said garments, including said "Affiliated Members" of respondent F. O. G. A., located throughout the several States of the United States.

In the course and conduct of their said respective businesses, respondent members of the said Ladies' Garment Manufacturers Group of said respondent F. O. G. A., but for the matters and things hereinafter set forth, would be naturally and normally in competition with each other, and are in competition with other individuals, copartners, and corporations also engaged in the manufacture of ladies', misses', and junior misses' dresses, suits, and other similar garments and in the interstate sale of said garments to retail dealers. Said members of the Ladies' Garment Manufacturers Group of respondent F. O. G. A., during the year 1935, manufactured and sold approximately 50 percent of all ladies' dresses sold in the United States at the wholesale price of \$10.75 and above, and 30 percent of all ladies' dresses sold in the United States at the wholesale price of \$6.75 and above. The said garments designed, manufactured, and sold by said members are in such demand by the trade and public that all retail dealers of ladies' garments attempting to offer a full line of ladies' garments to the public are required to stock and handle some lines of the same.

PAR. 3. Respondent Austin M. DeLisser, 512 Seventh Avenue, New York City, is executive secretary of the Textile Merchants Group of the said respondent F. O. G. A. Respondents G. H. Conze, representing Susquehanna Silk Mills, 149 Madison Avenue; E. W. Freudenberg, representing Amrein, Freudenberg Co., 14 East Thirty-eighth Street; Samuel Levine, representing Hess, Goldsmith & Co., 1400 Broadway; and E. E. Meyer, representing J. A. Wagenbauer, Inc., 469 Fifth Avenue, all of New York City, constitute the board of governors of said Textile Group of said respondent F. O. G. A., and as such are named as respondents herein. Said Textile Merchants Group of said respondent F. O. G. A. consists of approximately 50 individuals, copartners, and corporations engaged in the business of importing, converting, and manufacturing textile fabrics.

From time to time the membership of said Textile Merchants Group of said respondent F. O. G. A. is increased by the addition of new members, so that all the members of said group at any given time cannot be named as respondents herein without inconvenience and delay, wherefore, the officers hereinbefore named as respondents, as such officers, and the foregoing named individuals constituting the board of governors of the said Textile Merchants Group of said respondent F. O. G. A., are also made respondents as representing all members of said Textile Group of said respondent F. O. G. A., including those not herein specifically named.

The various members of said Textile Merchants Group of said respondent F. O. G. A., in the course and conduct of their said busi-

nesses, sell textile fabrics to manufacturers of ladies' garments located in States other than the State of New York, causing said products when so sold to be transported from their respective places of business to the aforesaid purchasers thereof, and there has been and now is a constant current of interstate trade and commerce in said products between members of the Textile Merchants Group and members of the said Ladies' Garment Manufacturers Group of said respondent F. O. G. A., and their said competitors located throughout the several States of the United States.

In the course and conduct of their said respective businesses, respondent members of the said Textile Merchants Group of said respondent F. O. G. A., but for the matters and things hereinafter set forth, would be naturally and normally in competition with each other, and otherwise are in such competition with other individuals, copartners, and corporations also engaged in the business of importing, converting, and manufacturing textile fabrics and in the sale of said fabrics to retail dealers in interstate commerce.

PAR. 4. Respondent National Federation of Textiles, Inc., hereinafter referred to as respondent Textiles, Inc., is a membership corporation organized under the laws of the State of Connecticut with its principal office and place of business at 10 East Fortieth Street, in the city of New York, State of New York. Peter Van Horn is president and Irene L. Blunt is secretary of said respondent Textiles, Inc. The membership of said respondent Textiles, Inc., is made up of approximately 100 converters, dyers, printers, and manufacturers of silk and rayon fabrics located in the principal cities of the eastern portion of the United States. The said respondent, Textiles, Inc., operates and maintains a clearing house for the registration of designs of silks, rayons, laces, and embroideries under the name of Industrial Design Registration Bureau, which has been designated by the Textile Merchants Group of the said respondent F. O. G. A., as the official registration agency of designs of fabrics manufactured and sold by the members of said group.

PAR. 5. Respondent Marshall Field & Co. is an Illinois corporation with its office located at 222 North Bank Drive in the city of Chicago and is an affiliated member of respondent F. O. G. A., engaged in the retail sale and distribution of merchandise including ladies' garments. John McKinlay is president and T. H. Eddy is secretary and treasurer of said respondent Marshall Field & Co.

Respondent Allied Stores Corporation is a Delaware corporation with its office located at 1440 Broadway, New York City, State of New York, owning and operating the retail stores of Jordan Marsh Co. located in Boston, Mass., and the Golden Rule Store located in

St. Paul, Minn., and is an affiliated member of respondent F. O. G. A., engaged in the retail sale and distribution of merchandise, including ladies' garments. B. Earl Puckett is president and A. C. Hallan is secretary and treasurer of said respondent Allied Stores Corporation.

Respondent Lindner Co. is an Ohio corporation with its office located at Euclid Avenue and East Fourteenth Street in the city of Cleveland, State of Ohio, owning and operating stores in the city of Cleveland, Ohio, in the city of Binghamton, State of New York, and in the city of Elmira, State of New York, and is an affiliated member of respondent F. O. G. A., engaged in the retail distribution of merchandise, including ladies' garments. Mack Gordon is president and Edward Schwarz is secretary of said respondent Lindner Co.

Respondent Horne Company is a Pennsylvania corporation with its office located on Penn Avenue at Stanwix Street, in the city of Pittsburgh, owning and operating a department store in said city, and is an affiliated member of respondent F. O. G. A., engaged in the retail sale and distribution of merchandise, including ladies' garments. A. H. Burchfield is President and W. H. Friesell is secretary and treasurer of said respondent Horne Co.

Respondent Mandel Brothers, Inc., is a Delaware corporation with its office located at 1 North State Street in the city of Chicago, State of Illinois, owning and operating a department store located in said city, and is an affiliated member of respondent F. O. G. A., engaged in the retail sale and distribution of merchandise, including ladies' garments. Edwin F. Mandel is president and Ben J. Altheimer is secretary of said respondent Mandel Brothers, Inc.

Respondent John Wanamaker, Philadelphia, is a Pennsylvania corporation with its office located in the city of Philadelphia, State of Pennsylvania, owning and operating a department store located in said city, and is an affiliated member of respondent F. O. G. A., engaged in the retail sale and distribution of merchandise, including ladies' garments. Said respondent also owns the entire corporate stock of John Wanamaker, a New York corporation, engaged in a similar business in the city of New York in said State. Wm. L. Nevin is president and Henry H. Funk is secretary of said respondent John Wanamaker, Philadelphia.

Respondent Lit Brothers is a Pennsylvania corporation with its office located at Market and Eighth Streets, in the city of Philadelphia, State of Pennsylvania, owning and operating a department store located in said city, and is an affiliated member of respondent F. O. G. A., engaged in the retail sale and distribution of merchan-

dise, including ladies' garments. G. H. Johnson is president and A. T. Hild is assistant secretary of said respondent Lit Brothers.

Respondent Bullock's, Inc., is a Delaware corporation with its office located at Broadway, Hill, and Seventh Streets, in the city of Los Angeles, State of California, owning and operating a department store located in said city, and is an affiliated member of respondent F. O. G. A., engaged in the retail sale and distribution of merchandise, including ladies' garments. P. G. Winnett is president and M. E. Arnett is secretary of said respondent Bullock's, Inc.

Respondent Emporium Capwell Corporation is a California corporation with its office located at 835 Market Street, in the city of San Francisco, owning and operating the Capwell Department Store in Oakland, Calif., and the Emporium Department Store in San Francisco, and is an affiliated member of respondent F. O. G. A., engaged in the retail distribution of merchandise, including ladies' garments. A. B. C. Dohrmann is president and E. C. Lipman is vice president and manager of said respondent Emporium Capwell Corporation.

Respondent J. L. Hudson Co. is a Michigan corporation with its office located in the city of Detroit, owning and operating a department store located in said city, and is an affiliated member of respondent F. O. G. A., engaged in the retail sale and distribution of merchandise, including ladies' garments. R. H. Webber is president and W. A. Petzold is secretary of said respondent J. L. Hudson Co.

The membership of the said Affiliated Members Group of the said respondent F. O. G. A. consists of approximately 12,000 retail dealers in ladies' garments and accessories, located in the principal trading centers of the several States of the United States, and include a substantial number of leading department stores and exclusive ladies' wear shops. From time to time the membership of the said Affiliated Member Group of said respondent F. O. G. A., is increased by the addition of new members so that all the affiliated retail dealer members of said respondent F. O. G. A. at any given point of time cannot be specifically named as respondents herein without inconvenience and delay, and also said respondent members constitute a class so numerous as to make it impractical to name them all as individual respondents herein. Wherefore, the foregoing respondent affiliated members of said respondent F. O. G. A. described in this paragraph are also made respondents herein as representing all affiliated retail members of said respondent F. O. G. A., including those not herein specifically named.

PAR. 6. Respondent Michigan Avenue Guild of Chicago, hereinafter referred to as respondent M. A. G., is a membership corporation

organized December 27, 1932, under the laws of the State of Illinois, and is now existing under the laws of said State as a nonprofit organization with its principal office and place of business located at 840 North Michigan Avenue, city of Chicago, in said State. The membership of said corporation consists of approximately 200 retail dealers of ladies' wearing apparel, located in and near the said city of Chicago, approved by the executive committee of said M. A. G., and who are, or have agreed to become, affiliated members of said respondent F. O. G. A., or who have agreed to comply with the trade practice rules and regulations of said respondent F. O. G. A. The following named individuals of said city of Chicago are officers and directors of said respondent M. A. G., and as such are designated as respondents herein: George M. Gleason, president and director, representing Saks-Fifth Avenue, 840 North Michigan Avenue; Guy L. Ederheimer, vice president and director, representing Leschin, Inc., 318 South Michigan Avenue; L. R. Pearson, treasurer, representing Martha Weathered Shop, 950 North Michigan Avenue; Edw. A. Fletcher, secretary, 840 North Michigan Avenue; Harry Blum, director, representing Blum's-Vogue, Inc., 630 South Michigan Avenue; Frank L. Cole, director, representing Martha Weathered Shop, 950 North Michigan Avenue; Herman Friedman, director, representing Kermans, 160 North Michigan Avenue; Mrs. Sally K. Greenebaum, director, representing Sally K. Greenebaum, 540 North Michigan Avenue; Clarence A. Powell, director, representing Powell-700 North, Inc., 700 North Michigan Avenue; Bernard Rose, director, representing South Shore Vogue, 2372 East Seventy-first Street; and Mrs. Elise A. Runyan, director, representing Elise A. Runyan, Inc., 1365 East Fifty-third Street.

From time to time the membership of said respondent M. A. G. is increased by the addition of new members so that all the affiliated members of said respondent M. A. G. at any given point of time cannot be specifically named as respondents herein without inconvenience and delay. Wherefore, the officers and directors of respondent M. A. G. hereinbefore named as respondents, as such officers and directors, are also made respondents as representing all members of said respondent M. A. G., including those not herein specifically named.

PAR. 7. Respondent Minneapolis Fashion Guild, hereinafter referred to as respondent Minneapolis Guild, is a membership corporation organized on or about June 1, 1932, under the laws of the State of Minnesota. Respondent Roy H. Bjorkman, representing respondent Roy H. Bjorkman, Inc., a member of said respondent Minneapolis Guild, located at Tenth and Nicollet, Minneapolis, Minn., is executive

secretary of said respondent Minneapolis Guild. The membership of said Minneapolis Guild consists of approximately 15 persons, firms, and corporations engaged in the sale at retail of ladies' dresses, suits, coats, and sportswear, and whose stores are located in the city of Minneapolis, in said State, and who are, or who have agreed to become, affiliated members of the said respondent F. O. G. A.

From time to time the membership of said respondent Minneapolis Guild is increased by the addition of new members so that all the affiliated members of said respondent Minneapolis Guild at any given point of time cannot be specifically named as respondents herein without inconvenience and delay. Wherefore, the officer and member hereinbefore named as respondent, as such officer and member of Minneapolis Guild, is also made respondent as representing all members of said respondent Minneapolis Guild, including those not herein specifically named.

PAR. 8. Ladies' Ready-to-Wear Guild of Baltimore, Inc., hereinafter referred to as respondent Baltimore Guild, is a membership corporation organized under the laws of the State of Maryland on or about January 1, 1935, and now existing under the laws of said State. The membership of said Baltimore Guild consists of approximately 40 persons, firms, and corporations engaged in the sale at retail of ladies' dresses, suits, coats, and sportswear, and whose stores are located in the city of Baltimore, State of Maryland, and who are, or have agreed to become, affiliated members of the respondent F. O. G. A. The following named individuals of the said city of Baltimore, are officers and directors of respondent Baltimore Guild, and as such are designated as respondents herein: C. F. Roycroft, secretary, 1200 Lexington Building; Charles G. Hutzler, president and director, representing Hutzler Brothers Co., 212 North Howard Street; Allen S. Metzger, vice president and director, representing the Maison Annette Co., 328 North Charles Street; Fred H. Alperstein, director, representing The Gaxton Co., 214 North Charles Street; William Pollock, director, representing The Hub, Charles & Baltimore Streets; Lester Bonwit, director, representing Bonwit Lennon, Inc., 220 North Charles Street; Martin Kohn, director, representing Hochschild Kohn & Co., Howard and Lexington Streets; Albert D. Slesinger, director, representing Slesingers, Inc., 342 North Charles Street; J. E. Ellington, director, representing the May Co., Howard and Lexington Streets; Sam J. Schleisner, director, representing the Schleisner Co., Howard and Saratoga Streets; and Hal W. Kenaston, director, representing O'Neill & Co., Charles and Lexington Streets.

From time to time the membership of said respondent Baltimore Guild is increased by the addition of new members so that all the members of said respondent Baltimore Guild at any given point of time cannot be specifically named as respondents herein without inconvenience and delay. Wherefore, the officers and directors hereinbefore named as respondents, as such officers and directors of said respondent Baltimore Guild, are also made respondents as representing all members of said respondent Baltimore Guild, including those not herein specifically named.

PAR. 9. The said respondents hereinbefore named and described, and each of them, during the period of time, to wit, from January 1, 1932, to the date of this complaint, have entered into an agreement, combination, and conspiracy with each other and with other persons, to hinder and suppress competition in the interstate sale and distribution of textile fabrics to manufacturers of ladies' and misses' garments, including dresses, suits, and coats; and also to hinder and suppress competition between and among said manufacturers of said garments in the interstate sale and distribution of their said products to retail dealers; and also to restrain interstate trade in said textile fabrics and said garments; and also to create a monopoly in the manufacture and interstate sale of said fabrics and said garments in the said members and affiliated members of said respondent F. O. G. A. Pursuant to said agreement, combination, and conspiracy said respondents have respectively and cooperatively performed, and are now so performing, the following acts and practices, to wit:

(a) Said respondent F. O. G. A. has coerced and compelled, and now coerces and compels, manufacturers of ladies' garments to confine the purchases of their requirements of textiles and fabrics to members of said Textile Merchants Group of respondent F. O. G. A., or to importers, converters, and manufacturers who have cooperated and are now cooperating with said respondent F. O. G. A. by registering their designs of said fabrics and textiles with the said respondent F. O. G. A. or with the said Industrial Design Registration Bureau of said respondent Textiles, Inc.; under the penalty of being required to pay fines of substantial amounts of money to said respondent F. O. G. A., and of being boycotted by members of said Textile Merchants Group of said respondent F. O. G. A.

(b) Said respondent F. O. G. A. has coerced and compelled, and now coerces and compels, said ladies' garment manufacturers to confine the sales of their merchandise to retail dealers who are affiliated members of said respondent F. O. G. A., or who have cooperated and are now cooperating with said respondent by purchasing their requirements of ladies' garments exclusively from the said members of said Ladies' Garment Manufacturers Group or said protective

affiliates of said respondent F. O. G. A., or otherwise have cooperated or are cooperating with the respondent F. O. G. A. in its style protective program as set forth herein; under penalty of being required to pay fines of substantial amounts of money to said respondent F. O. G. A., and of being boycotted by said affiliated members of said respondent F. O. G. A. or other retail dealers who have cooperated and are now cooperating with said respondent F. O. G. A. in its style protective program as set forth herein.

(c) Said respondent F. O. G. A. has coerced and compelled, and now coerces and compels, retail dealers of ladies' garments to become affiliated members of said respondent F. O. G. A., and to enter into agreements with said respondent F. O. G. A. by which and pursuant to which said retail dealers purchase their requirements of the respective lines of ladies' garments from the members of the said Ladies' Garment Manufacturers Group of the said respondent F. O. G. A. or the said protective affiliates, insofar as those respective lines are sold by said members or protective affiliates; and to refuse to purchase said ladies' garments from manufacturers who have copied garments adjudged and reported by said respondent F. O. G. A. to have been designed by said members of said Ladies' Garment Manufacturers Group of said protective affiliates of said respondent F. O. G. A.; and upon notice from said respondent F. O. G. A. to return all garments to said manufacturers which are adjudged by said respondent F. O. G. A. to be copies of garments designed, manufactured, and sold by members of said Ladies Garment Manufacturers Group, or said protective affiliates of said respondent F. O. G. A., and registered with said respondent F. O. G. A.; and to otherwise cooperate with said respondent F. O. G. A. in removing from the market garments of manufacturers who are not cooperating with said respondent F. O. G. A. in its style protective program set forth herein; under penalty of being blacklisted and boycotted by the members of said Ladies' Garment Manufacturers Group of said respondent F. O. G. A. as more particularly described in subparagraph (d) hereof.

(d) Said respondent F. O. G. A. has employed and now employs shoppers to spy upon retail dealers, including said affiliated members of said respondent F. O. G. A., to ascertain whether or not any of the ladies' garments being offered for sale by said retail dealers appears to be a copy of garments designed, manufactured, or sold by members of said Ladies' Garment Manufacturers Group or said protective affiliates of said respondent F. O. G. A. and registered with said respondent F. O. G. A.; and where said retail dealers are offering for sale garments which appear to be such copies and said retail dealers refuse or decline to cooperate with said respondent F. O. G. A. in removing from the market the garments of manufacturers who are

not cooperating with said respondent F. O. G. A. in its style protective program as set forth herein, said respondent F. O. G. A. places the names of such noncooperating retail dealers on a blacklist and circulates said blacklist among the members of said Ladies' Garment Manufacturers Group and said Textile Merchants Group of said respondent F. O. G. A., who thereupon and thereafter refuse to sell fabrics or ladies' garments designed and manufactured by them to such noncooperating retail dealers; and since the date of its organization said respondent F. O. G. A. has blacklisted, and said members of said respondent F. O. G. A. have refused to sell their products to more than 400 retail dealers located throughout the several States of the United States.

(e) Said respondent F. O. G. A. has coerced and compelled, and now coerces and compels, the members of said Ladies' Garment Manufacturers Group of said respondent F. O. G. A. to refuse to exhibit, sell or ship merchandise to persons conducting retail establishments from residential premises, or who do not cooperate with said respondent F. O. G. A. in its style protective program as set forth herein; and also refuse to participate in fashion shows sponsored by retail dealers or to display samples to group buyers; and also to agree upon uniform terms of sale and discounts, and to otherwise refrain from competing for the business of said retail dealers; under penalty of being required to pay to the said respondent F. O. G. A. fines in substantial amounts of money, and of being expelled from membership in said respondent F. O. G. A.

(f) Said respondent F. O. G. A., upon ascertaining through reports of its said shoppers that a member of said Ladies' Garment Manufacturers Group, or any other manufacturer of ladies' garments, has been selling ladies' garments to retail dealers which are copies of garments adjudged by said respondent F. O. G. A. to have been designed by members of said Ladies' Garment Manufacturers Group of said respondent F. O. G. A. and registered with the said respondent F. O. G. A., demands that said manufacturers discontinue said practice and cooperate with said respondent F. O. G. A. in removing from the market the garments adjudged to be copies, and if said manufacturers refuse to so comply with said demands, said respondent F. O. G. A. places the names of said noncooperating manufacturers upon a blacklist which is circulated among the retail dealers, affiliated members of said respondent F. O. G. A. Said retail dealers thereupon and thereafter, pursuant to coercion on the part of said respondent F. O. G. A., refuse to further purchase their requirements of ladies' garments from said noncooperating manufacturers; and since the date of its organization said respondent F. O. G. A. has caused its affiliated members to refuse to purchase ladies' garments from more than 100

ladies' garment manufacturers located throughout the several States of the United States.

(g) Said respondent F. O. G. A. has coerced and compelled, and now coerces and compels, said respondent Textile Merchants Group to register all designs of fabrics and textiles imported, converted, or manufactured by them with the said respondent F. O. G. A. or said Industrial Design Registration Bureau of respondent Textiles, Inc., and to confine the sale of their fabrics, so registered, to members or affiliated members or said protective affiliates of said respondent F. O. G. A., and to refrain from selling said products to garment manufacturers or retail dealers who are not members or affiliated members or protective affiliates of said respondent F. O. G. A.

(h) Said respondent Textiles, Inc., operating through and by means of its said division known as Industrial Design Registration Bureau, has, within the past year, in the solicitation of the registration of designs of fabrics from importers, converters, and manufacturers of textile fabrics, notified said importers, converters, and manufacturers of textile fabrics that the members of the Ladies' Garment Manufacturers Group and protective affiliates of the respondent F. O. G. A. had pledged themselves in writing to use only the registered designs of fabrics registered with said Industrial Design Registration Bureau, and that said Bureau had been designated by the said respondent F. O. G. A. as its agency to handle the registration of designs for said textile fabrics.

(i) Said respondents' local guilds, M. A. G., Minneapolis Guild, Baltimore Guild, and their officers and members, since their organization, have cooperated with the said respondent F. O. G. A. in its style protective program by entering into agreements with said respondent F. O. G. A. whereby it is agreed on the part of the respondent F. O. G. A. that its members will not sell merchandise within the respective areas of said local guilds to retailers who are not members in good standing of said guilds, or to those retailers whose practices do not conform to the standards of fair-trade practice of the respective guilds; and it is agreed on the part of the said local guilds that their members will not purchase ready-to-wear merchandise from any manufacturer not cooperating with said respondent F. O. G. A. in its style protective program, and the officers and officials of said local guilds have cooperated with the said respondent F. O. G. A. in using their official positions in the enforcement and maintenance of said agreements.

PAR. 10. The result of the said agreement, combination, and conspiracy, and the acts and practices performed thereunder by said respondents, as hereinbefore set forth, has been and now is (a) to prevent and hinder importers, converters, and manufacturers of

textile fabrics from selling their merchandise in interstate commerce to garment manufacturers who but for the existence of said agreement, combination, or conspiracy would purchase said products; (b) to prevent retail dealers in ladies' and misses' garments from purchasing their requirements of said products in interstate commerce from the manufacturers thereof; (c) to force many retail dealers to discontinue the sale of said products because of their inability to maintain a supply thereof at reasonable prices; (d) to substantially increase the price of ladies' and misses' garments to the manufacturers, retail dealers, and to the consuming public; and (e) to place in the hands of the respondent F. O. G. A. control over the business practices of the manufacturers and distributors of ladies' and misses' garments, and the power to exclude from this industry those manufacturers and distributors who do not conform to the rules and regulations established by said respondent F. O. G. A., and thus to tend to create a monopoly in the said respondent F. O. G. A. and its members.

PAR. 11. The foregoing alleged acts and practices of the said respondents have been and still are to the prejudice of the buying public generally and the customers and competitors of the members of said respondents in particular, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 16, A. D., 1936, issued and served its complaint in this proceeding upon the respondents specifically named in the caption hereof and upon the various corporations and individuals named as respondent in the body of the complaint, 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 the complaint were introduced by Reuben J. Martin and Everett F. Haycraft, attorneys for the Commission, and in opposition to the allegations of the complaint by Milton C. Weisman and M. A. Albert, attorneys for the respondent, before John W. Bennett, Edward M. Averill and Charles F. Diggs, respectively, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office

Findings

of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answers thereto, the 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 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 Fashion Originators Guild of America, Inc., hereinafter for convenience referred to as "F. O. G. A.," is a membership corporation composed of manufacturers of women's garments and of textiles used in the manufacture thereof. It was incorporated under the laws of the State of New York on March 7, 1932, and its principal office and headquarters are located in the city and State of New York. The following-named persons were officers and members of respondent's board of governors as of April 16, 1936.

OFFICERS

Maurice Rentner, president and treasurer.
 Herbert Sondheim, first vice president.
 Charles Gumprecht, second vice president.
 J. A. Livingston, treasurer.
 Albert M. Post, executive director.
 James M. Golby, executive secretary.

BOARD OF GOVERNORS

DRESS DIVISION

| | |
|-------------------|-------------------|
| William Bass | David Bender |
| Louis J. Brenner | Theodore Racoosin |
| Jo Copeland | Charles Lang |
| Charles Gumprecht | William Fox |
| Samuel Kass | Herbert Sondheim |
| Maurice Rentner | Joseph Halpert |
| D. Eli Lahm | Charles Miller |

COAT DIVISION

| | |
|---------------------------|----------------|
| Louis M. Wersba | Kallman Carmel |
| Leo Del Monte (alternate) | |

JUNIOR MISS DIVISION

Louis J. Mallas

SPORTS WEAR DIVISION

| | |
|--------------------------|--------------------|
| J. A. Livingston | David M. Goodstein |
| Matthew Kane (alternate) | |

Austin M. DeLisser is the executive secretary of the Textile Merchants' Group of the F. O. G. A. This group has no board of governors, but has a steering committee which performs the same functions, and G. H. Conze, E. W. Freudenberg, Samuel Levine, and E. E. Meyer are or have been members of this committee.

On April 16, 1936, the F. O. G. A. had 225 members, whose names, classifications, and addresses are as follows:

DRESS MEMBERS

| | |
|---------------------------------------------------------|------------------|
| Aldrich & Malvin, Inc..... | 530 7th Ave. |
| Milton Altmark, Inc..... | 530 7th Ave. |
| Charles Armour & Bros., Inc..... | 498 7th Ave. |
| Arons, Bernstein & Arons, Inc..... | 530 7th Ave. |
| Joseph & Ben Barnett, Inc..... | 498 7th Ave. |
| Rose Barrack & Lahm, Inc..... | 530 7th Ave. |
| William Bass Dress Corporation..... | 550 7th Ave. |
| Herman Beispel, Inc..... | 530 7th Ave. |
| Bender & Hamburger, Inc..... | 530 7th Ave. |
| Blotta & Conti, Inc..... | 498 7th Ave. |
| Brenner, Joseph & White..... | 30 West 47th St. |
| Brenner, Morris, Inc..... | 55½ Columbia. |
| Hattle Carnegie, Inc..... | 42 East 49th St. |
| Clifford Salkin, Inc..... | 530 7th Ave. |
| Lewis Cohn, Inc..... | 530 7th Ave. |
| Jo Copeland, Inc..... | 15 West 47th St. |
| David Crystal, Inc..... | 498 7th Ave. |
| Dolces Dressing, Inc..... | 530 7th Ave. |
| Anna Duke, Inc..... | 498 7th Ave. |
| Eta, Inc..... | 38 West 47th St. |
| Feigenbaum & Adelson, Inc..... | 530 7th Ave. |
| Pauline Fields, Inc..... | 498 7th Ave. |
| Herman Floersheimer & Bro., Inc..... | 550 7th Ave. |
| Louise Barnes Gallagher, Inc..... | 37 West 47th St. |
| Henry Ganz, Inc..... | 550 7th Ave. |
| Gardner & Schwartz, Inc..... | 498 7th Ave. |
| Garfinckel & Siegel, Inc..... | 550 7th Ave. |
| Ed. Garrick & Co., Inc..... | 550 7th Ave. |
| A. Goodman & Co., Inc..... | 530 7th Ave. |
| Joseph Greenberg-Bettina, Inc..... | 550 7th Ave. |
| Charles Groden, Inc..... | 20 West 56th St. |
| Julius Grossman & Fred Greenberg Dress Co., Inc..... | 550 7th Ave. |
| Joseph Halpert, Inc..... | 530 7th Ave. |
| Max Helt Dress Corporation..... | 478 7th Ave. |
| Myron Herbert & Charles Cooper, Inc..... | 498 7th Ave. |
| Jack Herzog & Bro., Inc..... | 530 7th Ave. |
| Virginia Hume & Gold, Inc..... | 498 7th Ave. |
| E. A. Jackson-Bienard, Inc..... | 550 7th Ave. |
| Kallman & Morris, Inc..... | 530 7th Ave. |
| Kaplan & Moskowitz, Inc..... | 498 7th Ave. |

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| Samuel Kass Gowns, Inc..... | 498 7th Ave. |
| Kiviette, Inc..... | 37 West 47th St. |
| Charles Kondazian & Papaz, Inc..... | 37 West 47th St. |
| Kornhauser Gowns, Inc..... | 498 7th Ave. |
| Charles Lang, Inc..... | 498 7th Ave. |
| La Rue Dresses, Inc..... | 550 7th Ave. |
| Lenkowsky Modes, Inc..... | 550 7th Ave. |
| Marry Lee Frocks, Inc..... | 498 7th Ave. |
| Mary Liotta, Inc..... | 37 West 47th St. |
| M. A. Litvin, Inc..... | 498 7th Ave. |
| H. Milgrim & Bros., Inc..... | 6 West 57th St. |
| Germaine Monteil, Inc..... | 36 West 47th St. |
| Jennie Moskowitz, Inc..... | 550 7th Ave. |
| Nanty Frocks, Inc..... | 36 West 47th St. |
| Nomis Dress Co., Inc..... | 498 7th Ave. |
| Paul Parnes, Inc..... | 498 7th Ave. |
| Pattulo Modes, Inc..... | 1 West 47th St. |
| Perles & Gilbert, Inc..... | 530 7th Ave. |
| Ben Reig, Inc..... | 498 7th Ave. |
| Maurice Rentner, Inc..... | 498 7th Ave. |
| Nettie Rosenstein Gowns, Inc..... | 36 West 47th St. |
| James J. Rothenberg, Inc..... | 550 7th Ave. |
| Rudolf Gowns, Inc..... | 530 7th Ave. |
| Ruffolo Bros., Inc..... | 31 West 47th St. |
| J. M. Silverman Dresses, Inc..... | 498 7th Ave. |
| Somay, Inc..... | 530 7th Ave. |
| Herbert Sondhelm, Inc..... | 530 7th Ave. |
| Spectator Sports, Inc..... | 15 West 47th St. |
| Frank Starr Friedlander, Inc..... | 530 7th Ave. |
| Straus-Miller, Inc..... | 498 7th Ave. |
| Suttre-Fox, Inc..... | 498 7th Ave. |
| A. Traina Gowns, Inc..... | 550 7th Ave. |
| John Traina, Inc..... | 530 7th Ave. |

(All of the above are located in the city and State of New York)

AFFILIATED MEMBERS

| | |
|-------------------------------|---------------------------------------|
| B. G. Garment Co., Inc..... | 337 South Franklin St., Chicago, Ill. |
| Fred A. Block, Inc..... | 325 West Jackson St., Chicago, Ill. |
| S. Eisenberg..... | 106 Fifth Ave., New York, N. Y. |
| H. N. Fried..... | 337 South Franklin St., Chicago, Ill. |
| Junior Guild Frocks, Inc..... | 1372 Broadway, New York, N. Y. |
| Lang-Kohn Mfg. Co..... | 525 7th Ave., New York, N. Y. |
| Matthew Kadetsky Co..... | 530 7th Ave., New York, N. Y. |
| Robinson Bros., Inc..... | 550 7th Ave., New York, N. Y. |

COAT AND SUIT MEMBERS

| | |
|------------------------------------|------------------------------------|
| Carmel Bros., Inc..... | 530 7th Ave., New York, N. Y. |
| Dartmoor Coat Co., Inc..... | 1384 Broadway, New York, N. Y. |
| Deitsch-Wersba & Coppola, Inc..... | 512 7th Ave., New York, N. Y. |
| Del Monte Illicy Co., Inc..... | 205 West 39th St., New York, N. Y. |

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|---------------------------------|-----------------------------------|
| Ben Gershel & Co., Inc..... | 512 7th Ave., New York, N. Y. |
| Ben Ginsburg, Inc..... | 500 7th Ave., New York, N. Y. |
| Aaron Goldstein Co., Inc..... | 530 7th Ave., New York, N. Y. |
| Louis Goldstein Co., Inc..... | 512 7th Ave., New York, N. Y. |
| Grossman & Splegel, Inc..... | 512 7th Ave., New York, N. Y. |
| Phillip Mangone & Co., Inc..... | 500 7th Ave., New York, N. Y. |
| Monte, Sans & Pruzan, Inc..... | 21 West 46th St., New York, N. Y. |
| Zuckerman & Kraus, Inc..... | 512 7th Ave., New York, N. Y. |

JUNIOR MISS MEMBERS

| | |
|--------------------------------------------------------------------------------------|----------------|
| Louis Kallish and Max Rosenbluth (copartners trading as Arkay Junior Frocks)..... | 498 7th Ave. |
| Ashley Frocks, Inc..... | 1400 Broadway. |
| J. H. Horwitz and Joseph M. Duberman (copartners trading as Horwitz & Duberman)..... | 498 7th Ave. |
| Jane Junior Dresses, Inc..... | 1400 Broadway. |
| Joanne, Jr., Zinn Bros., Inc..... | 1400 Broadway. |
| Junior League Frocks, Inc..... | 1372 Broadway. |
| Louise Mulligan, Inc..... | 498 7th Ave. |
| Ira Rentner-Miller, Inc..... | 498 7th Ave. |

(All of the above-named are located in New York, N. Y.)

TEXTILE ASSOCIATES

| | |
|---------------------------------------------|-------------------|
| Amrein, Freudenberg & Co., Inc..... | 14 East 38th St. |
| Bianchini, Ferrier, Inc..... | 663 5th Ave. |
| Bloomsburg Silk Mill, Inc..... | 525 7th Ave. |
| Sidney Blumenthal & Co., Inc..... | 1385 Broadway. |
| Brueck & Richards, Inc..... | 280 Madison Ave. |
| Case & Co., Inc..... | 220 West 40th St. |
| Chatillon, Mouly, Roussel, Inc..... | 608 5th Ave. |
| Cheney Bros., Inc..... | 1412 Broadway. |
| Combler & Co., Inc..... | 58 West 40th St. |
| Coudurier, Frustus & Devigne, Inc..... | 1441 Broadway. |
| Descours, Genthen, Inc..... | 58 West 40th St. |
| Croydon Fabrics, Inc..... | 1441 Broadway. |
| Silk Guild of America, Inc..... | 1441 Broadway. |
| F. DuCharne Silk Co., Inc..... | 244 Madison Ave. |
| Empire Silk Co. (Incorporated)..... | 180 Madison Ave. |
| Cohn Hall-Marx Co. Inc..... | 1412 Broadway. |
| The Forstman Woolen Co. (Incorporated)..... | 350 5th Ave. |
| Frank Associates, Inc..... | 1412 Broadway. |
| Theodore J. Gallagher, Inc..... | 58 West 40th St. |
| Hess, Goldsmith & Co., Inc..... | 1400 Broadway. |
| L. J. Hyams & Jane Hyams (copartners)..... | 108 West 39th St. |
| Kandelraft Silks, Inc..... | 1441 Broadway. |
| Lace Net Importing Co., Inc..... | 244 Madison Ave. |
| Maginnis & Thomas, Inc..... | 411 5th Ave. |
| H. B. Mallinson & Co., Inc..... | 119 West 40th St. |
| Menke Kaufman & Co..... | 119 West 40th St. |

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| Onondaga Silk Co., Inc..... | 1412 Broadway. |
| Wm. C. Openhym..... | 1441 Broadway. |
| Remond-Holland, Inc..... | 663 5th Ave. |
| L. & E. Stirn, Inc..... | 1400 Broadway. |
| Stunzi Sons Silk Co., Inc..... | 1400 Broadway. |
| Susquehanna Silk Mills (Inc.)..... | 498 7th Ave. |
| Schwarzenbäch, Huber, Inc..... | 498 7th Ave. |
| J. A. Wagenbauer, Inc..... | 545 5th Ave. |
| Wahnetah Silk Co., Inc..... | 119 West 40th St. |
| Wechaler Silk Corp..... | 498 7th Ave. |
| Zellinger & Schreth, Inc..... | 50 West 40th St. |
| J. J. & N. Blackstone, Inc..... | 58 West 40th St. |
| Dutschler, Trull & Justin, Inc..... | 570 7th St. |
| Ellen Lace & Embroidery Co., Inc..... | 1441 Broadway. |
| L. H. Hollander..... | 101 West 37th St. |
| Ikle Freres & Co., Inc..... | 22 West 38th St. |
| Herbert Lehman, Inc..... | 47 West 34th St. |
| Lido Embroidery, Inc..... | |
| Maison France, Inc..... | 101 West 37th St. |
| Record Lace & Embroidery Co., Inc..... | 1270 Broadway. |
| Swiss Novelty Embroidery Co., Inc..... | 108 West 39th St. |
| Walter Tobler & Franz Hoenig (copartners)..... | 250 West 40th St. |
| Sol Wolfman, Inc..... | 1457 Broadway. |

SPORTS WEAR MEMBERS

| | |
|---------------------------------------------------------|----------------|
| Adler & Adler, Inc..... | 550 7th Ave. |
| Davidow, Inc..... | 550 7th Ave. |
| David M. Goodstein, Inc..... | 550 7th Ave. |
| Kane-Weill, Inc..... | 498 7th Ave. |
| Joseph Levay, Inc..... | 498 7th Ave. |
| J. A. Livingston, Inc..... | 498 7th Ave. |
| David N. Lowenthal & Son, Inc..... | 550 7th Ave. |
| Mutual Rosenbloom Corporation..... | 498 7th Ave. |
| Charles W. Nudelman, Inc..... | 550 7th Ave. |
| Zoltan Rosenberg & Theodore Rosenberg (copartners)..... | 550 7th Ave. |
| Sport Kraft, Inc..... | 1350 Broadway. |
| Star Maid Dresses, Inc..... | 498 7th Ave. |
| Sam Steinberg & Co., Inc..... | 498 7th Ave. |
| Townley Frocks, Inc..... | 498 7th Ave. |

(All of the above-named are located in New York, N. Y.)

PROTECTIVE AFFILIATES

| | |
|------------------------------|----------------|
| Aywon Dress Co., Inc..... | 1400 Broadway. |
| L. & D. Bellinson, Inc..... | 1400 Broadway. |
| Daytime Frocks, Inc..... | 525 7th Ave. |
| F. E. D. Dress Co., Inc..... | 1400 Broadway. |
| Harry Frank..... | 1400 Broadway. |
| Friedman Dress Co., Inc..... | 1400 Broadway. |
| Goldman Frocks Co., Inc..... | 1400 Broadway. |

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| International Dress Co., Inc..... | 1400 Broadway. |
| Jomark Dresses, Inc..... | 1400 Broadway. |
| Joe Levine Dress Co., Inc..... | 1400 Broadway. |
| Parisian Mfg. Co., Inc..... | 1400 Broadway. |
| C. H. D. Robbins Co., Inc..... | 1375 Broadway. |
| Rosen Bros. Frocks, Inc..... | 1400 Broadway. |
| Sheila-Lynn Dresses, Inc..... | 1400 Broadway. |
| Silver Dresses, Inc..... | 1400 Broadway. |
| David S. Westheim Corp..... | 1400 Broadway. |
| Witlin & Schneider, Inc..... | 1400 Broadway. |
| Anderman-Bob Burns, Inc..... | 1385 Broadway. |
| Bernard Appel, Inc..... | 498 7th Ave. |
| Grace Ashley..... | 743 5th Ave. |
| Bon Ray Dance Frocks, Inc..... | 134 West 37th St. |
| Capri Frocks, Inc..... | 1372 Broadway. |
| Casino Dresses, Inc..... | 530 7th Ave. |
| Cohen Tunick, Inc..... | 525 7th Ave. |
| Dalton Frocks, Inc..... | 1372 Broadway. |
| Sam Davidson, Inc..... | 1400 Broadway. |
| Dresden Dress Co., Inc..... | 1400 Broadway. |
| Fashion Wear Dress Co., Inc..... | 1400 Broadway. |
| Franklin Dress Co., Inc..... | 318 West Adams, Chicago, Ill. |
| Ginsburg & Abelson, Inc..... | 1400 Broadway. |
| Alexander S. Gross, Inc..... | 498 7th Ave. |
| Lee Claire Costumes, Inc..... | 525 7th Ave. |
| Lyla Modes, Inc..... | 1400 Broadway. |
| Lyttle Bros., Inc..... | 1400 Broadway. |
| E. N. Marcus..... | 1400 Broadway. |
| Matty Moskowitz, Inc..... | 530 7th Ave. |
| Parnis-Levinson, Inc..... | 530 7th Ave. |
| Patricia Perkins, Inc..... | Los Angeles, Calif. |
| Radiant Dress Co., Inc..... | 525 7th Ave. |
| Reich-Goldfarb & Co., Inc..... | 530 7th Ave. |
| L. C. Rosenblatt, Inc..... | 1440 Broadway. |
| Schultze-Zuch, Inc..... | 525 7th Ave. |
| Stern & Goldberg, Inc..... | 525 7th Ave. |
| Will Steinman, Inc..... | 525 7th Ave. |
| Valroy, Inc..... | 491 7th Ave. |
| Phil Zahn & Co., Inc..... | 1400 Broadway. |

(All the above-named except the two otherwise shown, are located in New York, N. Y.)

| | |
|------------------------------------------------------------------------------|----------------|
| Bretter & Sussman, Inc..... | 1375 Broadway. |
| Campus Modes, Inc..... | 1400 Broadway. |
| Flo-Frocks, Inc..... | 1385 Broadway. |
| George Hess Co., Inc..... | 1385 Broadway. |
| Junior Fashion Guild, Inc..... | 498 7th Ave. |
| Michael Kaplan & M. Kaplan (copartners) (trading as Mike Kaplan Dresses). | 1400 Broadway. |

Findings

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|-----------------------------------------------------------------|----------------|
| Wein Frocks, Inc..... | 1375 Broadway. |
| Abbate-Swift, Inc..... | 1385 Broadway. |
| Argosy Dresses, Inc..... | 1385 Broadway. |
| Cecele Dance Frocks, Inc..... | 1384 Broadway. |
| Garland Dress Co., Inc..... | 1400 Broadway. |
| B. Tobias, Inc..... | 498 7th Ave. |
| Samuel Lipman, Herman Lipman and Julius Lipman (copartners). | 1400 Broadway. |
| Marie Lynn Dance Frocks, Inc..... | 1384 Broadway. |
| Rosenthal & Kallman, Inc..... | 1400 Broadway. |

(All of the above are located in New York, N. Y.)

PAR. 2. Respondent Michigan Avenue Guild of Chicago is a membership corporation organized under the laws of the State of Illinois, on April 27, 1932. Its headquarters are located at 669 North Michigan Avenue, Chicago, Ill. The membership of this corporation is composed of approximately 75 retail dealers in women's wearing apparel, whose places of business are located in Chicago, Illinois. Its officers in 1936 were

- Guy L. Ederheimer, president.
- Frank L. Cole, vice president.
- Edward A. Fletcher, secretary.
- L. R. Pearson, treasurer.

George M. Gleason was president in 1935.

Its Board of Directors in 1936 consisted of the following:

- | | |
|----------------|----------------------|
| Harry Blum. | Leo Bramson. |
| Frank L. Cole. | Guy L. Ederheimer. |
| Louis Gossert. | M. E. Greenebaum. |
| A. E. Levitt. | Sally K. Greenebaum. |
| Bernard Rose. | E. R. Lindburg. |

The following named persons were members of its Board of Directors in 1935:

- | | |
|---------------------|------------------|
| George M. Gleason. | Herman Friedman. |
| Clarence A. Powell. | Elise A. Runyan. |

PAR. 3. Respondent Minneapolis Fashion Guild is an unincorporated membership association, having its headquarters in Minneapolis, Minn. Roy H. Bjorkman is the executive secretary of this association and dominates and controls its activities. The association has no other officers or directors. Approximately nineteen dealers in women's wearing apparel whose places of business are located in Minneapolis, Minn., comprise the membership of this association.

PAR. 4. Respondent Ladies' Ready-to-Wear Guild of Baltimore, Inc., is a membership corporation organized under the laws of the

State of Maryland. The following-named persons comprise the officers and directors of this corporation:

Charles G. Hutzler, president and director.
Allen S. Metzger, vice president and director.
C. F. Roycroft, secretary.
Fred H. Alperstein, director.
William Pollock, director.
Lester Bonwit, director.
Martin B. Kohn, director.
Albert D. Slesinger, director.
J. E. Ellington, director.
Sam J. Schleisner, director.
Hal W. Kenaston, director.

The membership of this respondent corporation is composed of approximately 40 retail dealers in women's garments whose places of business are located in Baltimore, Md.

PAR. 5. Respondent National Federation of Textiles, Inc., is a membership corporation organized under the laws of the State of Connecticut. Its principal office is located at 10 East Fortieth Street, in the City and State of New York. Peter Van Horn is the president of this corporation and Irene L. Blunt is its secretary.

The membership of this corporation consists of approximately 100 manufacturers, converters, dyers, and printers of silk and rayon fabrics.

PAR. 6. Approximately 12,000 retail dealers in women's garments, located at various places throughout the United States cooperate with the respondent F. O. G. A. in carrying out its hereinafter described programs, policies, and practices, and have signed declarations of cooperation which will be hereinafter described. It is impracticable to name all of said cooperating retailers as respondents, but the following named respondents are representative of the whole:

Marshall Field & Co.—a corporation organized under the laws of the State of New York and having its principal place of business at 222 North Bank Drive, in the city of Chicago, State of Illinois. John McKinley is president of this corporation; Ernest L. Olrich is its secretary; and Horace A. Wetmore is its treasurer.

Allied Stores Corporation—a corporation organized under the laws of Delaware, and having its principal place of business at 85 Ellison Street, Paterson, N. J. D. Earl Pluckett is its president and A. C. Hallam is its secretary and treasurer.

Findings

The Lindner Co'y (designated in the complaint as Linder Co.)—a corporation organized under the laws of the State of Ohio and having its principal place of business at Euclid Avenue and East Fourteenth Street, in the city of Cleveland and State of Ohio. Max Gordon is its president and Edward Schwarz is its secretary.

Joseph Horne Co. (designated in the complaint as Horne Co.)—a corporation organized under the laws of the State of Pennsylvania and having its principal place of business on Pennsylvania Avenue and Stanwix Street, in the city of Pittsburgh, Pa. A. M. Burchfield is its president and W. M. Friesell is its secretary and treasurer.

Mandel Bros., Inc.—a corporation organized under the laws of the State of Delaware and having its principal place of business at 1 North State Street, in the City of Chicago, State of Illinois. Edwin F. Mandel is its president and Sam J. Altheimer is its secretary.

John Wanamaker, Philadelphia—a corporation organized under the laws of the State of Pennsylvania, and having its principle place of business in the city of Philadelphia, State of Pennsylvania. William L. Nevin is its president and Henry H. Funk is its secretary.

Lit Bros., Inc. (designated in the complaint as Lit Bros.)—a corporation organized under the laws of the State of Pennsylvania and having its principal place of business in the city of Philadelphia, State of Pennsylvania. G. H. Johnson is its president and A. T. Hild is its assistant secretary.

Bullocks', Inc.—a corporation organized under the laws of the State of Delaware, having its principal place of business located at Hill and Seventh Streets in the city of Los Angeles, State of California. F. G. Winnett is its president and M. E. Arnett is its secretary.

The Emporium Capwell Corporation (named in the complaint as Emporium Capwell Corporation)—a corporation organized under the laws of the State of Delaware, and having its principal place of business at 835 Market Street in the city of San Francisco, State of California. Joel W. Kaufman is its vice president, secretary, and treasurer. This corporation owns all the common stock of the Emporium, a California corporation which owns and operates the Capwell Department Store, located in Oakland, Calif., and the Emporium Department Store, located in San Francisco, Calif.

J. L. Hudson Co.—a corporation organized under the laws of the State of Michigan and having its principal place of business located in the city of Detroit, State of Michigan. Oscar Weber is its vice president and general manager.

In a number of instances these cooperating retail dealers, at the request of the F. O. G. A., have contributed to its fund to be used in defraying the expenses incident to the effectuation of its programs and policies, and such contributing retail dealers are designated by the F. O. G. A. as retail contributing members.

PAR. 7. The members of the F. O. G. A. and the National Federation of Textiles, Inc., sell and ship their products to dealers located in States other than those in which said members are located, and in so doing, are in competition among themselves and with other manufacturers who likewise sell and ship similar products.

PAR. 8. The garment-manufacturing members of the F. O. G. A. are a dominant factor in the women's garment manufacturing industry, and their products are in such demand by the trade and the purchasing public that all retail dealers in women's garments, in order to meet competition and the demand of the consuming public, are compelled to stock and handle some of the lines manufactured by said F. O. G. A. members. The combined sales of the members of the F. O. G. A. in 1936 constituted 38.8 percent of the total sales of women's garments in the United States in the wholesale price range of \$6.75 and up, and 83.99 percent in the wholesale price range of \$10.75 and up.

PAR. 9. Respondent F. O. G. A. was organized in March 1932 by approximately 15 manufacturers of women's garments which sold at wholesale for from \$29.50 up. Manufacturers of lower-priced garments were admitted from time to time, and by the fall of 1935 the membership included manufacturers in the price range of from \$6.75 up. After the F. O. G. A. was organized, it was decided to include in its membership manufacturers of textiles used in the women's garment manufacturing industry. By April 16, 1936, the membership of this respondent consisted of 176 manufacturers of women's garments and 49 manufacturers, converters, dyers, and printers of textiles.

Respondent F. O. G. A. was organized primarily for the purpose of preventing the copying for sale in commerce of alleged original creations in fashions and styles of women's garments. The program was later expanded to cover designs of textiles used in the manufacture of women's garments. This respondent from time to time enlarged its original program to cover other practices and policies which will be hereinafter set forth.

PAR. 10. Respondent F. O. G. A., in furtherance of its objectives, sought and secured the cooperation of the three respondent local guilds, Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild, and Ladies' Ready-to-Wear Guild of Baltimore, Inc. Each of these guilds entered into an agreement with the F. O. G. A., by the terms of which the F. O. G. A. agrees that its members will not sell their products in the cities in which said local guilds are located to retailers who are not members in good standing of said local guilds, or who do not conform to their standards and regulations; that they will not sell at retail to individual consumers or to persons conducting their business in residences, residential quarters, or in hotels or apartment buildings; that they will not conduct off-price promotion sales or clearance sales prior to the dates fixed by the local guild; that they will not sell to any member of the local guild who shall violate any of the provisions of the agreement until such member is restored to good standing in the local guild; that if any of its members shall breach any of the provisions of this agreement they will be suspended from membership.

The respective local guilds agree that their members will not purchase from manufacturers who do not conform to the standard of ethics and the regulation of the F. O. G. A.; that they will not knowingly buy or sell copies of legitimately registered styles and will return any such copies as are found in their stock; that they will accept the decision of the "style piracy" division of the F. O. G. A. on all questions of alleged design piracy; that they will stamp all their orders for merchandise with the warranty clause formulated by the F. O. G. A., which clause is as follows:

This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted.

Each of the respondent local guilds agrees that it will suspend from membership any member who shall violate any of the provisions of the agreement; that its members will refrain from purchasing from any member of the F. O. G. A. who shall violate any of the provisions of this agreement until such time as such member shall be restored to membership in good standing of the F. O. G. A.

The terms of these agreements were fulfilled by the F. O. G. A. and its members, and by the respective local guilds and their members.

PAR. 11. Respondent F. O. G. A., in 1933, determined that its objectives would be best accomplished by securing the cooperation of individual retail dealers in women's garments in territories which

had no local guilds, and to this end, it distributed to retail dealers throughout the United States copies of what it termed a "Declaration of Cooperation," for the signature of the retailer. It is stated in this Declaration of Cooperation that the retailer will not buy any copies of merchandise created by members of the F. O. G. A.; that he will abide by the decision of the "piracy committee" of the F. O. G. A., and return such garments as are adjudged to be copies of the Guild's registered styles, and will cooperate with the F. O. G. A. to the fullest extent in helping it to remove such copies from the market; that he will furnish the F. O. G. A. with such information in his possession as it may desire; that he will affix to all of his apparel orders the warranty clause formulated by the F. O. G. A., which is set forth in paragraph 10 hereof.

At first the F. O. G. A. attempted to secure the voluntary cooperation of the retailers and their signatures to the declaration of cooperation by representing the advantages to be derived from such cooperation; later, after having secured a number of voluntary signatures to this "declaration," the F. O. G. A., coerced, constrained, and compelled retail dealers to sign such declarations of cooperation under the threat that unless they did so, its members would refuse to sell them their products or to allow them to inspect their lines of merchandise. The garment-manufacturing members of the F. O. G. A. have refused and do refuse to exhibit or sell their merchandise to retailers who fail or refuse to sign said declarations of cooperation, or who, having signed same, fail to comply with the requirements thereof.

As a result of the coercive activities of the F. O. G. A., approximately 12,000 retail dealers, including those specifically mentioned in paragraph 6 hereof, had signed such declarations of cooperation and returned same to the F. O. G. A. by the end of 1935. The retailers who signed these declarations thereafter refused to purchase garments which were determined by the F. O. G. A. to be copies of original registered styles or designs of its members, and the terms of the declaration were generally complied with by the signers thereof. In some instances, however, signers of these declarations of cooperation failed or refused to comply with the terms of such declaration of cooperation, in which instances the members of the F. O. G. A., in accordance with the requirement of the F. O. G. A., refused to sell or exhibit their merchandise to such noncomplying retailers. The majority of the 12,000 retail dealers in women's garments referred to in paragraph 6 hereof signed such declarations of cooperation as a result of the threat of the F. O. G. A. that its members would sell their products only to those merchants who signed the declaration of cooperation.

The respondent, F. O. G. A., after it had secured the cooperation of a large number of retail dealers, sought to, and did, induce many retailers not only to refuse to purchase alleged copies of original designs of its members, but also to refuse to purchase any of their requirements from manufacturers who copied original styles or designs of members of the F. O. G. A.

PAR. 12. The F. O. G. A., as a part of its program, in 1933 instituted its Design Registration Bureau for the registration of alleged original designs and styles of its women's garment-manufacturing members. Blank application forms were furnished the members, on which description was entered of the design and style of the garment to be registered, and members were required to submit a sketch of the garment with such form, together with an affidavit setting forth that the garment sought to be registered was an original design created by the applicant. Each registration was stamped and numbered, but such registration raised no presumption that the registered garment was, in fact, the original design of the registrant, but merely fixed the date when such claim was made.

PAR. 13. The F. O. G. A. from time to time appoints what it designates as a "piracy committee," to determine whether the garments alleged to be copies of styles and designs registered by its members as original creations are such in fact. The piracy committee notifies both parties to the controversy as to the time and place of hearing, and both the garment claimed as original and its alleged copy are before the committee. After the hearing, the committee makes its determination, and if adverse to the alleged copyist, he has the right of appeal to certain other successive committees, as provided. When the challenged party has exhausted the appeals in such case provided, the status of the garment is fixed.

PAR. 14. The F. O. G. A. employs in the principal cities throughout the country persons designated as "shoppers," who visit the stores of cooperating retail dealers for the purpose of examining their stocks, to determine and report as to whether they contain garments declared by the piracy committee of the F. O. G. A. to be copies of registered designs or styles of its members. When such copies are discovered by the shoppers, they request the retailer to remove the same from sale, and failure to do so is reported by the shopper to the F. O. G. A. These shoppers also visit the stores of noncooperating retail dealers, without disclosing their identity, for the purpose of ascertaining whether such merchants have on sale copies of alleged original designs and styles of F. O. G. A. members, and if such are found, it is reported to the F. O. G. A.

PAR. 15. The F. O. G. A., in order to provide an effective means of preventing the purchase by retail dealers of alleged copies of original styles and designs registered by its members, inaugurated and maintains a card-index system by which the names of cooperating retailers who have signed the declaration of cooperation are each entered on a white card, duplicates of which are sent to each member of the F. O. G. A., and such members are prohibited from selling to any retail merchant whose name is not so carded. The names of retailers who fail or refuse to sign the declaration of cooperation, or who, having signed, fail or refuse to take off sales garments adjudged by the piracy committee of the F. O. G. A. to be copies of registered original designs of an F. O. G. A. member, are entered on a red card, a duplicate of which is sent to each member of the F. O. G. A., and upon receipt of same, the member, in compliance with the regulations and requirements of the F. O. G. A., refuses to sell such red-carded retailer. The F. O. G. A. also distributes among its members lists of retailers who have failed or refused to sign the declaration of cooperation, or who, having signed same, fail or refuse to remove from sale copies of alleged original styles or designs registered by its members, or who fail to comply with the rules and regulations of the F. O. G. A., with instructions that members receiving such lists are not to sell their merchandise to persons whose names appear thereon, and its members thereafter refuse to sell such persons. The red-carded list, on March 20, 1936, contained the names of over 400 retail dealers located at various places throughout the United States. The F. O. G. A. has also red-carded retailers who refuse to disclose the names of the manufacturer from whom they purchased alleged copies, even though such retailers removed the alleged copies from sale.

PAR. 16. The respondent National Federation of Textiles, Inc., maintains a clearing-house for the registration of textile designs, under the name Industrial Design Registration Bureau. This bureau is available to members and nonmembers of said respondent corporation. The F. O. G. A. designated this bureau as the official registration bureau of its textile members, and the garment-manufacturing members and the textile members of the F. O. G. A. entered into an agreement that the former would not buy textiles which were not registered in said bureau, and the latter agreed to sell only to those garment manufacturers who became parties to said agreement. The agreements were and are kept by said members.

PAR. 17. Respondent National Federation of Textiles, Inc., on December 23, 1935, placed an advertisement in a trade journal, notifying manufacturers and converters of textiles used in the women's garment manufacturing industry that members of the F. O. G. A.

and other manufacturers of women's garments who were not members of the F. O. G. A., had signed pledges to use only textile designs which had been registered in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

PAR. 18. On December 28, 1933, the F. O. G. A. passed a resolution that, as a means of preventing style piracy, its members would not buy from textile manufacturers who sold to retailers who entered into agreements with manufacturers to manufacture styles, and that they would not sell to retailers who resort to this practice.

PAR. 19. On September 13, 1933, the board of governors of the F. O. G. A., by resolution, prohibited its members from participating in any manner whatsoever in any retail advertising, and fixed expulsion from the organization as the penalty for violation thereof; and the members of the F. O. G. A. have complied and do comply with the terms of this resolution.

PAR. 20. On June 10, 1935, the F. O. G. A. adopted a resolution that none of its members should allow or give any discount in excess of "8-10 e. o. m."

PAR. 21. The F. O. G. A., on June 10, 1935, adopted a resolution prohibiting its members from selling at retail, and thereafter its members refused to make retail sales.

PAR. 22. The F. O. G. A. cooperated with the Ladies' Ready-to-Wear Guild of Baltimore Inc., in its attempt to prevent special sales except upon days designated by said Baltimore Guild.

PAR. 23. In compliance with the policy and program of the F. O. G. A., its members refuse to sell their women's garments to persons who conduct business in residences, residential quarters, hotels, or apartment houses.

PAR. 24. In the event a retailer fails to obey the rule of the F. O. G. A. which prohibits retailers participating with dress manufacturers in promoting fashion shows unless the merchandise used therein be actually purchased and delivered, the F. O. G. A. refuses to continue its affiliation with such retailer and denies to him all the privileges resulting from such affiliation.

PAR. 25. In compliance with the policy and program of the F. O. G. A., its members refrain from participating in fashion shows sponsored by retailers.

PAR. 26. The F. O. G. A. employs auditors who audit the books of its members to ascertain whether they are selling red-carded retailers or violating any of the regulations, policies, or programs of the F. O. G. A.

PAR. 27. The F. O. G. A. collects fines which it imposes on its members who are shown by its auditor's reports, or otherwise, to have

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sold red-carded retailers, or to have violated any of its policies or programs. A fine of \$1,500 was collected from one member, and the F. O. G. A. notified its membership that a fine of \$5,000 would be assessed by it in case of future violation.

PAR. 28. Retail dealers in women's garments who have failed or refused to cooperate with the F. O. G. A., or who, having signed its declaration of cooperation, have failed or refused to remove from sale garments declared by the F. O. G. A. to be copies of registered original designs or styles of its members, have been occasioned loss of good will and great financial loss by the refusal of garment-manufacturing members of the F. O. G. A. to sell them their merchandise.

PAR. 29. Manufacturers of women's garments who sell their products in interstate commerce and who are not members of the F. O. G. A. have been occasioned great financial loss, due to the return by retail dealers, in compliance with the requirements of respondent F. O. G. A., of garments declared by said respondent to be copies of registered original styles or designs of its members.

PAR. 30. Respondent F. O. G. A. has induced and constrained retail dealers to refrain from purchasing any of their requirements from manufacturers declared by it to be confirmed copyists, and as a result, such manufacturers have suffered great financial loss.

PAR. 31. All of the respondents, during the period of time, to wit, from March 7, 1932, to April 16, 1936, by cooperating with each other in the conduct and consummation of the policies and programs of the respondent F. O. G. A., and pursuant to understandings, arrangements, agreements, combinations, and conspiracies entered into jointly and severally by them, and by reason of the policies and programs in pursuance thereof, have produced and caused the following conditions and effects:

(a) Prevented competitors of members of the F. O. G. A. and the National Federation of Textiles, Inc., from making sales of their products and shipments thereof in interstate commerce, and, as a result, competition in interstate commerce in the sale and shipment of women's garments and textiles used in the manufacture thereof has been substantially lessened, hindered, and suppressed.

(b) Prevented retail dealers in women's garments, located throughout the United States, from buying their requirements from manufacturers boycotted by the respondent F. O. G. A., and as a result, competition in interstate commerce in the purchase and sale of women's garments has been substantially lessened, hindered and suppressed.

(c) Respondents F. O. G. A. and the National Federation of Textiles, Inc., have obtained and have exercised control over the business practices of a majority of the manufacturers and distributors of women's garments and the textiles used in the manufacture thereof, and have the power to exclude from the industry those manufacturers and distributors who do not conform to the rules and regulations of said respondents, and thus tend to create in themselves a monopoly in the said industries.

(d) Constrained, coerced, and compelled retail dealers in women's garments throughout the United States to declare their intention to cooperate with the F. O. G. A. in its policies and programs by signing the declaration of cooperation submitted by the F. O. G. A.

(e) Caused retail dealers in women's garments who failed or refused to sign the declaration of cooperation of the F. O. G. A., or who, having signed same, failed to remove from sale garments found by the F. O. G. A. to be copies of styles or designs registered as original creations of its members, to suffer great financial loss and loss of good will because of the refusal of members of the F. O. G. A. to sell their merchandise to such retailers.

(f) The F. O. G. A. fixes the amount of discounts to be given by its garment-manufacturing members to retail dealers.

(g) Garment-manufacturing members of the F. O. G. A. refuse to sell their merchandise at retail, or to persons conducting business in residences, residential quarters, hotels, or apartment houses.

(h) The F. O. G. A. prohibits its garment-manufacturing members from participating in fashion shows conducted by retailers.

(i) The F. O. G. A. prevents its garment-manufacturing members from subsidizing retail advertising.

(j) The F. O. G. A. exacts fines from its garment-manufacturing members for violation of its policies and programs.

(k) Garment-manufacturing members of the F. O. G. A. refuse to buy from textile manufacturers that sell to retailers who enter into agreements with manufacturers to manufacture styles.

(l) Garment-manufacturing members of the F. O. G. A. refuse to sell to retail dealers who enter into contracts with manufacturers to manufacture styles.

(m) Textile members of the F. O. G. A. refuse to sell their products to manufacturers who enter into agreements with retail dealers to manufacture styles.

(n) Garment-manufacturing members of the F. O. G. A. refuse to purchase textiles from manufacturers thereof who do not register their designs with the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

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(o) Textile members of the F. O. G. A. refuse to sell their products to manufacturers who do not agree to purchase only from textile manufacturers who register their designs with the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

(p) Garment-manufacturing members of the F. O. G. A. refuse to sell to retail dealers in Chicago, Ill., Minneapolis, Minn., and Baltimore, Md., who are not members of the local guild of said respective cities, or who do not conform to the rules and regulations of said respective guilds; and members of said respondent local guilds confine their purchases of women's garments to members of the F. O. G. A. and those manufacturers who conform to the regulations, programs and policies of the F. O. G. A.

CONCLUSION

The acts, policies, and practices of the respondents, as set forth in the foregoing findings as to the facts, under the circumstances therein set forth, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, and tend to create a monopoly, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST²

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, the testimony and other evidence taken before John W. Bennett, Edward M. Averill and Charles F. Diggs, respectively, examiners of the Commission theretofore duly designated by it, and briefs filed herein and oral arguments by counsel, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Fashion Originators Guild of America, Inc., its officers,

Maurice Rentner, president, treasurer and member of its board of governors.

Herbert Sondheim, first vice president and member of its board of governors.

² Order published as modified by Commission order dated March 29, 1939, which eliminated from the original cease and desist order the following paragraph, to wit:

"(a) To refuse to sell their textile products to manufacturers of women's garments who fail or refuse to agree that they will not purchase any of their requirements from textile manufacturers who do not register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc." (See p. 473.)

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Charles Gumprecht, second vice president and member of its board of governors.

J. A. Livingston, treasurer and member of its board of governors.

Albert M. Post, executive director.

James M. Golby, executive secretary.

and their successors;

William Bass.

Louis J. Brenner.

Jo Copeland.

William Fox.

Joseph Halpert.

Charles Miller.

Kallman Carmel.

David M. Goodstein.

David Bender.

Theodore Racoonin.

Charles Lang.

Samuel Kass.

D. Eli Lahm.

Louis M. Wersba.

Leo Del Monte.

Matthew Kane.

Louis J. Mallas.

and their successors, members of its board of governors;

Austin M. DeLisser, executive secretary of the Textile Merchants Group of the Fashion Originators Guild of America, Inc., and E. W. Freudenberg, Samuel Levine, and E. E. Meyer, and their successors, members of its steering committee, and the following named members of the Fashion Originators Guild of America, Inc.:

Aldrich & Malvin, Inc.

Charles Armour & Bros., Inc.

Joseph & Ben Barnett, Inc.

William Bass Dress Corp.

Bender & Hamburger, Inc.

Brenner, Joseph & White, Inc.

Hattie Carnegie, Inc.

Lewis Cohn, Inc.

David Crystal, Inc.

Anna Duke, Inc.

Feigenbaum & Adelson, Inc.

Herman Floershelmer & Bro., Inc.

Louise Barnes Gallagher, Inc.

Garfinckel & Siegel, Inc.

A. Goodman & Co., Inc.

Julius Grossman & Fred Greenberg Dress Co., Inc.

Charles Groden, Inc.

Max Helt Dress Corp.

Myron Herbert & Charles Cooper, Inc.

Virginia Hume & Gold, Inc.

Kallman & Morris, Inc.

Samuel Kass Gowns, Inc.

Charles Kondazian & Papaz, Inc.

Charles Lang, Inc.

Lenkowsky Modes, Inc.

Milton Altmark, Inc.

Arons, Bernstein & Arons, Inc.

Rose, Barrack & Lahm, Inc.

Herman Beispel, Inc.

Blotta & Conti, Inc.

Brenner, Morris, Inc.

Clifford Salkin, Inc.

Jo Copeland, Inc.

Dolces Dressing, Inc.

Eta, Inc.

Pauline Fields, Inc.

Henry Ganz, Inc.

Gardner & Schwartz, Inc.

Ed Garrick & Co., Inc.

Joseph Greenberg-Bettina, Inc.

Joseph Halpert, Inc.

Jack Herzog & Bro., Inc.

E. A. Jackson-Bienard, Inc.

Kaplan & Moskowitz, Inc.

Kiviette, Inc.

Kornhauser Gowns, Inc.

LaRue Dresses, Inc.

Mary Lee Frocks, Inc.

Mary Liotta, Inc.

H. Milgrim & Bros., Inc.

Jennie Moskowitz, Inc.

Nomis Dress Co., Inc.

Pattulo Modes, Inc.

Ben Relg, Inc.

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| Nettie Rosenstein Gowns, Inc. | Brueck & Richards, Inc. |
| Rudolf Gowns, Inc. | Chatillon, Mouly, Roussel, Inc. |
| J. M. Silverman Dresses, Inc. | Combler & Co., Inc. |
| Herbert Sondheim, Inc. | Coudurier, Frustus & Devigne, Inc. |
| Frank Starr Friedlander, Inc. | Silk Guild of America, Inc. |
| Suttre-Fox, Inc. | Empire Silk Co. (Inc.) |
| John Traina, Inc. | The Forstman Woolen Co. (Inc.) |
| Fred A. Block, Inc. | Theodore J. Gallagher, Inc. |
| H. N. Fried. | L. J. Hyams |
| Lang-Kohn Mfg. Co. | Kandelaft Silks, Inc. |
| Robinson Bros., Inc. | Maginnis & Thomas, Inc. |
| Dartmoor Coat Co., Inc. | Menke Kaufman & Co. |
| Ben Gershel & Co., Inc. | Wm. C. Openbym |
| Ben Ginsberg, Inc. | L. & E. Stirn, Inc. |
| Aaron Goldstein Co., Inc. | Blanchini, Ferier, Inc. |
| Grossman & Spiegel, Inc. | Sidney Blumenthal & Co., Inc. |
| Monte, Sans & Pruzan, Inc. | Case & Co., Inc. |
| Louis Kallish. | Cheney Bros., Inc. |
| Ashley Frocks, Inc. | Descours, Genthon, Inc. |
| Joseph M. Duberman | Croydon Fabrics, Inc. |
| Joanne, Jr. Zinn Bros., Inc. | F. DuCharne Silk Co., Inc. |
| Louise Mulligan, Inc. | Cohn-Hall-Marx Co., Inc. |
| M. A. Litvin, Inc. | Frank Associates, Inc. |
| Germaine Montell, Inc. | Hess, Goldsmith & Co., Inc. |
| Nanty Frocks, Inc. | Jane Hyams |
| Paul Parnes, Inc. | Lace Net Importing Co., Inc. |
| Perles & Gilbert, Inc. | H. B. Mallinson & Co., Inc. |
| Maurice Rentner, Inc. | Onondaga Silk Co. |
| James J. Rothenberg, Inc. | Remond-Holland, Inc. |
| Ruffolo Bros., Inc. | Stunzl Sons Silk Co., Inc. |
| Somay, Inc. | Susquehanna Silk Mills (Inc.). |
| Spectator Sports, Inc. | J. A. Wagenbauer, Inc. |
| Straus-Miller, Inc. | Wechaler Silk Corp. |
| A. Traina Gowns, Inc. | J. J. & N. Blackstone, Inc. |
| B. G. Garment Co., Inc. | Ellen Lace & Embroidery Co., Inc. |
| S. Eisenberg | Ikle Freres & Co., Inc. |
| Junior Guild Frocks, Inc. | Lido Embroidery, Inc. |
| Matthew Kadetsky Co. | Record Lace & Embroidery Co., Inc. |
| Carmel Bros., Inc. | Walter Tobler |
| Deitsch, Wersba & Coppola, Inc. | Franz Hoening |
| Del Monte Hickey Co., Inc. | Schwarzenbach, Huber, Inc. |
| Louis Goldstein Company, Inc. | Wahnetah Silk Co., Inc. |
| Phillip Mangone & Co., Inc. | Zellinger & Schreth, Inc. |
| Zuckerman & Kraus, Inc. | Dutschler, Trull & Justin, Inc. |
| Max Rosenbluth | L. H. Hollander |
| J. H. Horwitz | Herbert Lehman, Inc. |
| Jane Junior Dresses, Inc. | Maison France, Inc. |
| Junior League Frocks, Inc. | |
| Ira Rentner-Miller, Inc. | |
| Amrein Freudenberg & Co., Inc. | |
| Bloomsburg Silk Mill, Inc. | |

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| Swiss Novelty Embroidery Co., Inc. | Sport Kraft, Inc. |
| Sol Wolfman, Inc. | Sam Steinberg & Co., Inc. |
| Adler & Adler, Inc. | L. & D. Bellinson, Inc. |
| David M. Goodstein, Inc. | F. E. D. Dress Co., Inc. |
| Joseph Levay, Inc. | Friedman Dress Co., Inc. |
| David N. Lowenthal & Son, Inc. | International Dress Co., Inc. |
| Charles W. Nudelman, Inc. | Joe Levine Dress Co., Inc. |
| Theodore Rosenberg | C. H. D. Robbins Co., Inc. |
| Star Maid Dresses, Inc. | Sheila-Lynn Dresses, Inc. |
| Townley Frocks, Inc. | David S. Westheim Corporation |
| Aywon Dress Co., Inc. | Bernard Appel, Inc. |
| Daytime Frocks, Inc. | Bonn Ray Dance Frocks, Inc. |
| Harry Frank | Casino Dresses, Inc. |
| Goldman Frocks Co., Inc. | Dalton Frocks, Inc. |
| Jomark Dresses, Inc. | Dresden Dress Co., Inc. |
| Parisian Mfg. Co., Inc. | Franklin Dress Co., Inc. |
| Rosen Bros. Frocks, Inc. | Alexander S. Gross, Inc. |
| Silver Dresses, Inc. | Lyla Modes, Inc. |
| Witlin & Schneider, Inc. | El. N. Marcus |
| Anderman-Bob Burns, Inc. | Parnis-Levinson, Inc. |
| Grace Ashley | Radiant Dress Co., Inc. |
| Capri Frocks, Inc. | L. C. Rosenblatt, Inc. |
| Cohen-Tunick, Inc. | Stern & Goldberg, Inc. |
| Sam Davidson, Inc. | Valroy, Inc. |
| Fashion Wear Dress Co., Inc. | Bretter & Sussman, Inc. |
| Ginsburg & Abelson, Inc. | Flo-Frocks, Inc. |
| Lee Claire Costumes, Inc. | George Hess Co., Inc. |
| Lyttle Bros., Inc. | Michael Kaplan |
| Matty Moskowitz, Inc. | Wein Frocks, Inc. |
| Patricia Perkins, Inc. | Argosy Dresses, Inc. |
| Reich-Goldfarb & Co., Inc. | Garland Dress Co., Inc. |
| Schultze-Zuch, Inc. | Samuel Lipman |
| Will Steinman, Inc. | Julius Lipman |
| Phil Zahn & Co., Inc. | Rosenthal & Kallman, Inc. |
| Campus Modes, Inc. | Junior Fashion Guild, Inc. |
| Davidow, Inc. | M. Kaplan |
| Kane-Weill, Inc. | Abbate-Swift, Inc. |
| J. A. Livingston, Inc. | Cecele Dance Frocks, Inc. |
| Mutual Rosenbloom Corp. | B. Tobias, Inc. |
| Zoltan Rosenberg | Herman Lipman |
| | Marie-Lynn Dance Frocks, Inc. |

and all present and future members, their agents, servants, and employees, each and all,

Cease and desist from directly or indirectly, jointly or severally, entering into or carrying out any understanding, arrangement, agreement, combination, or conspiracy, with each other or with any other person or persons, association, or corporation, to hinder or suppress competition in the interstate sale and distribution of women's garments or textiles used in the manufacture thereof; or to hinder or

suppress competition among manufacturers of said garments or textiles in the interstate sale and distribution of said products to retail dealers, and particularly from directly or indirectly, in pursuance of any such understanding, arrangement, agreement, combination, or conspiracy, from:

1. Inducing, coercing, constraining, or compelling manufacturers of women's garments to confine their purchases of textiles to those textile manufacturers who register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

2. Inducing, coercing, constraining, or compelling women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to buy from textile manufacturers who sell to retail dealers in women's garments who enter into agreements with manufacturers to manufacture styles, or to refuse to sell to such retail dealers as resort to such practices.

3. Inducing, coercing, constraining, or compelling textile members of the Fashion Originators Guild of America, Inc., to refuse to sell textiles to women's garment manufacturers who do not agree to purchase only from textile manufacturers who register their designs with the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

4. Inducing, coercing, constraining, or compelling women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to sell their merchandise to retail dealers who do not agree to cooperate with, or who do not cooperate with, the Fashion Originators Guild of America, Inc., by refusing to buy women's garments declared by it to be copies of original registered designs of its members and registered by them in the registration bureau of said respondent, Fashion Originators Guild of America, Inc., and by returning to the manufacturers thereof any such copies which may be found in their stock, and by stamping all their orders for merchandise with the warranty clause stamp of the Fashion Originators Guild of America, Inc., which recites that the seller warrants that the garments ordered and sold are not copies of styles originated by members of the Fashion Originators Guild of America, Inc., and that the purchaser reserves the right to return any merchandise which is not as warranted.

5. Inducing, coercing, constraining, or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to confine their sales in Chicago, Ill.; Minneapolis, Minn., and Baltimore, Md.; to retail dealers in women's garments who are members of the respective respondent local guilds of those

cities, to wit: Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild and Ladies' Ready-to-Wear Guild of Baltimore, Inc., or those who conform to the standards and regulations of such respondent local guilds.

6. Inducing, coercing, constraining, or compelling the women's garment-manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to conduct off-price promotion sales, or clearance sales in Chicago, Ill.; Minneapolis, Minn., and Baltimore, Md.; prior to the dates fixed for such sales by the respective respondent local guilds, to wit: Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild, and Ladies' Ready-to-Wear Guild of Baltimore, Inc.

7. Inducing, coercing, constraining, or compelling the Women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to sell at retail, or to persons conducting their business in residences, residential quarters, hotels, or apartment buildings.

8. Inducing, coercing, constraining, or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to exhibit or sell their merchandise to retail dealers who fail or refuse to sign the Declaration of Cooperation of the Fashion Originators Guild of America, Inc., or who, having signed same, fail or refuse to comply with the conditions thereof.

9. Inducing, coercing, constraining, or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to contribute to the cost of advertisements of retail dealers in women's garments.

10. Inducing, coercing, constraining, or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to participate in fashion shows sponsored by retailers.

11. Fixing or attempting to fix, or dictate, the amount of discounts to be allowed by the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to retail dealers in women's garments.

12. Inducing, coercing, constraining, or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to permit retailers to participate with them in promoting fashion shows unless the merchandise used therein has been actually purchased and delivered to such retailers.

13. Employing auditors, accountants, or others to audit the books of the members of the Fashion Originators Guild of America, Inc.,

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for the purpose of ascertaining whether they are violating or have violated any of the policies, regulations or programs of the Fashion Originators Guild of America, Inc., and from imposing or collecting fines or penalties, or suspending or expelling from membership in the Fashion Originators Guild of America, Inc., those members who violate the policies, regulations or programs of the Fashion Originators Guild of America, Inc.

It is further ordered, That the respondent Michigan Avenue Guild of Chicago—

Guy L. Ederhelmer.
Edward A. Fletcher.
Harry Blum.
Louis Gossert.
A. E. Levitt.
Bernard Rose.
Herman Friedman.
Frank L. Cole.

L. R. Pearson.
Leo Bramson.
M. E. Greenbaum.
Sally K. Greenbaum.
E. R. Lindburg.
George M. Gleason.
Clarence A. Powell.
Ellse A. Runyan.

its officers and members of its Board of Directors and their successors, its members and all future members;

The respondent, Minneapolis Fashion Guild, Roy H. Bjorkman, its executive secretary, and his successors, its officers and members of its board of directors and their successors, its members and all future members;

The respondent Ladies Ready-to-Wear Guild of Baltimore, Inc.—

Charles G. Hutzler.
C. F. Roycroft.
William Pollock.
Martin B. Kohn.
J. E. Ellington.

Allen S. Metzger.
Fred H. Alperstein.
Lester Bonwit.
Albert D. Slesinger.
Sam J. Schletsner.

Hal W. Kenaston.

its officers and members of its board of directors, and their successors, its members and all future members:

Cease and desist, From directly or indirectly, jointly or severally, entering into or carrying out any understanding, arrangement, agreement, combination, or conspiracy, with each other or with any other person, or persons, association, or corporation:

(a) To refuse to purchase any of their requirements from manufacturers of women's garments who are not members, or who do not conform to the standards, ethics or regulations of the Fashion Originators Guild of America, Inc.

(b) To comply with the requirement of the Fashion Originators Guild of America, Inc., prohibiting the purchase or sale of women's garments declared by it to be copies of styles or designs registered as original by its members in its design registration bureau.

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(c) To comply with the requirement of the Fashion Originators Guild of America, Inc., that any such declared copies as are mentioned in subparagraph (b), that are found in their stock shall be removed from sale and returned to the manufacturer thereof.

(d) To comply with the requirement of the Fashion Originators Guild of America, Inc., that all orders for women's garments shall be stamped with its warranty clause which recites that the seller warrants that the garments are not copies of styles or designs registered with the Fashion Originators Guild of America, Inc., as original by its members, and reserving the right in the purchaser to return any merchandise which is not as warranted.

(e) To comply with the requirement of the Fashion Originators Guild of America, Inc., that purchases of women's garments be made only from its members in good standing or from manufacturers who observe its standards, ethics, policies, and regulations.

It is further ordered, That the respondent National Federation of Textiles, Inc., Peter Van Horn, its president, Irene L. Blunt, its secretary, and their successors, all other of its officers and their successors, members of its board of directors and their successors, and its members and all future members, their agents, servants, and employees:

Cease and desist, From directly or indirectly, jointly or severally, entering into, or carrying out, any understanding, arrangement, agreement, combination, or conspiracy, with each other or with any other person, persons, association or corporation—

(b) * To publish in trade journals, newspapers, or in any other manner, that manufacturers of women's garments have entered into an agreement not to purchase textiles from manufacturers thereof who do not register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

It is further ordered, That respondents Marshall Field & Co., Allied Stores Corporation, the Lindner Co., Joseph Horne Co., Mandel Brothers, Inc., John Wanamaker (Philadelphia), Lit Brothers, Inc., Bullock's, Inc., the Emporium Capwell Corporation, and J. L. Hudson Co., their officers, members of their boards of directors, and their successors, their agents, servants, and employees, and approximately 12,000 retail dealers in women's garments throughout the United States who have signed declarations of cooperation with respondent Fashion Originators Guild of America, Inc., whom it is impracticable to name herein, and of whom the respondents specifically named in this paragraph are representative:

Cease and desist, From, directly or indirectly, jointly or severally entering into, or carrying out any understanding, arrangement, agree-

* See footnote on p. 466.

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ment, combination, or conspiracy with each other, or with any other person or persons, association or corporation :

(a) To refuse to purchase any women's garments from manufacturers thereof who are not members of the Fashion Originators Guild of America, Inc., or who do not conform to its standards, ethics, and regulations.

(b) To comply with the requirement of the Fashion Originators Guild of America, Inc., not to purchase or sell women's garments declared by it to be copies of styles or designs registered in its design registration bureau by its members.

(c) To comply with the request of the Fashion Originators Guild of America, Inc., that no women's garments be purchased from manufacturers declared by it to be confirmed copyists.

(d) To comply with the requirement of the Fashion Originators Guild of America, Inc., that any women's garments found in their stocks which have been declared by it to be copies of registered styles and designs of its members be removed from sale and returned to the manufacturer thereof.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed, insofar as it applies to respondent G. H. Conze, for the reason that said respondent resigned as a member of the steering committee of the textile group of Fashion Originators Guild of America, Inc., prior to the issuance of the complaint herein, and refused to be a party to the policies and programs which formed the basis of the charges set out in the complaint.

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 this order.

Syllabus

IN THE MATTER OF
**JACOB GOLDBERG, TRADING AS CROWN NOVELTY
 HOUSE**

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

Docket 3484. Complaint, July 12, 1938—Decision, Feb. 8, 1939

Where an individual engaged in sale and distribution of watches, cameras, razor blades, clocks, and various other articles of merchandise—

- (a) Distributed or caused to be distributed to representatives and prospective representatives, in selling and distributing his said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme, among other advertising literature, a sales circular consisting of a list on which were designated a number of items of merchandise and prices thereof and pull card for use in sale and distribution of said products under a plan or scheme in accordance with which particular article of merchandise and price to be paid and apparent value to be secured by purchaser were dependent upon matter disclosed by particular tab selected by chance by purchaser, and representative was compensated by premium for operation of card and sale of merchandise, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of said merchandise in accordance with aforesaid or similar sales plan, involving game of chance or sale of a chance to procure an article of merchandise at a price much less than apparent normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said methods or any method involving game of chance or sale of a chance to win by chance or any method contrary to public policy and refrain therefrom;

With result that many persons were attracted by his said method and by element of chance involved in sale of such merchandise as 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 such or equivalent method, and of unfairly diverting by reason of said game of chance trade and custom to him from his competitors aforesaid;

- (b) Caused such statements to appear in his advertising matter as "Free Gifts—Valuable Premiums Free," "How to Get Your Gifts Without Any Cost to You," and "2 Extra Surprise Gifts Free," facts being none of his so-called premiums or gifts were given away "free" or "without cost" but said so-called premiums or gifts which were represented as being "free" or "without cost" to said representatives were either purchased with their labor or the prices thereof were included in the prices of other articles of merchandise which they had to sell or procure sale of before said so-called premiums or gifts could be procured by them, and in the case of a number thereof, certain sums of money were required to be paid by said representatives in addition to the labor performed or services rendered;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such statements and representations

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were true, and into the purchase of substantial quantities of his said products as a result thereof, and of unfairly diverting trade to him from competitor manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning the same; to the substantial injury of competition in commerce:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Jacob Goldberg an individual trading as Crown Novelty House, hereinafter referred to as respondent, has violated the provisions of the 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 Jacob Goldberg is an individual trading under the name of Crown Novelty House, with his principal office and place of business located at 65 Suffolk Street, New York, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of watches, cameras, china and silverware, lamps, razor blades, clocks, cigaret lighters, jewelry, cosmetics, bedding, kitchenware, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been 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 and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and distributes, and has sold

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and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature, including a sales circular. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set-out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards use and have used 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 sales of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. 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 method which 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 of such merchandise 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 capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of his business, as hereinabove related, respondent causes and has caused various false, deceptive, and misleading statements to appear in his advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Free Gifts—Valuable Premiums Free.

How to get your gifts without any cost to you.

2 extra surprise gifts free.

Findings

PAR. 6. In truth and in fact, none of respondent's so-called premiums or gifts are given away "free" or "without cost," but said so-called premiums or gifts which are represented as being "free" or "without cost" to said representatives are either purchased with labor by said representatives or the prices thereof are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them. For a number of said so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and 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 statements and representations are true, and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are, among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and, as a result thereof, substantial injury is being done, 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.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 12, 1938, issued, and thereafter served its complaint in this proceeding upon respondent, Jacob Goldberg, an individual trading as Crown Novelty House, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 7, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. There-

after, 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 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 Jacob Goldberg is an individual trading under the name of Crown Novelty House, with his principal office and place of business located at 65 Suffolk Street, New York, N. Y. Respondent is now, and for some time last past has been, engaged in the sale and distribution of watches, cameras, china and silverware, lamps, razor blades, clocks, cigarette lighters, jewelry, cosmetics, bedding, kitchenware, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from his place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been 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 and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives, certain advertising literature, including a sales circular. Respondent's merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set-out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of

merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards use and have used 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 sales of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above found, are unwilling to adopt and use said methods, or any methods involving a game of chance or the sale of a chance to win something by chance, or any method which 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 of such merchandise 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 capacity and tendency to, and does, unfairly divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of his business, as hereinabove described, respondent causes and has caused various false, deceptive, and misleading statements to appear in his advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Free Gifts—Valuable Premiums Free.

How to get your gifts without any cost to you.

2 extra surprise gifts free.

PAR. 6. In truth and in fact, none of respondent's so-called premiums or gifts are given away "free" or "without cost," but said so-called premiums or gifts which are represented as being "free" or "without cost" to said representatives are either purchased with labor by said representatives or the prices thereof are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them. For a number of said so-called premiums or gifts

certain sums of money must be paid by said representatives in addition to the labor performed or services rendered.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and 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 statements and representations are true, and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are, among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and, as a result thereof, substantial injury is being done, 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 respondent, as herein found, 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 the Federal Trade Commission Act.

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 fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Jacob Goldberg, individually, and trading as Crown Novelty House, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of watches, cameras, china and silverware, lamps, razor blades, clocks, cigarette lighters, jewelry, cosmetics, bedding, kitchenware, or any other articles of merchandise, in commerce,

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as commerce is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, pull cards or circulars having pull tabs thereon, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents or to distributors or to members of the public pull cards or circulars having pull tabs thereon, or other lottery devices so prepared or printed as to enable such persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of pull cards or circulars having pull tabs thereon, or any other lottery device.

4. Using the terms "free" or "without cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing respondent's merchandise unless all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the terms "free" or "without cost" or any other terms of similar import or meaning and there is no deception as to the price, quality, character, or any other feature of such merchandise or as to the services to be performed in connection with obtaining such merchandise.

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

Syllabus

IN THE MATTER OF

MIAMI WHOLESALE DRUG CORPORATION ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (f) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3377. Complaint, Apr. 11, 1938—Decision, Feb. 9, 1939

Where a corporation engaged in wholesale drug business and in purchasing, as thus engaged, goods, wares, and merchandise from manufacturers and sellers in the various States, in competition with others similarly engaged and in similar purchase, and in publishing, along with certain individuals, its officers, and in pursuance of a purchasing policy and practice designed and intended to induce favorable discriminatory prices for it on its purchases of goods, wares, and merchandise of like grade and quality to those bought by competitor purchasers, and not as an independent business operated in good faith, a magazine—

Induced and persuaded manufacturers and sellers to enter into contracts with it for insertion of advertisements therein under agreements or understandings that charges therefor, for which no substantial benefits and considerations accrued to manufacturers and sellers, would be credited on the purchase price of the goods, wares, and merchandise bought by it from such manufacturers and sellers, and thus obtained substantial discriminations in price, amounting to differentials in favor of it of from 33½ percent to 50 percent over other wholesalers competing with it and with customers of it, through credits, discounts, and allowances made on purchases of goods, wares, and merchandise bought by it, by virtue of such contracts and agreements for advertising space in periodical aforesaid, value of which as advertising medium was not substantial;

With result that it was thereby enabled to and did offer and sell to other wholesalers at prices lower than competitors of its wholesaler-customers could purchase the same commodities or those of like grade and quality from the manufacturers, and as said wholesaler-customers were enabled to and did offer and sell such commodities to retailers at prices lower than other wholesalers competing with it and its said customers could profitably sell such commodities to such dealers, effect of such discriminations in price induced and received by them was substantially to lessen competition and to tend to create a monopoly in the sale and distribution of drug products, and to injure, destroy, and prevent competition between and among it and its customers on the one hand, and their competitors on the other, and between and among customers of each:

Held, That such acts and practices, as above set forth, constituted violation of Section 2 (f) of act of Congress approved October 15, 1914, as amended by act of Congress approved June 19, 1936.

Mr. John Darsey for the Commission.

Mr. Aaron M. Kanner, of Miami, Fla., for respondents.

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COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, since June 19, 1936, have violated and are now violating the provisions of section 2 (f) 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 sec. 13), and for other purposes," approved June 19, 1936, (the Robinson-Patman Act), hereby issues this its complaint against respondents and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. The respondent, Miami Wholesale Drug Corporation, is a corporation organized and existing under the laws of the State of Florida, having an office and principal place of business in Miami, Fla. It is now, and for several years last past has been, engaged in the wholesale drug business.

The individual respondents, Arthur S. Lavine, Vivian L. King, and Sam S. Lavine, are president, vice president, and treasurer, respectively, of the respondent corporation.

Respondent Rodney S. Pullen, Jr., is in active charge of the management of the business of the respondent corporation as well as the business conducted under the trade name "Miami Magazine."

In the course and conduct of the wholesale drug business of the respondent corporation as aforesaid, goods, wares, and merchandise are purchased from manufacturers and sellers located in the various States of the United States, pursuant to which purchases the said goods, wares, and merchandise are shipped and transported to the respondent corporation from the States in which the various manufacturers and sellers are located, and the respondent corporation causes said goods, wares, and merchandise so purchased to be sold, shipped, and distributed, to other wholesalers and to retailers residing in the various States of the United States.

There are other corporations, partnerships, firms, and individuals, engaged in the wholesale drug business, who purchase goods, wares, and merchandise from manufacturers and sellers thereof, pursuant to which said purchases, goods, wares, and merchandise are shipped and distributed into and through the various States of the United States to the respective purchasers thereof, and with such corporations, partnerships, firms, and individuals, the respondent corpora-

tion and its customers are, and at all times mentioned herein have been, in competition.

PAR. 2. In the course and conduct of the business as hereinabove described, the respondent corporation, with the active cooperation, aid, and assistance of the individual respondents, adopted, follows, and pursues a purchasing policy and practice designed and intended to induce favorable discriminatory prices for the respondent corporation in its purchases of goods, wares, and merchandise of like grade and quality to those purchased by competing purchasers. Pursuant to, and in furtherance of, the said purchasing plan and policy, the parties respondent cause a magazine to be published under the trade name "Miami Magazine." Manufacturers and sellers are persuaded and induced to enter into contracts or agreements authorizing advertisements to be inserted in the said magazine, which contracts or agreements either provide, or it is understood, and so carried out, that the charges made for said advertisements shall be credited on the purchase price of the goods, wares, and merchandise purchased by the respondent corporation from such manufacturers and sellers. Many of such contracts or agreements have been so induced, entered into, and executed since June 19, 1936.

The publication of the aforesaid magazine by the parties respondent is not an independent business operated in good faith on a profit basis, but is a subterfuge operated solely as an incident to the wholesale drug business engaged in by the respondent corporation, for the purpose of obtaining the discriminations in price as aforesaid. The said magazine has no substantial value as an advertising medium, and there are no substantial benefits and considerations accruing to manufacturers and sellers for the credits, discounts, and allowances made on purchases of goods, wares, and merchandise by the respondent corporation by virtue of the contracts and agreements for advertising space therein.

The discriminations in price thus obtained are substantial, amounting to differentials in favor of respondent of from 33 $\frac{1}{3}$ percent to 50 percent over other wholesalers competing with respondent and with customers of respondent; enable respondent to offer and sell, and respondent does offer and sell, to other wholesalers at prices lower than competitors of respondent's said wholesaler customers can purchase the same commodities, or commodities of like grade and quality, from the manufacturers thereof; and enable respondent and its said wholesaler customers to offer and sell, and they do offer and sell, said commodities to retailers at prices lower than other wholesalers competing with respondent and its said customers can profitably sell such commodities to retailers.

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PAR. 3. The effect of the aforesaid discriminations in price, induced and received by the respondents, has been, and may be, substantially to lessen competition and tend to create a monopoly in the sale and distribution of drug products, and to injure, destroy, and prevent competition between and among the respondent and its customers, on the one hand, and their competitors, on the other hand, and between and among customers of each.

PAR. 4. The foregoing alleged acts of the respondents are in violation of section 2 (f) of said Act of Congress approved June 19, 1936, 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 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), the Federal Trade Commission on April 11, 1938, issued, and subsequently served, its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the violation of section 2 (f) of the Clayton Act, as amended.

On November 10, 1938, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the facts. 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 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, Miami Wholesale Drug Corporation, is a corporation organized and existing under the laws of the State of Florida, having an office and principal place of business in Miami, Fla. It is now, and for several years last past has been, engaged in the wholesale drug business.

The individual respondents, Arthur S. Lavine, Vivian L. King, and Sam S. Lavine, are president, vice president and treasurer, respectively, of the respondent corporation.

Respondent Rodney S. Pullen, Jr., is in active charge of the management of the business of the respondent corporation, as well as of the business conducted under the trade name "Miami Magazine."

In the course and conduct of the wholesale drug business of the respondent corporation as aforesaid, goods, wares, and merchandise are purchased from manufacturers and sellers located in the various States of the United States. The said goods, wares, and merchandise are shipped and transported to the respondent corporation from the States in which the various manufacturers and sellers are located, and the respondent corporation thereupon causes said goods, wares, and merchandise so purchased to be sold, shipped and distributed to other wholesalers and to retailers residing in the various States of the United States.

There are other corporations, partnerships, firms, and individuals, engaged in the wholesale drug business, who purchase goods, wares, and merchandise from manufacturers and sellers thereof, pursuant to which said purchases, goods, wares, and merchandise are shipped and distributed into and through the various States of the United States to the respective purchasers thereof. The respondent corporation and its customers are, and at all times mentioned herein have been, in competition with such corporations, partnerships, firms, and individuals.

PAR. 2. In the course and conduct of the business as hereinabove described, the respondent corporation, with the active cooperation, aid and assistance of the individual respondents, adopted, follows, and pursues a purchasing policy and practice designed and intended to induce favorable discriminatory prices for the respondent corporation in its purchases of goods, wares, and merchandise of like grade and quality to those purchased by competing purchasers.

Pursuant to, and in furtherance of, the said purchasing plan and policy, the parties respondent cause a magazine to be published under the trade name "Miami Magazine." Manufacturers and sellers are persuaded and induced to enter into contracts or agreements authorizing advertisements to be inserted in the said magazine, which con-

tracts or agreements either provide, or it is understood and so carried out, that the charges made for said advertisements shall be credited on the purchase price of the goods, wares, and merchandise purchased by the respondent corporation from such manufacturers and sellers. Many of such contracts or agreements have been so induced, entered into, and executed since June 19, 1936.

The Commission finds that the publication of the aforesaid magazine by the parties respondent is not an independent business operated in good faith on a profit basis, but is a subterfuge operated solely as an incident to the wholesale drug business engaged in by the respondent corporation, for the purpose of obtaining the discriminations in price as aforesaid.

The Commission further finds that the said magazine has no substantial value as an advertising medium, and there are not substantial benefits and considerations accruing to manufacturers and sellers for the credits, discounts, and allowances made on purchases of goods, wares, and merchandise by the respondent corporation by virtue of the contracts and agreements for advertising space therein.

The discriminations in price thus obtained are substantial, amounting to differentials in favor of respondent of from $33\frac{1}{3}$ percent to 50 percent over other wholesalers competing with respondent corporation and with customers of respondent corporation. The discriminations in price enable respondent corporation to offer and sell, and respondent corporation does offer and sell, to other wholesalers at prices lower than competitors of respondent's said wholesaler customers can purchase the same commodities, or commodities of like grade and quality, from the manufacturers thereof.

The discriminations in price enable respondent corporation and its said wholesaler customers to offer and sell, and they do offer and sell, said commodities to retailers at prices lower than other wholesalers competing with respondent corporation and its said customers can profitably sell such commodities to retailers.

PAR. 3. The effect of the aforesaid discriminations in price, induced and received by the respondents, has been substantially to lessen competition and to tend to create a monopoly in the sale and distribution of drug products, and to injure, destroy, and prevent competition between and among the respondent corporation and its customers, on the one hand, and their competitors on the other hand, and between and among customers of each.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are in violation of section 2 (f) of said Act of Congress

approved June 19, 1936, 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).

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 behalf of the parties respondent, in which answer the respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said parties respondent have violated 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."

It is ordered, That the respondent, Miami Wholesale Drug Corporation, its officers, representatives, agents, and employees, and the respondents, Rodney S. Pullen, Jr., Arthur S. Lavine, Sam S. Lavine, Vivian L. King, Esther S. King, and Elizabeth R. King, in connection with the purchase of drug commodities in interstate commerce by either of said parties respondent, do forthwith cease and desist from:

1. Inducing sellers to contract with either of the parties respondent herein, in connection with the purchases of commodities by either of said parties respondent, for the payment for advertising space in any magazine or publication, published by either of said parties respondent, at prices greater than the recognized value of such space as an advertising medium to the sellers paying therefor.

2. Inducing sellers to discriminate in price between either of the said parties respondent and other purchasers of commodities of like grade and quality, by granting, allowing, and paying to either of the said parties respondent herein, in connection with the purchases

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of either of said parties respondent, any advertising allowances, or anything of value in lieu thereof, which are not granted by such sellers to all of their customers on proportionately equal terms.

3. Receiving and accepting any discriminatory price or the benefit of any discrimination in price obtained in the manner set forth in, and prohibited by, subparagraphs (1) and (2) of this order.

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

Syllabus

IN THE MATTER OF
BLOOMINGDALE BROS., INC.

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

Docket 3564. Complaint, Aug. 30, 1938—Decision, Feb. 9, 1939

Where a corporation engaged in operating a department store, and in selling therefrom, among other things, men's and women's wearing apparel to members of the purchasing public in the various States and in the District of Columbia, in substantial competition in commerce with others engaged in sale and distribution of such apparel made from silk, wool, rayon, cotton, and other fibers, and including those who do not misrepresent the nature, character or content of the articles of wearing apparel offered by them; in advertising its said apparel in newspapers of general circulation in various States—

- (a) Represented and described certain coats there offered as "all wool," notwithstanding fact such coats were not composed wholly of wool, or fleece, or hair of the sheep, as long definitely understood from word in minds of consuming public and associated, in coats thus described, with fabric entirely made from the hair or fleece of the sheep, and held in high esteem in products thereof for their preeminent qualities and qualities of warmth, durability, and beauty, but were composed of a mixture of wool and rayon;
- (b) Represented, as aforesaid, as "celanese, cotton, and 'Terry' polo shirts," certain garments thus offered, facts being said shirts were not composed of a mixture of celanese or rayon, of cotton, and cotton of the terry weave, but were composed, in case of some, wholly of rayon, in case of others wholly of cotton, and in case of still others wholly of cotton of so-called terry type of weave; and
- (c) Represented, as aforesaid, certain dresses thus offered as "Acetate Chiffon," notwithstanding fact said garments were not composed wholly of silk, as long associated in the public mind with word "chiffon" as designating dress goods and other similar products as made of said long, well and favorably known and highly esteemed product of the cocoon of the silk worm, but were made wholly of rayon;

With capacity and tendency to cause members of public, through association and meaning of words "wool" and "chiffon" as aforesaid, and inadequate understanding of words "celanese" and "acetate" as trade names of rayon manufacturer or rayon process used only in connection with rayon fabrics, to purchase such articles in erroneous belief that they were composed, as case might be, wholly of wool, of mixture of celanese, cotton, and cotton of terry type of weave, and of silk wholly, and to divert thereby trade to it from its competitors; to the injury of competition in commerce:

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

Mr. George W. Williams for the Commission.

Proskauer, Rose & Paskus, of New York City, for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Bloomingdale Bros., Inc., hereinafter referred to as respondent, has violated the provisions of 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, Bloomingdale Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Lexington Avenue and Fifty-ninth Street, in the city of New York, in said State.

Respondent 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, men's and women's wearing apparel. Respondent causes, and at all times herein mentioned has caused, its said goods, when sold, to be shipped from its place of business in the city of New York, State of New York, to purchasers thereof located in the various States of the United States other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said merchandise sold in commerce among and between the various States of the United States and in the District of Columbia.

Respondent is now, and has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of men's and women's wearing apparel made from silk, wool, rayon, cotton, and other fibers, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as mentioned in paragraph 1 hereof, respondent, in soliciting the sale of and selling said wearing apparel, and for the purpose of inducement, caused certain advertising matter to be inserted in newspapers having an interstate circulation. In said advertisements and in other advertising matter certain coats were represented, designated, and referred to as "all wool"; certain polo shirts were represented, designated, and referred to as containing cotton in substantial amount; and certain dresses were represented, designated, and referred to as "chiffon."

Through use of such statements, designations, and representations, respondent represents to members of the public that such items of wearing apparel so advertised and offered for sale were "all wool" in the

case of the coats, that the polo shirts were composed in substantial part of cotton, and that the dresses were made of silk. The representations hereinabove set forth were false and misleading in that said items of wearing apparel so represented, designated, and referred to were not composed of "all wool" in the case of the coats, in substantial part of cotton in the case of the polo shirts, and of silk in the case of the dresses. The coats were in fact composed of a mixture of wool and spun rayon. The polo shirts were in fact composed entirely of viscose rayon, and the dresses were in fact composed of materials other than silk, to wit, rayon.

PAR. 3. The word "wool" for many years last past has had, and still has, in the minds of the consuming public generally a definite and specific meaning, to wit, fleece or hair obtained from sheep. Wool products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities and have been woven into a variety of fabrics noted for their qualities of warmth, durability, and beauty. Coats and other items of wearing apparel designated, described and referred to as "all wool" have been for a long time, and at the present time still are, associated in the public mind with a fabric entirely made from the hair or fleece of sheep.

The word "cotton" for many years last past has had, and still has, in the minds of the consuming public generally a definite and specific meaning, to wit: The product of the cotton plant. Cotton products hold, and for many years have held, great public esteem and confidence for their preeminent qualities. Cotton has long been used for the manufacture of shirts, and the quality of garments made therefrom is well known to the purchasing public for durability and generally fine wearing character.

The word "silk" for many years last past has had, and still has, in the minds of the consuming public a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk fabrics for many years have held, and still hold, great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics, and a variety of distinctive terms have been applied to the fabrics resulting from different types of weaving. Dress goods and other similar products designated, described, or referred to as "chiffon" 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.

The word "rayon" is the name of a chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk, and is by

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the purchasing and consuming public practically indistinguishable from silk.

PAR. 4. There are among the competitors of the respondent herein, as mentioned in paragraph 1 hereof, those who do not misrepresent the nature, character, or content of the goods manufactured and offered for sale by them.

The use by respondent of the false, deceptive, and misleading statements and 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 and mistaken beliefs that such statements and representations are true, and that the coats herein referred to were composed wholly of wool, that the polo shirts herein referred to were composed in substantial part of cotton and that the dresses herein referred to were composed of silk, and into the purchase of said respondent's products as the result of such erroneous beliefs. By the statements and representations aforesaid trade is diverted unfairly to respondent from such competitors referred to in paragraph 4 hereof. As the result thereof, injury is being done, 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.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 30, 1938, issued its complaint in the above-entitled proceeding and caused same to be served on the respondent, Bloomingdale Bros., Inc., charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. Thereafter, a stipulation as to the facts was made and entered into by and between W. T. Kelley, chief counsel for the Federal Trade Commission and Proskauer, Rose & Paskus, attorneys for said respondent, which stipulation was accepted and approved by the Commission on November 18, 1938. Said stipulation provided that the statement of facts contained therein may be made a part of the record herein and 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; that the Commission may proceed upon said statement of facts (including inferences that may be drawn therefrom), 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 came on for final hearing before the Commission upon the complaint herein and the said stipulation as to the facts, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Bloomingdale Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at Lexington Avenue and Fifty-ninth 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, men's and women's wearing apparel. Respondent causes and at all times herein mentioned has caused its said merchandise to be sold and distributed to members of the purchasing public located in the various States of the United States and in the District of Columbia. It causes and during the time herein mentioned has caused its merchandise when sold to be transported from its place of business in the city of New York, State of New York, to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent is now and has been for several years last past in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of men's and women's wearing apparel made from silk, wool, rayon, cotton, and other fibers.

PAR. 2. Respondent in the course and conduct of its business, as set out in paragraph 1 hereof, in soliciting the sale of and selling articles of wearing apparel, has caused advertisements to be published in newspapers of general circulation in various States of the United States, in which advertisements certain coats offered for sale by it were represented and described as "all wool," and certain polo shirts offered for sale by it were represented and described as "celanese, cotton, and 'Terry' polo shirts"; and certain dresses offered for sale by it were represented and described as "Acetate Chiffon."

PAR. 3. The word "wool" for many years last past has had and still has in the minds of the consuming public, generally, a definite and specific meaning, to wit: Fleece or hair obtained from sheep. Wool products for many years have held and still hold great public esteem and confidence for their preeminent qualities and have been woven into a variety of fabrics noted for their quality of warmth, durability, and beauty. Coats and other items of wearing apparel designated, described, and referred to as "all wool" have been for a long time and at the present time still are associated in the public mind with a fabric entirely made from the hair or fleece of sheep.

The word "cotton" for many years last past has had and still has in the minds of the consuming public, generally, a definite and specific meaning, to wit: The product of the cotton plant. Cotton products hold and for many years have held great public esteem and confidence for their preeminent qualities. Cotton has long been used for the manufacture of shirts and the quality of garments made therefrom is well known to the purchasing public for durability and generally fine wearing character.

The word "silk" for many years last past has had and still has in the minds of the consuming public a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk fabrics for many years have held and still hold great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics, and a variety of distinctive terms have been applied to the fabrics resulting from different types of weaving silk. Dress goods and other similar products designated, described, or referred to as "chiffon" 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.

The word "rayon" is the name of a chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk and is by the purchasing and consuming public practically indistinguishable from silk.

The word "celanese" is not sufficiently understood by a substantial portion of the purchasing public to be identified as being a trade name of a rayon manufacturer used only in connection with certain rayon fabrics, to place said purchasers on notice that the fabrics and articles manufactured therefrom, so designated, are in fact rayon and not silk.

The word "acetate" is the name of a process in the manufacture of rayon but is not sufficiently understood by a substantial portion

of the purchasing public to be identified as a trade name or as a process for the making of rayon, and used only in connection with certain rayon fabrics, to place said purchaser on notice that the fabrics and articles manufactured therefrom, so designated, are in fact rayon and not silk.

The word "chiffon" has been for a long time and at the present time still is associated in the public mind with a fabric made from the cocoon of the silkworm, commonly known and understood by the public as silk.

PAR. 4. The coats represented and designated by respondent as "all wool," as set out in paragraph 2 hereof, were not composed wholly of wool but were composed of a mixture of wool and rayon; the polo shirts represented and designated by respondent as "celanese, cotton, and 'Terry' polo shirts," as set out in said paragraph 2, were not composed of a mixture of celanese (rayon), cotton and cotton of the terry weave, but some were composed wholly of rayon some wholly of cotton, and others were composed wholly of cotton of the so-called terry type of weave; and the dresses represented and designated by respondent as "acetate chiffon," as set out in said paragraph 2, were not composed of silk but were composed wholly of rayon and the use by respondent of such representations and descriptions of the articles of wearing apparel offered for sale by it, has the capacity and tendency to cause members of the public to purchase such articles in the erroneous belief that such coats were composed wholly of wool; that such polo shirts were composed of a mixture of celanese (rayon), cotton, and cotton of the terry type of weave; and that said dresses were composed wholly of silk.

PAR. 5. There are among the competitors of respondent herein as mentioned in paragraph 1 hereof those who do not misrepresent the nature, character, or content of the articles of wearing apparel offered for sale by them. The statements, designations, and representations made by respondent, as set out in paragraph 2 hereof, have the capacity and tendency to divert trade to respondent from its competitors and thereby injury is being done and has been done by respondent to competition in commerce as herein set out.

CONCLUSION

The acts and practices of the respondent, as herein found, 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 the provisions of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and a stipulation as to the facts entered into by Proskauer, Rose and Paskus, attorneys for respondent herein, 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Bloomingdale Bros., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of men's coats and shirts, women's dresses, and other articles of wearing apparel, and like products, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "wool" or any other word or words of like import or meaning, to describe or designate any fabric or product which is not composed wholly of wool, provided that in case of fabrics or products composed in part of wool and in part of rayon or materials other than wool, there is used in immediate connection or conjunction with the word "wool," in letters of at least equal size and conspicuousness, words truthfully describing or designating each constituent fiber or material thereof, in the order of its predominance by weight, beginning with the largest single constituent.

2. Using the word "chiffon," or any other word or words of similar import or meaning, such as "crepe," "satin," or "taffeta," to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, unless said descriptive word or words are used truthfully to designate the type of weave or construction, in which case such words shall be qualified by using in connection or conjunction therewith, in letters of at least equal size and conspicuousness, a word or words clearly naming or describing the fibers or materials from which said fabric or product is made.

3. Advertising, offering for sale, or selling fabrics or any other products composed in whole or in part of rayon without clearly disclosing the fact that such fabrics or products are composed of rayon, and when such fabrics or products are composed in part of rayon

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and in part of other fibers or materials, such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

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
MILLER GROWERS 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 3573. Complaint, Aug. 31, 1938—Decision, Feb. 9, 1939

Where a corporation and three individuals, associated with it as officers or otherwise, engaged, jointly and severally, in retail sale and distribution of citrus fruits to purchasers in various States and in the District of Columbia—

- (a) Represented and implied, through inclusion of words "Growers" and "Association" in corporate name of aforesaid concern, that they were the producers of citrus fruits offered and sold by them, and that said concern was an association of fruit growers;

Facts being they did not own or operate, either individually or jointly, any citrus grove in Florida or in any other State where such fruits were produced, and neither said concern nor said individuals, engaged under same name as trade name, were association of citrus fruit growers, but fruits offered and sold by them were purchased from local markets in the territories in which they operated; and

- (b) Represented to prospective purchasers that they were the owners of citrus fruit groves in Florida and prepared to deliver high-grade and fancy fruits to such purchasers through their own organization;

- (c) Represented, through one of their number, to stewards, dieticians or other purchasing agents of hospitals, or other institutions that such person was a grower in Florida and that the president or chairman of the board of trustees of the particular institution with which said person was negotiating had expressed the wish that such person receive an order for fruit; and

- (d) Represented, through one of their number, as aforesaid, to selected and prominent prospective customers whose credit was good and whose business relations were well known, that he was a friend of a friend of such particular prospective customer, mentioning some business associate or personal friend of latter in a distant city, and that such friend told person thus representing that friend felt sure prospective customer thus contacted and addressed would be interested in obtaining some of said person's de luxe fruits straight from the Florida grove.

Facts being, while on orders received from hospitals or other institutions they usually supplied fair-grade fruit priced near current market price, though ordinarily in several times amount ordered, in case of sales to individuals, medium- to poor-grade fruit, and, frequently, partly rotted, was, as a rule, delivered, and purchaser was billed for amount greatly exceeding market price for highest-grade fruit, and representations as aforesaid as to expressions by president or chairman of board desiring the giving of such an order, or as to wishes of supposed friend of prospective purchaser, were false and misleading, and officials or persons whose names were thus used had no knowledge whatever of such proposed transactions and had made no suggestions in regard thereto;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations, as variously set-out, were true, and into purchase, as a result of such erroneous and mistaken belief, induced as aforesaid, of their said merchandise:

Held, That such acts and practices on the part of said concern and individuals acting as above set forth and in concert with one another, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. James L. Fort for the Commission.

Mr. Emil Leepson, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Miller Growers Association, a corporation, Benjamin Miller, and Leah Miller, individuals trading as Miller Growers Association, and Minerva Miller, an individual, all hereinafter referred to as respondents, have violated the provisions of 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 Miller Growers Association 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 Room 1014, 53 Park Place, in the city of New York, State of New York. Benjamin Miller and Leah Miller are individuals trading under the name "Miller Growers Association," a partnership with exactly the same name as the corporation. Benjamin Miller and Leah Miller also act as officers of the corporate respondent. Minerva Miller is an individual. All respondents were and are trading at the address herein given as that of the corporate respondent, Miller Growers Association. Respondents now are, and have been, engaged both jointly and severally in the retail sale and distribution of citrus fruits. Respondents cause, and at all times herein mentioned have caused, their said goods when sold to be shipped from their place of business in New York to the purchasers thereof located in various States of the United States other than the State of New York, and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in such merchandise in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of their business, as mentioned in paragraph 1 hereof, and for the purpose of inducing the purchase of their merchandise, the respondents have represented to prospective purchasers that they are the owners of citrus fruit groves in Florida and are prepared to deliver high-grade and fancy citrus fruit to said purchasers through their own organization. Respondents, usually acting through Benjamin Miller, will telephone the steward, dietitian, or other purchasing agent of a hospital or other institution and explain that the said Miller, or another of the respondents, is a grower in Florida and that the president or chairman of the board of trustees of the particular institution with whose agent he is negotiating has expressed the wish that respondent receive an order for fruit, such tactics frequently resulting in sales.

Another method employed by respondents, again usually acting through Benjamin Miller, is to select a prospective customer who is quite prominent, whose credit is good, and whose business relations are well known. Miller then phones such prospective customer, introducing himself as a friend of a friend of the proposed customer, mentioning some business associate or personal friend of the proposed customer located in a distant city. Miller states the friend told Miller that he felt sure the prospective customer would be interested in obtaining some of Miller's de luxe fruits straight from the Florida grove.

On the orders received from hospitals or other institutions respondents usually supply fair-grade fruit priced near the current market price, but respondents usually deliver several times the amount ordered. In case of the sales to individuals, usually medium to poor-grade fruit, frequently partly rotted, is delivered, and the purchaser is billed for an amount greatly exceeding the market prices for the highest-grade fruit.

A substantial portion of the purchasing public prefers to purchase citrus fruits from the growers thereof or from associations of such growers, because it believes that certain economies are involved in buying direct from the producer, and that citrus fruits purchased direct from the producer are fresher than those which have passed through intervening hands. Through the use of the words "Growers Association" in the name of the corporate respondent and in the trade name used by the individual respondents, respondents represent and imply that said respondents are the producers of the citrus fruits offered for sale and sold and that the Miller Growers Association is an association of fruit growers.

Through the use of the foregoing practices respondents represent to members of the purchasing public that such products, so designated and described, were and are high-grade or fancy citrus fruits, coming directly from the groves of respondents.

PAR. 3. The aforesaid representations are false and misleading in that said fruits, so designated and described, were not and are not high-grade or fancy fruits, but were medium or low grade, and in some instances decayed to the point where they were not usable. The aforesaid representations and implications are false and misleading in that respondents do not own or operate, either individually or jointly, any citrus grove in Florida or in any other State where said citrus fruits offered for sale and sold by them are produced, and neither said Miller Growers Association, the corporate respondents, nor Miller Growers Association, the trade name used by the individual respondents, is an association of citrus fruit growers. In truth and in fact, the citrus fruits offered for sale and sold by the respondents are purchased from local markets in the territories where they operate. The aforesaid representations that the contacts with purchasers were made upon the suggestion or recommendation of an institution official or of some person well known to said prospective purchaser are false and misleading in that the officials or persons whose names were used had no knowledge whatever of such proposed transactions and made no suggestion in regard thereto.

The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the quality of the citrus fruit; the representations as to the ownership by respondents of citrus groves, which are made both by specific statements and the use of the misleading and deceptive name, "Miller Growers Association"; the statements that respondents have been requested to contact the proposed purchasers, have had and now have a capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of respondents' said merchandise as a result of such erroneous and mistaken belief induced by the aforesaid misrepresentations, acts, and practices of the respondents.

PAR. 4. The aforesaid acts and practices of the respondents, acting individually, as officers of the corporate respondent, and in concert one with the other, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 31st day of August 1938, issued its complaint in this proceeding and caused the complaint to be served upon the respondents, Miller Growers Association, Benjamin Miller and Leah Miller, individuals trading as Miller Growers Association, and Minerva Miller, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of the complaint and the filing of respondents' answer, the Commission, by an order entered herein, granted respondents' motion for permission to withdraw their answer and to substitute therefor an answer admitting all the material allegations of fact set forth in the complaint, and waiving all intervening procedure and further hearing as to the facts. The substitute answer was duly filed in the office of the Commission November 7, 1938.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and 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, Miller Growers Association, 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 Room 1014, 53 Park Place, in the city of New York, State of New York. Benjamin Miller and Leah Miller are individuals trading under the name "Miller Growers Association," a partnership with exactly the same name as the corporation. Benjamin Miller and Leah Miller also act as officers of the corporate respondent. Minerva Miller is an individual. All respondents were and are trading at the address herein given as that of the corporate respondent, Miller Growers Association. Respondents now are, and have been, engaged both jointly and severally in the retail sale and distribution of citrus fruits. Respondents cause, and at all times herein mentioned have caused, their said goods when sold to be shipped from their place of business in New York to the purchasers thereof located in various States of the United States other than the State of New York, and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in such merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as mentioned in paragraph 1 hereof, and for the purpose of inducing the purchase of their merchandise, the respondents have represented to prospective purchasers that they are the owners of citrus fruit groves in Florida and are prepared to deliver high-grade and fancy citrus fruit to said purchasers through their own organization. Respondents, usually acting through Benjamin Miller, will telephone the steward, dietitian, or other purchasing agent of a hospital or other institution and explain that the said Miller, or another of the respondents, is a grower in Florida and that the president or chairman of the board of trustees of the particular institution with whose agent he is negotiating has expressed the wish that respondent receive an order for fruit, such tactics frequently resulting in sales.

Another method employed by respondents, again usually acting through Benjamin Miller, is to select a prospective customer who is quite prominent, whose credit is good, and whose business relations are well known. Miller then phones such prospective customer, introducing himself as a friend of a friend of the proposed customer, mentioning some business associate or personal friend of the proposed customer located in a distant city. Miller states the friend told Miller that he felt sure that prospective customer would be interested in obtaining some of Miller's de luxe fruits straight from the Florida grove.

On the orders received from hospitals or other institutions respondents usually supply fair-grade fruit priced near the current market price, but respondents usually deliver several times the amount ordered. In case of the sales to individuals, usually medium- to poor-grade fruit, frequently partly rotted, is delivered; and the purchaser is billed for an amount greatly exceeding the market prices for the highest-grade fruit.

A substantial portion of the purchasing public prefers to purchase citrus fruits from the growers thereof or from associations of such growers because it believes that certain economies are involved in buying direct from the producer, and that citrus fruits purchased direct from the producer are fresher than those which have passed through intervening hands. Through the use of the words "Growers Association" in the name of the corporate respondent and in the trade name used by the individual respondents, respondents repre-

sent and imply that said respondents are the producers of the citrus fruits offered for sale and sold and that the Miller Growers Association is an association of fruit growers.

Through the use of the foregoing practices respondents represent to members of the purchasing public that such products, so designated and described, were and are high-grade or fancy citrus fruits, coming directly from the groves of respondents.

PAR. 3. The aforesaid representations are false and misleading in that said fruits, so designated and described, were not and are not high-grade or fancy fruits, but were medium or low grade, and in some instances decayed to the point where they were not usable. The aforesaid representations and implications are false and misleading in that respondents do not own or operate, either individually or jointly, any citrus grove in Florida or in any other State where said citrus fruits offered for sale and sold by them are produced, and neither said Miller Growers Association, the corporate respondent, nor Miller Growers Association, the trade name used by the individual respondents, is an association of citrus fruit growers. In truth and in fact, the citrus fruits offered for sale and sold by the respondents are purchased from local markets in the territories where they operate. The aforesaid representations that the contacts with purchasers were made upon the suggestion or recommendation of an institution official or of some person well known to said prospective purchaser are false and misleading in that the officials or persons whose names were used had no knowledge whatever of such proposed transactions and made no suggestion in regard thereto.

The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the quality of the citrus fruit; the representations as to the ownership by respondents of citrus groves, which are made both by specific statements and the use of the misleading and deceptive name, "Miller Growers Association"; the statements that respondents have been requested to contact the proposed purchasers have had and now have a capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of respondents' said merchandise as a result of such erroneous and mistaken belief induced by the aforesaid misrepresentations, acts, and practices of the respondents.

CONCLUSION

The aforesaid acts and practices of the corporate respondent, and of the individual respondents, acting individually, and as officers of

the corporate respondent, and in concert with each other as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of the several respondents, in which answers the respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that all of said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Benjamin Miller and Leah Miller, individually, and trading as Miller Growers Association, or under any other trade name, and Minerva Miller, an individual, and Miller Growers Association, a corporation, and its officers and their respective representatives, salesmen, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, with the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of citrus fruit, or disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said citrus fruit, which advertisements, directly or through implication.

1. Represent, through the use of the words "Growers" or "Association" or any other words of similar import or meaning, in any corporate or trade name or in any other manner, that respondents or any of them are growers of citrus fruit or are owners of citrus fruit groves in Florida or elsewhere, or are an association of fruit growers;
2. Represent to prospective purchasers that friends of said prospective purchasers have suggested to respondents, or any of them, that said friends were interested in respondents' making sales to said prospective purchasers;
3. Represent to buyers or other officials of hospitals or other institutions that the president or chairman of the board of trustees or

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other official of the particular institution with whose agent respondents are negotiating, has expressed the wish or desire that respondents receive an order for fruit from such institution; or

4. Represent that the citrus fruit offered for sale by them is of a grade, character, or quality superior to, or different from, its true grade, character, or quality.

It is further ordered, That each of 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

R. P. REID, INDIVIDUALLY, AND TRADING AS REID
PACKING COMPANY

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

Docket 3677. Complaint, Dec. 23, 1938—Decision, Feb. 9, 1939

Where an individual engaged in the processing and sale and distribution of salted peanuts which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof and which were composed of a number of individual, small, sealed 5-cent packages of such product enclosed in larger pasteboard cartons and containing concealed therein, in the case of a few, 5 cents, 10 cents, 25 cents, or \$1 as the case might be, for distribution to prospective purchasers by lot or chance—

Sold to wholesalers, retailers, and jobbers, together with explanatory display cards for retailers' use, said assortments for display and resale to purchasing public in accordance with sales plan aforesaid, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its product in accordance with sales plan hereinabove set forth, involving game of chance or sale of a chance to procure sum of money, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to offer or sell their said product so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public so as to involve game of chance or any other method of sale contrary to public policy and refrain therefrom;

With result that many dealers in and ultimate purchasers of such product were attracted by his said method and manner of packing said salted peanuts and by element of chance involved in sale thereof as above described and were thereby induced to purchase such salted peanuts, thus packed and sold by him, in preference to those offered and sold by said competitors who do not use such or equivalent method, and of unfairly diverting trade to him from his competitors aforesaid; to the substantial injury of competition in commerce:

Held, That such acts or practices were all to the injury and prejudice of the public and competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that R. P. Reid, individually and trading as Reid Packing Co., hereinafter referred to as re-

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spondent, has violated the provisions of 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, R. P. Reid, is an individual, doing business under the trade name of Reid Packing Co., with his principal office and place of business located at 320 South College Street, Charlotte, N. C. The respondent is now, and for some time last past has been, engaged in the processing of salted peanuts and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, his product, when sold, to be transported from his aforesaid place of business in North Carolina to purchasers thereof in the various States of the United States other than North Carolina and in the District of Columbia, at their respective places of location. There is now, and has been for some time last past, a course of trade by said respondent in salted peanuts in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is, and has been for some time last past, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of salted peanuts in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells, and has sold, to wholesale and retail dealers and jobbers, salted peanuts so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Said salted peanuts are packed in individual, small, sealed cartons for retail to the ultimate consumer at 5 cents per carton. A number of these small cartons of peanuts are placed in a larger pasteboard carton. Sealed within a small number of the said individual cartons are 5 cents, 10 cents, 25 cents, or \$1, but the ultimate purchaser cannot ascertain which cartons contain one of the above-named sums until a selection has been made and the individual carton broken open. The aforesaid purchasers of said individual cartons of salted peanuts who procure one of the said sums of money, thus procure the same wholly by lot or chance.

With said assortments respondent furnishes display cards for use by the retail dealers in offering such assortments to the public, which display cards bear legends or statements containing, among other things, the following:

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REID'S
ROASTED AND SALTED
PEANUTS
You May get

5¢ 5¢

5¢-10¢ 25¢ or \$1.00

For Advertising Purposes
We Pack \$6.00 In Money

in each shipping case of 30 cartons—denominations of

5¢-10¢ 25¢ or \$1.00

REID PACKING CO. CHARLOTTE, N. C.

Sales of salted peanuts by the method herein described are made in accordance with the above-described legends or instructions. The said prizes are allotted to the customers or purchasers in accordance with the above legends. The said prizes are thus distributed to the purchasing public wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the said salted peanuts resell same to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said salted peanuts for sale and sell 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 his product in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his product, and the sale of said product by and through the use thereof and by the aid of said sales plan or method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of said salted peanuts to the purchasing public, in the manner above alleged, involves a game of chance or the sale of a chance to procure a sum of money. Many persons, firms, and corporations who make and sell salted peanuts in competition with the respondent, as above alleged, are unwilling to offer for sale or sell their said product 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 any other method of sale that is contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate purchasers of, salted peanuts are attracted by respondent's said method and manner of packing said salted peanuts and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said salted peanuts so packed and sold by respondent in preference to salted peanuts offered for sale and sold by said com-

petitors 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 a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 23, 1938, issued, and on December 24, 1938, served its complaint in this proceeding upon the respondent R. P. Reid, individually and trading as Reid Packing Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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 the respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commissioner. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer and the Commission having duly considered the 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, R. P. Reid, is an individual, doing business under the trade name of Reid Packing Co., with his principal office and place of business located at 320 South College Street, Charlotte, N. C. The respondent is now, and for some time last past has been, engaged in the processing of salted peanuts and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers in commerce between and among the various States

of the United States and in the District of Columbia. Respondent causes, and has caused, his product, when sold, to be transported from his aforesaid place of business in North Carolina to purchasers thereof in the various States of the United States other than North Carolina and in the District of Columbia, at their respective places of location. There is now, and has been for some time last past, a course of trade by said respondent in salted peanuts in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is, and has been for some time last past, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of salted peanuts in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells, and has sold, to wholesale and retail dealers and jobbers, salted peanuts so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Said salted peanuts are packed in individual, small, sealed cartons for retail to the ultimate consumer at five cents per carton. A number of these small cartons of peanuts are placed in a larger pasteboard carton. Sealed within a small number of the said individual cartons are five cents, ten cents, twenty-five cents, or one dollar, but the ultimate purchaser cannot ascertain which cartons contain one of the above named sums until a selection has been made and the individual carton broken open. The aforesaid purchasers of said individual cartons of salted peanuts who procure one of the said sums of money, thus procure the same wholly by lot or chance.

With said assortments respondent furnishes display cards for use by the retail dealers in offering such assortments to the public, which display cards bear legends or statements containing, among other things, the following:

| | |
|------------------------------------------------------|------------|
| REID'S | |
| ROASTED AND SALTED | |
| PEANUTS | |
| 5¢ | 5¢ |
| You May get | |
| 5¢-10¢ | 25¢ or \$1 |
| For Advertising Purposes | |
| We Pack \$6.00 In Money | |
| in each shipping case of 30 cartons—denominations of | |
| 5¢-10¢ | 25¢ or \$1 |
| REID PACKING CO. CHARLOTTE, N. C. | |

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Sales of salted peanuts by the method herein described are made in accordance with the above-described legends or instructions. The said prizes are allotted to the customers or purchasers in accordance with the above legends. The said prizes are thus distributed to the purchasing public wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the said salted peanuts resell same to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said salted peanuts for sale and sell 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 his product in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his product, and the sale of said product by and through the use thereof and by the aid of said sales plan or method, is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of said salted peanuts to the purchasing public, in the manner above found, involves a game of chance or the sale of a chance to procure a sum of money. Many persons, firms, and corporations who make and sell salted peanuts in competition with the respondent, as above found, are unwilling to offer for sale or sell their said products 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 any other method of sale that is contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate purchasers of, salted peanuts are attracted by respondent's said method and manner of packing said salted peanuts and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said salted peanuts so packed and sold by respondent in preference to salted peanuts 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 a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, 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 aforesaid acts and practices of respondent, as herein found, are all to the injury and prejudice of the public and of respondent's

competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, R. P. Reid, individually, and trading as Reid Packing Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of salted peanuts or other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing said salted peanuts or any other merchandise so packed and assembled that sales of said merchandise to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to, or placing in the hands of dealers assortments of said salted peanuts or any other merchandise which is 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 said merchandise contained in said assortments to the public.

3. Selling or distributing individual packages of said salted peanuts or any other merchandise containing coins or other United States money, which said individual packages of said merchandise is packed and assembled in assortments with other individual packages of said merchandise of similar size, shape, and appearance not containing coins or other United States money, for resale to the public by retail dealers.

4. Furnishing to dealers a display card, either with packages or assortments of said salted peanuts or any other merchandise or separately, bearing a legend or legends or statements informing the purchasers thereof that said merchandise 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.

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5. Mailing, shipping, or transporting to dealers or others, punchboards, push or pull cards, or other lottery devices, so prepared or printed as to enable such persons to sell or distribute any merchandise by the use thereof.

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

BANFI PRODUCTS CORPORATION AND HARRY MARIANI,
JOHN MARIANI, PAUL MARIANI, AND JOSEPH B. MARIANI

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

Docket 3598. Complaint, Sept. 21, 1938—Decision, Feb. 10, 1939

Where a corporation and four individuals, officers thereof and in control of its advertising policies and business activities and acting in concert with one another, engaged in selling and distributing Montecatini Salts or laxative medicine in crystal and powder form, plain and iodated, and allegedly extracted from the Italian springs thus named, to purchasers in the District of Columbia and in other States, in substantial competition with others engaged in sale and distribution of similar products in commerce among the various States and in said District, and including many who do not make any misrepresentations concerning the qualities and properties of their respective products and their effectiveness—

Represented in their advertising in pamphlets, circulars, advertisements in newspapers and periodicals, radio broadcasts, and other advertising media circulated generally throughout the United States, either directly in English or in Italian, that due to qualities and properties of said Montecatini Salts they constituted an effective and competent remedy or treatment for diseases of the stomach, liver and heart, and for constipation, headaches, rheumatism, high blood pressure, uric acid, and various other conditions, and were always good for any minor ailment, and effective in the treatment of virtually all ailments, and that they constituted a mild, efficacious laxative and were harmless and could be used freely and without irritation;

Facts being they were not a competent treatment or remedy for diseases of the stomach, liver, and heart, or for headaches, bad breath, rheumatism, gout, obesity, high blood pressure, and rash, blotches, or pimples, or for uric acid or other ailments, and were not effective as a treatment for all minor ailments, nor harmless, and could not be used freely without irritation, and had no beneficial value except as a laxative or purgative in cases of temporary or occasional constipation, and, whether plain or iodated or in crystal or powder form, had no value in treating any ailment or the symptoms thereof except when such conditions or symptoms could be relieved by a laxative or purgative, and use thereof freely constituted a drastic purge which would irritate intestines;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that all said representations and implications were true, and with result, as a direct consequence of such belief, that number of the consuming public purchased substantial volume of their products and trade was diverted unfairly to them from competitors likewise engaged in distribution and sale of laxatives and other medicinal preparations in commerce and who truthfully advertise their respective products and the effectiveness thereof; to the injury of competition in commerce:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. John M. Russell for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Banfi Products Corporation, a corporation, and Harry Mariani, John Mariani, Paul Mariani, and Joseph B. Mariani, individuals, hereinafter referred to as respondents, have violated the provisions of 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. Banfi Products Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and respondents Harry Mariani, John Mariani, and Paul Mariani, individuals, are president, treasurer, and secretary, respectively, thereof. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondent, and all of said respondents have cooperated each with the other and have acted in concert in doing the acts and things hereinafter alleged. Respondents' office and principal place of business is located at 206 Spring Street in the city of New York, State of New York.

PAR. 2. Respondents now are and for over 2 years last past have been engaged in the sale and distribution of a laxative medicine known as Montecatini Salts, in crystal and powder form, plain and iodated, claimed by them to have been extracted from the waters of the Montecatini Springs in Italy. Respondents cause said product, when sold, to be transported from their 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.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said Montecatini Salts in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, respondents are in active and substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of similar products in commerce between and among

the various States of the United States and in the District of Columbia. Among such competitors there are many who do not make any misrepresentations or false statements concerning the qualities and properties of their respective products and of their effectiveness when taken.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said Montecatini Salts by members of the purchasing public, respondents have made, by means of pamphlets, circulars, advertisements inserted in newspapers and periodicals, by radio broadcasts, and other advertising media circulated generally throughout the United States, many representations, either directly as hereinafter stated in the English language, or their equivalent in the Italian language, concerning the qualities and properties of Montecatini Salts and their effectiveness when taken, among and typical of which are the following:

The Office of the Census in Washington published * * * its bulletin showing an increase of mortality in * * * diseases of the stomach, the liver, and the heart * * * We warn those suffering from similar diseases * * * to stop their ailments promptly. The causes sometimes might prove fatal * * * use Montecatini Salts.

Use * * * simple Montecatini Salts if you suffer from constipation, headaches, bad breath, acidity of the stomach, and liver trouble * * * and Iodized Salts if you are troubled with rheumatism, gout, obesity, high blood pressure, and rash.

Montecatini Iodized Salts are good for the skin when you have blotches or pimples * * * uric acid * * *.

If there is someone who might think that Montecatini Salts are not good for almost all illnesses, we wish to reassure them by saying that this is not so.

Montecatini Salts is always good for any minor ailment.

Montecatini Salts are a mild efficacious laxative.

These Salts can be used freely with no fear of harming you.

Montecatini Salts are an ideal remedy because they clean the intestines without irritating them.

All of said statements together with similar statements occurring in the respondents' advertising literature and radio broadcasts purport to be descriptive of the respondents' product and of its effectiveness when taken. In all of their advertising literature, radio broadcasts, and through other means, respondents, directly or by inference through the statements and representations herein set out and other statements of similar import and effect, represent that due to the qualities and properties of said Montecatini Salts, such salts are an effective and competent remedy or treatment for diseases of the stomach, liver, and heart, and for constipation, headaches, bad breath, acidity of the stomach, rheumatism, gout, obesity, high blood pressure, rash, blotches, pimples, and uric acid; that said salts are always good for any minor ailment and effective in the treatment of

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virtually all ailments; that said salts constitute a mild efficacious laxative; and that they are harmless and can be used freely and will clean the intestines without irritation.

PAR. 5. The representations and implications so made and used by the respondents with respect to the nature of their products and their effectiveness in use are grossly exaggerated, false, and misleading. In truth and in fact Montecatini Salts, plain and iodated, whether in crystal or powder form, are not a competent treatment or remedy for diseases of the stomach, liver, and heart; for headaches, bad breath, rheumatism, gout, obesity, high blood pressure, and rash; for blotches or pimples; or for uric acid or other ailments. Said salts are not effective as a treatment for all minor ailments and they are not harmless and cannot be used freely without irritating the intestines.

In truth and in fact, said Montecatini Salts have no beneficial value except as a laxative or purgative in cases of temporary or occasional constipation and said salts, plain or iodated, whether in crystal or powder form, have no value in treating any ailment or the symptoms thereof except when such condition or symptom can be relieved by a laxative or a purgative. The use of said salts freely constitutes a drastic purge and will irritate the intestines.

PAR. 6. Each and all of the false and misleading representations and implications made by the respondents in describing their product and its effectiveness when used, as hereinabove set out, have had and have a tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations and implications are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' products with the result that trade in said commerce has been diverted unfairly to respondents from competitors likewise engaged in the business of distributing and selling laxatives and other medicinal preparations in said commerce who truthfully advertise their respective products and the effectiveness thereof when used. As a result thereof, injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 21st day of September 1938, issued its complaint in this proceeding and caused it to be served upon the respondents Banfi Products Corporation, Harry Mariani, John Mariani, Paul Mariani, and Joseph B. Mariani, charging them with the use of unfair methods of competition and unfair or deceptive acts or practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw their answer and to substitute therefor an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts, 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 complaint and 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. The respondent, Banfi Products Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. The respondents, Harry Mariani, John Mariani, and Paul Mariani, are respectively the president, treasurer, and secretary of Banfi Products Corporation. The office and principal place of business of the respondent is located at 206 Spring Street, City of New York, N. Y. The respondents, Harry Mariani, John Mariani, Paul Mariani, and Joseph B. Mariani, have control of the advertising policies and business activities of the corporate respondent, and the respondents have all cooperated each with the other and have acted in concert in doing the acts and things hereinafter set forth.

PAR. 2. The respondents are, and for over 2 years last past have been, engaged in the sale and distribution of a laxative medicine known as Montecatini Salts, in crystal and powder form, plain and iodated, claimed by them to have been extracted from the waters of the Montecatini Springs in Italy, and they cause the said product, when sold, to be transported from their place of business in the State of New York to purchasers located in the District of Columbia and in other States of the United States.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in the product, Montecatini Salts, 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 the business in the sale and distribution of Montecatini Salts, the respondents are, and have been, in substantial competition with other corporations, firms, and individuals engaged in the sale and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia. Among such competitors there are many who do not make any misrepresentations concerning the qualities and properties of their respective products and their effectiveness when used by members of the public.

PAR. 4. By means of pamphlets, circulars, advertisements in newspapers and periodicals, radio broadcasts, and other advertising media circulated generally throughout the United States, the respondents have made many representations in the course and conduct of their said business, either directly in the English language or in equivalent expressions in the Italian language, as hereinafter stated, concerning the qualities and properties of Montecatini Salts and the effectiveness of their use by members of the public. Among such representations and typical of them are the following:

The Office of the Census in Washington published * * * its bulletin showing an increase of mortality in * * * diseases of the stomach, the liver and the heart * * * We warn those suffering from similar diseases * * * to stop their ailments promptly. The causes sometimes might prove fatal * * * use Montecatini Salts.

Use * * * simple Montecatini Salts if you suffer from constipation, headaches, bad breath, acidity of the stomach and liver trouble * * * and Iodized Salts if you are troubled with rheumatism, gout, obesity, high blood pressure, and rash.

Montecatini Iodized Salts are good for the skin when you have blotches or pimples * * * uric acid * * *.

If there is someone who might think that Montecatini Salts are not good for almost all illnesses, we wish to reassure them by saying that this is not so.

Montecatini Salts is always good for any minor ailment.

Montecatini Salts are a mild efficacious laxative.

These Salts can be used freely with no fear of harming you.

Montecatini Salts are an ideal remedy because they clean the intestines without irritating them.

All of said statements together with similar statements occurring in the respondents' advertising literature and radio broadcasts purport to be descriptive of the respondents' product and of its effectiveness when taken. In all of their advertising, literature, radio broadcasts, and through other means, respondents, directly or by inference through the statements and representations herein set out and other

statements of similar import and effect, represent that due to the qualities and properties of said Montecatini Salts such salts are an effective and competent remedy or treatment for diseases of the stomach, liver, and heart, and for constipation, headaches, bad breath, acidity of the stomach, rheumatism, gout, obesity, high blood pressure, rash, blotches, pimples, and uric acid; that said salts are always good for any minor ailment and effective in the treatment of virtually all ailments; that said salts constitute a mild efficacious laxative; and that they are harmless and can be used freely and will clean the intestines without irritation.

PAR. 5. The representations and implications so made and used by the respondents with respect to the nature of their products and their effectiveness in use are grossly exaggerated, false, and misleading. In truth and in fact Montecatini Salts, plain and iodated, whether in crystal or powder form, are not a competent treatment or remedy for diseases of the stomach, liver, and heart; for headaches, bad breath, rheumatism, gout, obesity, high blood pressure and rash; for blotches or pimples; or for uric acid or other ailments. Said salts are not effective as a treatment for all minor ailments and they are not harmless and cannot be used freely without irritating the intestines.

In truth and in fact, said Montecatini Salts have no beneficial value except as a laxative or purgative in cases of temporary or occasional constipation and said salts, plain or iodated, whether in crystal or powder form, have no value in treating any ailment or the symptoms thereof except when such conditions or symptom can be relieved by a laxative or a purgative. The use of said salts freely constitutes a drastic purge and will irritate the intestines.

PAR. 6. Each and all of the false and misleading representations and implications made by the respondents in describing their product and its effectiveness when used, as hereinabove set out, have had and have a tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations and implications are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' products with the result that trade in said commerce has been diverted unfairly to respondents from competitors likewise engaged in the business of distributing and selling laxatives and other medicinal preparations in said commerce who truthfully advertise their respective products and the effectiveness thereof when used. As a result thereof, injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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CONCLUSION

The above acts and practices of the respondents, Banfi Products Corporation, Harry Mariana, John Mariani, Paul Mariani, and Joseph B. Mariani, are to the prejudice of the public and of the competitors of respondent Banfi Products Corporation, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Banfi Products Corporation, and its officers, and Harry Mariana, John Mariani, Paul Mariani, Joseph B. Mariani, and their respective representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a laxative medicine in crystal or powder form, either plain or iodated now designated by the name of Montecatini Salts, or any other laxative medicine composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or under any other name, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said salts, which advertisements represent, directly or through implication, that such salts constitute a remedy or cure for diseases of the stomach, liver, and heart, for constipation, headaches, bad breath, acidity of the stomach, rheumatism, gout, obesity, high blood pressure, rash, blotches, pimples, or uric acid, or that such salts constitute a compe-

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tent and effective treatment for any of such diseases or ailments; that said salts are always good for any minor ailment and are effective in the treatment of virtually all ailments; that said salts constitute a mild efficacious laxative or will clean the intestines without irritation unless such representations are limited to cases of temporary or occasional constipation; and that said salts are harmless and can be freely used with safety.

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
MITCHELL BAZELON AND CHARLES HARRIS INDIVIDUALLY AND AS COPARTNERS TRADING UNDER THE FIRM NAMES AND STYLES OF PARK-LANE CANDY COMPANY AND CHARRIS SPECIALTY COMPANY

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

Docket 3083. Complaint, Mar. 18, 1937—Decision, Feb. 15, 1939

Where two individuals engaged as partners in sale and distribution of items of merchandise including cocktail shakers, watches, pipes, and numerous other items of novelty merchandise, as cataloged and offered and variously packaged and assembled so as to involve use of a lottery scheme when sold and distributed to ultimate consumers, and which were composed of (1) seventeen $\frac{1}{2}$ -pound boxes of chocolate candy, four 1-pound boxes thereof, two 1-pound fancy boxes thereof and 1 cocktail shaker set, together with 600-hole punchboard for sale under a plan and in accordance with board's explanatory legend by which purchaser paid for chance, amount ranging from 1 cent to 5 cents, depending upon particular numbers punched, and received in accordance with success in selection of certain numbers, one of said boxes of candy, and under which purchaser of last punch on board received the cocktail shaker set; (2) of groups or combinations of articles, together with punchboards, for sale and distribution to public under a plan or scheme in accordance with which purchaser received for penny (or 5-cent chance, as case might be) article of merchandise, value of which was in excess of cost of purchase or nothing, dependent upon success or failure in selecting certain numbers; and of (3) various other assortments involving different arrangements, but, in all, punchboards or push cards for sale and distribution thereof to ultimate consumer by lot or chance—

Sold to jobbers and wholesalers, for display and resale to purchasing public by retail dealer purchasers thereof, in accordance with aforesaid sales plans, such assortments, and thereby supplied to and placed in the hands of others means of conducting a lottery in the sale of their products in accordance with such sales plans, in violation of a long-established public policy of the common law and criminal statutes and contrary to established public policy of the United States Government, and in competition with many who are unwilling to offer or sell merchandise packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve game of chance or sale of a chance to win by chance, and refrain therefrom;

With effect of inducing customers to buy their said products in preference to similar or like merchandise offered and sold by their competitors and with result that many dealers in and ultimate purchasers of candy and other articles of merchandise were attracted by their said method and manner of packing such candy and other merchandise, and by element of chance involved in sale thereof as above described, and were induced by reason of said plan or method to purchase substantial volume of such candy and

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other articles thus packed and sold by them, in preference to those offered and sold by their competitors aforesaid who do not use such or equivalent methods, and of diverting trade and custom to them from their competitors aforesaid, and with tendency and capacity to exclude from said trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful, lessen competition therein, and create monopoly thereof in themselves and such other distributors of candy and other articles as do use same or equivalent methods, deprive purchasing public of benefit of free competition therein, and eliminate therefrom 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 all to the injury and prejudice of the public and competitors and constitute unfair methods of competition.

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

Mr. Henry C. Lank, *Mr. P. C. Kolinski*, and *Mr. D. C. Daniel* 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 Mitchell Bazelon and Charles Harris, individually and as copartners trading under the firm names and styles of Park-Lane Candy Co. and Charis Specialty Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents are individuals conducting a copartnership under the trade names and styles of Park-Lane Candy Co. and Charis Specialty Co. Their office and principal place of business is located at 946 Diversey Parkway, in the city of Chicago, State of Illinois. Respondents are now, and for several months last past have been, engaged in the sale and distribution of candy and various other articles of merchandise, including, among others, such items as cocktail shakers, watches, pipes, fountain pens, cigarette lighters, cigarette cases, opera glasses, cameras, and numerous other items of novelty merchandise, to wholesale dealers and jobbers located at points in the State of Illinois and in various other States of the United States. Respondents cause said products when sold to be

transported from their place of business in the city of Chicago, State of Illinois, to purchasers thereof in Illinois and in other States of the United States at their respective places of business; and there is now, and has been for several months last past, a course of trade and commerce by said respondents in such candy and other merchandise between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other partnerships and with individuals and corporations engaged in the sale and distribution of candy and in the sale and distribution of various other articles of 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 sell and have sold to wholesale dealers and jobbers various packages or assortments of candy and other articles of merchandise so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consuming public. The respondents assemble, sell, and distribute various assortments, some of the assortments containing packages of candy together with other articles of merchandise, and other assortments containing no candy but various articles of merchandise. All such assortments include a punchboard, and each assortment involves the use of the same method of chance for the distribution of the candy or other articles of merchandise to the consuming public by means of said punchboard. For illustration, the method used in the sale of assortments of candy, together with other articles of merchandise, is as follows:

One of said assortments is composed of seventeen $\frac{1}{2}$ -pound boxes of chocolate candy, four 1-pound boxes of chocolate candy, two 1-pound fancy boxes of chocolate candy, and 1 cocktail shaker set, together with a device commonly called a "punchboard." The punchboard contains 600 holes, and in each hole a slip of paper bearing a printed number is secreted. The numbers printed on said slips are effectively concealed until after a selection has been made and the printed slip separated from the board. Customers procuring a number ending in zero receive the same free of charge. Numbers ending in one pay 1 cent; numbers ending in two pay 2 cents; numbers ending in three pay 3 cents; numbers ending in four pay 4 cents; and numbers ending in 5, 6, 7, 8, and 9 pay 5 cents. The board bears legends or statements advising which numbers receive the $\frac{1}{2}$ -pound boxes of candy, which numbers receive the 1-pound boxes of candy, and which numbers receive the 1-pound fancy boxes of candy. The purchaser of the last punch on said board receives the cocktail shaker set. Customers or purchasers not qualifying by obtaining one of the

numbers calling for a box of candy, or the last punch on said board, receive nothing for their money other than the privilege of punching a number from said board. The fact as to whether a customer receives a punch free of charge or pays 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents, and the fact as to whether he receives nothing for his purchase or 1 of the ½-pound boxes of candy, one of the 1-pound boxes of candy, one of the 1-pound fancy boxes of candy, or the cocktail shaker set, is thus determined wholly by lot or chance. The several boxes of candy and the cocktail shaker set are each worth more than 5 cents.

PAR. 3. The wholesale dealers and jobbers, to whom respondents sell their assortments, resell said assortments to retail dealers, and said retail dealers expose said assortments for sale and sell said merchandise to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth; and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondents' said products in preference to similar or like merchandise offered for sale and sold by their competitors.

PAR. 4. The sale of said merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise by chance free of charge or at a price of 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents.

The use by respondents of said method in the sale of their merchandise, and the sale of said 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.

The use by respondents of said method has the tendency unduly to hinder competition or to create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the said 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 sell and distribute merchandise in competition with the respondents, as above alleged, are unwilling to offer for sale or sell merchandise 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 and other articles of merchandise are attracted by respondents' said method and manner of packing said candy and other merchandise 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 other articles of merchandise so packed and sold by respondents in preference to candy and other articles of 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 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 said trade in respondents and such other distributors of candy and other articles of merchandise 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 exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 18, 1937, issued, and on March 22, 1937, served its complaint in this proceeding upon the respondents, Mitchell Bazelon and Charles Harris, individually and as copartners trading under the firm names and styles of Park-Lane Candy Co. and Charris Specialty 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' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank, attorney for the Commission, and in opposition to the allegations of the complaint by John A. Nash and Horace J. Donnelly, attorneys for respondents, before Miles J. Furnas and William C. Reeves, 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, brief in support of the complaint (respondents not having filed brief in opposition to the complaint and not having requested oral argument), and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Mitchell Bazelon and Charles Harris are individuals conducting a copartnership under the trade names of Park-Lane Candy Co. and Charris Specialty Co.

Respondents' principal place of business is located at 946 Diversey Boulevard in the city of Chicago, State of Illinois.

Respondents, since April 1936, have been engaged in the sale and distribution of candy, and also in the sale and distribution of other articles of merchandise, which include such items as cocktail shakers, watches, pipes, fountain pens, cigarette lighters, cigarette cases, opera glasses, cameras, and numerous other items of novelty merchandise.

This merchandise is sold by respondents to jobbers and wholesale dealers located throughout the United States.

Respondents cause said merchandise, when sold, to be transported from their office and place of business in the State of Illinois to purchasers thereof located in States of the United States other than the State from which said shipments are made.

Respondents maintain a course of trade and commerce in said merchandise sold and distributed by them between and among the various States of the United States.

Respondents are now, and have been, in substantial competition with other partnerships and with individuals and corporations likewise engaged in the sale and distribution of candy and other articles

of merchandise in commerce between and among the various States of the United States.

PAR. 2. Respondents in the conduct of their business sell assortments of candy and assortments of other articles of merchandise, which are identified in paragraph 1 hereof, packaged and assembled in such a manner as to involve the use of a lottery scheme when sold and distributed to the ultimate consumer.

Some of the assortments which respondents assemble, sell, and distribute contain packages of candy, together with other articles of merchandise. Other of respondents' assortments contain no candy, but articles of merchandise. All of such assortments include either a punchboard or a punch card.

The testimony shows, and the Commission finds, that the same method of chance is involved in the use of each assortment, and each assortment of candy or merchandise is distributed to the consuming public by means of the punchboard or punch card.

The testimony further shows, and the Commission finds, that respondents in the conduct of their business sell their various assortments by mailing to prospective customers located throughout the United States circulars which are descriptive of respondents' candy and merchandise assortments.

These assortments are referred to in said circulars as "Deals."

Respondents, trading under the name of Park-Lane Candy Co., secured a mailing list and sent to the persons or firms whose names appeared on said mailing list one of such circulars, upon which the name of Park-Lane Candy Co. appears as the vendor.

One type of assortment or "deal" sold by respondents trading as Park-Lane Candy Co. pursuant to orders obtained by them from persons or firms who received said circulars and from other persons or firms was assembled by respondents in the following manner.

The assortment was composed of seventeen ½-pound boxes of chocolate candy, four 1-pound boxes of chocolate candy, two 1-pound fancy boxes of chocolate candy, and one cocktail shaker set, together with a device commonly called a punchboard.

The said punchboard contained 600 holes, and in each hole a slip of paper bearing a printed number was secreted. The numbers printed on said slips were effectively concealed until after a selection had been made and the printed slip separated from the board.

If a customer procured a number ending in zero, he received the same free of charge. If a customer punched or procured a number ending in one said customer paid 1 cent; for a number ending in two the customer paid 2 cents; for a number ending in three the customer paid 3 cents; for a number ending in four the customer paid 4 cents;

and for numbers ending in five, six, seven, eight, and nine the customer paid 5 cents.

The board bears statements advising which numbers receive the $\frac{1}{2}$ -pound boxes of candy, which numbers receive the 1-pound boxes of candy, and which numbers receive the 1-pound fancy boxes of candy. The purchaser of the last punch on the said board receives the cocktail shaker set.

Customers or purchasers not qualifying by obtaining one of the numbers calling for a box of candy, or the last punch on said board, receive nothing for their money other than the privilege of punching a number from said board.

The fact as to whether a customer received a punch free of charge or pays 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents, and the fact as to whether he received nothing for his purchase or one of the $\frac{1}{2}$ -pound boxes of candy, one of the 1-pound boxes of candy, one of the 1-pound fancy boxes of candy, or the cocktail shaker set, is thus determined wholly by lot or chance. The several boxes of candy and the cocktail shaker set are each worth more than 5 cents.

Other assortments or "deals" of candy and novelty items or merchandise were also sold by respondents. These assortments differed from the one above described only in the manner in which the merchandise was packaged or arranged, and the types of punchboards or punch cards to be used in selling the merchandise. In all of the assortments sold by respondents a lottery by use of the punchboard or punch card was used for the purpose of sale to the ultimate consumer.

Respondents, trading under the name of Charris Specialty Co., also mailed to prospective customers in various States of the United States a catalog or circular, which was designated as Catalog No. 17, upon which the name of Charris Specialty Co. appears as the vendor.

The assortments or "deals" sold by respondents under the name of Charris Specialty Co. consisted for the most part of the articles of merchandise described in paragraph 1 hereof with punchboard and punch cards and not candy.

The assortments sold by respondents trading as Charris Specialty Co. pursuant to orders obtained by them from persons or firms who received said circular or catalog, and from others were assembled by respondents in the following manner.

The articles of merchandise listed in the catalog, and which were sold by respondents, were in groups or combinations, and each group or combination was accompanied by a punchboard, each of which had a large number of holes. Into each hole of the punchboard there had been inserted a rolled slip of paper upon which was printed a

number. Members of the public are solicited to punch from one or more holes of the board the said rolled slip of paper, and for each punch customers were charged 1 cent. Some of the numbers on the slip of paper so punched from the board entitled the customer to an article of merchandise worth much more than 1 cent, but for other numbers the customer received nothing.

In the operation of the board accompanying some of the groups of articles of merchandise, members of the public were required to pay 5 cents for the privilege of punching one of the numbers from the board.

In the operation of all of the boards, the selection of a number which might entitle the selector to an article of merchandise was wholly a matter of chance.

Respondents discontinued the use of the catalog and the sale of the items listed therein in the month of February 1937.

PAR. 3. The Commission finds that the wholesale dealers and jobbers to whom respondents sold their assortments resold said assortments to retail dealers, and said retail dealers exposed said assortments for sale, and sold said merchandise to the purchasing public in accordance with the aforesaid sales plan.

Respondents thus supplied to and placed in the hands of others the means of conducting a lottery in the sale of their products, in accordance with the sales plan set forth in paragraph 2 hereof.

This sales plan has the capacity and tendency to, and does induce customers to purchase respondent's products in preference to similar or like merchandise offered for sale and sold by respondents' competitors.

PAR. 4. The Commission finds that the sale of respondents' merchandise to the purchasing public in the manner above found, involves a game of chance or the sale of a chance to procure an article of merchandise by chance, free of charge, or at a price 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents.

The Commission further finds that the use by respondents of the said method in the sale of their merchandise, and the sale of the said 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.

The use by respondents of said method has the tendency to hinder competition and create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the said trades 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 sell and distribute merchandise in competition with the respondents, as above found, are unwilling to offer for sale or sell merchandise packed and assembled in the manner that respondents pack and assemble their merchandise, 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 and other articles of merchandise are attracted by respondents' said method and manner of packing said candy and other merchandise and by the element of chance involved in the sale thereof in the manner above described. Because of sales plan or method such dealers and ultimate purchasers are and have been thereby induced to purchase a substantial volume of said candy and other articles of merchandise so packed and sold by respondents in preference to candy and other articles of 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 method by respondents has the tendency and capacity to, and does, divert to respondents trade and custom from their said competitors who do not use the same or an equivalent method.

The use of the said method by respondents also has the tendency and capacity to exclude from said trades all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; lessen competition in said trades and to create a monopoly in said trades in respondents and such other distributors of candy and other articles of merchandise 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 trades all actual competitors and exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

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 acts and practices of the respondents as hereinabove found are all to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in com-

merce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondents, testimony, and other evidence taken before Miles J. Furnas and William C. Reeves, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief by counsel for the Commission (counsel for 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Mitchell Bazelon and Charles Harris, individually and as copartners trading under the firm names and styles of Park-Lane Candy Co. and Charris Specialty Co., or trading under any other name or names, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy, cocktail shakers, watches, pipes, fountain pens, cigarette lighters, cigarette cases, opera glasses, cameras, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist:

1. Selling and distributing candy or other articles of merchandise so packed and assembled that sales of said products or other merchandise to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise,

2. Supplying to or placing in the hands of dealers assortments of said products or other merchandise together with punchboards, push or pull cards or other lottery devices, which said punchboards, push or pull cards, or other lottery devices are to be used or may be used in selling or distributing said products or other merchandise to the public.

3. Supplying to or placing in the hands of dealers punchboards, push or pull cards, or other lottery devices either with assortments of said products or other merchandise or separately, which lottery devices are to be used or may be used in selling or distributing said products or other merchandise to the public.

4. Selling or otherwise disposing of said products or other merchandise by the use of punchboards, push or pull cards, or any other lottery device or devices.

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.

Mr. FREER dissented to the inclusion of certain words in the Commission's order to cease and desist in this case, involving respondents located within the Seventh Circuit, because the United States Circuit Court of Appeals for the Seventh Circuit in the case of A. McLean & Son—Docket 2264—had stricken from the order in said previous case these words and substituted others for them. [See, for decision referred to, 84 F. (2d) 910.]

IN THE MATTER OF
BONWIT TELLER, INC.

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

Docket 3499. Complaint, Sept. 17, 1938¹—Decision, Feb. 15, 1939

Where a corporation engaged in operation of department store from which it sold and distributed women's wearing apparel and other allied products to members of the purchasing and consuming public in the various States and in the District of Columbia, in substantial competition with others likewise engaged in such sale and distribution of such apparel and other products—

- (a) Designated and referred to certain slips, which it advertised in newspapers and periodicals of interstate circulation, and in advertising which it approved and agreed to, for insertion in newspapers by others for the benefit, profit and advantage of itself and others, as "satin," through statement "A gown of cotton lace over satin," without disclosure, in immediate connection and conjunction with said word, of said slips' rayon content, so as to apprise and inform purchasing public of such composition, and thereby represented to members of purchasing public that garments thus advertised and offered were made of silk, product of cocoon of silk worm, as long associated in public mind with word "satin," used to designate, describe or refer to dress goods and other similar products, and long held in high esteem for the preeminent qualities of products made therefrom; and
- (b) Advertised certain women's suits as being lined with "Silk Rayon Crepe," without disclosing, in connection therewith, that silk was weighted and not unweighted, and represented thereby to members of purchasing public that such linings consisted of a mixed fabric made up of predominant part of unweighted silk and rayon;

With effect of misleading and deceiving substantial portion of purchasing and consuming public into erroneous and mistaken belief that such representations were true, and of inducing purchase of such items of wearing apparel on account of such erroneous and mistaken beliefs thus brought about through such deceptive and false representations, and of unfairly diverting trade in commerce to it from competitors engaged in sale of similar apparel and other allied products and who do not misrepresent material of which apparel offered for sale or sold by them is composed; to the injury of competition in commerce:

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

Mr. George W. Williams for the Commission.

Paskus, Gordon & Hyman, of New York City, for respondent.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Fed-

¹ Amended.

Complaint

eral Trade Commission, having reason to believe that Bonwit Teller, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Bonwit Teller, 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 Fifth Avenue, and Fifty-sixth Street, New York City, State of New York.

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 and consuming public located in the 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 City, State aforesaid, to the purchasers thereof located in the various States of the United States other than the said State of New York and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by said respondent in said merchandise, sold by it in commerce between and among the various States of the United States, and in the District of Columbia.

Respondent is now, and at all times herein mentioned, has been in substantial competition with other corporations and with individuals, 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 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 such merchandise, caused, and now causes, advertising matter to be inserted in newspapers and magazines having an interstate circulation, and has approved and agreed to advertising matter being so inserted and circulated by others for the benefit, profit, and advantage of respondent and such others. In said advertising matter, certain "slips" worn by women were, and are, represented, designated, and referred to as "satin," said advertisement reading, in its material part as follows:

A gown of cotton lace over satin.

said word "satin" being used without being in any way qualified.

Complaint

28 F. T. C.

Such statements and representations on the part of respondent serve as representations to members of the purchasing and consuming public that such garments so advertised and offered for sale were, and are, composed of silk.

In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling such merchandise, caused advertising matter to be inserted in newspapers and other publications having interstate circulation, and in so doing has advertised certain women's suits as being lined with "Silk Rayon Crepe," when there was, and is, no such material as silk rayon, and when, in fact, the lining was composed of weighted silk, without any indication in said advertisement that said lining was composed of weighted silk, and in the absence of such indication such statements and representations on the part of respondent serve as representations to members of the purchasing and consuming public that such garments so advertised and offered for sale were composed of unweighted silk.

The representations herein set forth were, and are, false and misleading, in that said garments so represented, designated, and referred to as "satin" were, and are, not composed of silk, but were, and are, composed of rayon, and such representations had, and have, the tendency and effect of concealing the fact that such "slips" were, and are, made of rayon, when it was, and is, the duty of respondent to make disclosure of the fact that such "slips" were, and are, composed of rayon, by using the word rayon in immediate connection and conjunction with such word "satin," in such a way and manner as to apprise and inform the purchasing and consuming public that such "slips" were, and are, composed of rayon; and in that said linings were not composed of an unweighted silk, but were, in fact, composed of weighted silk, without indicating that such lining was weighted by the use of the word "weighted" in connection with said advertisement, in such a way as to inform the members of the purchasing and consuming public that the same was weighted.

PAR. 3. The word "silk" for many years last past has had, and still has, in the mind of the purchasing and 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 fiber has long been woven into a variety of fabrics. A variety of distinctive terms has been applied to the fabrics resulting from the different types of treatment and weaves of silk fiber. Dress goods and other similar products designated, described, or referred to as "satin," and other like words, when used alone, and until quali-

fied, designate or describe the materials from which the garment is made, and have been for a long time, and at the present time still are, associated in the public mind with material made from the product of the cocoon of the silk worm, commonly known and understood by the purchasing and consuming public as silk.

Rayon is the name of a chemical fiber or fabric that simulates silk, in that it has the appearance and feel of silk, and is, by the purchasing and consuming public, practically indistinguishable from silk. The use of the word "weighted" in connection with silk is meant silk that has been subjected to a metallic bath, resulting in a metallic substance or substances being permanently absorbed by the silk fiber.

PAR. 4. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that such representations were, and are, true; and has induced, and does induce, the purchase of such items of wearing apparel, on account of such erroneous and mistaken belief brought about by the use of said deceptive and false representations. 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 and other allied products who do not misrepresent the material of which wearing apparel offered for sale by them is made or composed. By use of the representations aforesaid, trade in said commerce has been, and is being, unfairly diverted to respondent from said competitors. 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 and the District of Columbia.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 17, 1938, issued and on September 21, 1938, served its amended complaint in this proceeding upon respondent Bonwit Teller, 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 30, 1938, the

respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in this said complaint excepting that part of paragraph 2 of the complaint which charges that the words "Silk Rayon Crepe" serve as representations to members of the public that the garments they described were composed wholly of unweighted silk. Respondent waived all intervening procedure and further hearing as to said facts. 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 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, Bonwit Teller, Inc., is a corporation, organized and 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 Fifth Avenue and Fifty-sixth Street, New York City, State of New York.

Respondent Bonwit Teller, Inc., 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. Said merchandise is sold and distributed, by respondent, to members of the purchasing and consuming 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 said articles of merchandise, when sold, to be shipped from its place of business in the State of New York to the purchasers thereof located at various points in States of the United States other than the State from which said shipments are made and in the District of Columbia. Respondent maintains and has maintained a course of trade in commerce in said merchandise, sold by it between and among the various States of the United States and the District of Columbia.

Respondent is now, and has been, in substantial competition with other corporations and with individuals, firms, and partnerships likewise engaged in the business of selling and distributing women's wearing apparel and other allied products 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 in offering for sale and selling its

merchandise caused advertising matter to be inserted in newspapers and magazines having an interstate circulation. Respondent also approved and agreed to the insertion of certain advertising matter in newspapers by others for the benefit, profit, and advantage of respondent and such others.

In said advertising matter, certain "slips" worn by women were represented, designated, and referred to as "satin," said advertisement reading in its material part as follows:

A gown of cotton lace over satin.

The word "satin" was used in said advertisements without being qualified in any manner.

The Commission finds that the use of the word "satin" in the manner aforesaid serves as a representation to members of the purchasing public that the garments so advertised and offered for sale were composed of silk.

Respondent also advertised certain women's suits as being lined with "Silk Rayon Crepe."

The Commission finds the use of the words "Silk Rayon Crepe" in the manner aforesaid serves as a representation to members of the purchasing public that the lining of the suits consisted of a mixed fabric made up of a predominant part of unweighted silk combined solely with rayon.

PAR. 3. The Commission finds that the above representations made by respondent in advertising these women's slips and suits were and are false, misleading, and untrue.

In truth and in fact said women's "slips" were and are not satin. The Commission finds that said slips were and are composed of rayon.

In truth and in fact the linings of said suits were and are not composed of unweighted silk and rayon. The Commission finds that the linings of the suits were composed wholly of weighted silk.

PAR. 4. The Commission finds that it was and is the duty of respondent to make disclosure of the fact that the "slips" respondent offered for sale and sold were and are composed of rayon by using the word "rayon" in immediate connection and conjunction with the word "satin," in such a way and manner as to apprise and inform the purchasing public that such slips were and are composed of rayon.

The Commission finds that it was and is the duty of respondent to make disclosures of the fact that said linings were not composed of an unweighted silk, but were, in fact, composed of weighted silk by the use of the word "weighted" in connection with said advertise-

ment in such a way as to inform the members of the purchasing public that the same was weighted.

PAR. 5. The word "silk" for many years last past has had, and still has, in the mind of the purchasing and 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 fiber has long been woven into a variety of fabrics. A variety of distinctive terms has been applied to the fabrics resulting from the different types of treatment and weaves of fiber. Dress goods and other similar products designated, described, or referred to as "satin," and other like words, when used alone, and until qualified, designate or describe the materials from which the garment is made, and have been for a long time, and at the present time still are, associated in the public mind with material made from the product of the cocoon of the silkworm, commonly known and understood by the purchasing and consuming public as silk.

Rayon is the name of a chemical fiber or fabric that simulates silk, in that it has the appearance and feel of silk, and is, by the purchasing and consuming public, practically indistinguishable from silk. The use of the word "weighted" in connection with silk is meant silk that has been subjected to a metallic bath, resulting in a metallic substance or substances being permanently absorbed by the silk fiber.

PAR. 6. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that such representations were, and are, true; and has induced, and does induce, the purchase of such items of wearing apparel, on account of such erroneous and mistaken belief brought about by the use of said deceptive and false representations.

There are among the competitors of respondent, corporations, individuals, partnerships, and firms, engaged in the sale of women's wearing apparel and other allied products who do not misrepresent the material of which wearing apparel offered for sale by them is made or composed.

By use of the representations aforesaid, trade in said commerce has been, and is being, unfairly diverted to respondent from said competitors.

As a result thereof, 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.

Order

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, except that part of paragraph 2 of the complaint which charges that the words "Silk Rayon Crepe" serve as representations to members of the public that the garments they describe were composed wholly of unweighted silk, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Bonwit Teller, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of fabrics, ladies' wearing apparel and garments, and other like articles of merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "satin" or "crepe" or any other word or words of similar import or meaning, to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, unless such descriptive word or words are used truthfully to designate the type of weave or construction, in which case such words shall be qualified by using in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, a word or words clearly naming or describing the fibers or materials from which said product or fabric is made.

2. Using the words "silk rayon" to designate or describe any fabrics, wearing apparel, garments, or other like merchandise, provided, however, that in the case of mixed fabrics which contain silk and rayon, the fibers or materials of said mixed fabrics, wearing apparel, garments, or other like merchandise, shall be designated or described in the order of their predominance by weight beginning with the largest single constituent.

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3. Advertising, offering for sale, or selling fabrics or any other products composed in whole or in part of rayon without clearly disclosing the fact that such fabrics or products are composed of rayon, and when such fabrics or products are composed in part of rayon and in part of other fibers or materials, such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

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

FERRARA PANNED CANDY COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3542. Complaint, Aug. 17, 1938—Decision, Feb. 15, 1939

Where a corporation engaged in the manufacture, sale, and distribution of candy, including assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof and which (1) were composed of a number of pieces of candy, together with push cards for sale and distribution of said pieces under a plan and in accordance with card's explanatory legend by which purchaser received, in accordance with particular basket ball legend disclosed by disk selected to be pushed by chance, pieces of candy ranging from 1 to 20, and (2) involved various push cards similar to that above described and varying therefrom in detail only, for sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme—

Sold and distributed to dealers such assortments for display and resale to purchasing public in accordance with aforesaid sales plan and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its candy in accordance with such sales plan involving game of chance or sale of a chance to procure additional pieces of candy without additional cost, contrary to an established public policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to offer and sell their products 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 or any other method contrary to public policy, and refrain therefrom;

With tendency and capacity to induce purchasers of its said candy to buy same in preference to that offered and sold by its competitors and with result that many dealers in and ultimate consumers of candy were attracted by its 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 substantial amounts of such candy thus packed and sold by it in preference to that offered and sold by its said competitors, who do not use such or equivalent sales plan or method, and with tendency and capacity, because of said game of chance, unfairly to divert trade and custom to it from its competitors who do not use such or equivalent methods, 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, create a monopoly thereof in it and in such other distributors of candy as do use same or equivalent sales plan or method, deprive purchasing public of benefit of free competition, and eliminate from said trade all actual and exclude therefrom all potential competitors who do not adopt and use such plan or method:

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

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

Mr. D. C. Daniel for the Commission.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Ferrara Panned Candy Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of 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, Ferrara Panned Candy Co., Inc., is a corporation, organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 2200-10 West Taylor Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes, and has caused, its products, when sold, to be transported from its place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia. There is now, and for some time last past has been, a course of trade by said respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its 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 and in 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 dealers, certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when distributed to the consumers thereof. One of said assortments is, and has been, sold and distributed to the consuming public in the following manner:

This assortment consists of a number of pieces of candy, together with a device commonly called a push card. The push card contains a number of partially perforated discs which are divided into four sections. On the face of each disk is printed the word "Push." Within each of said discs is printed one of a number of basketball terms, which lend themselves to legend use for the awarding of prizes. Sales are 1 cent each, and each purchaser is entitled to one push from said card. The said card bears statements or legends as follows:

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BASKETBALL 1¢

| | |
|-----------------------------------------|-----------|
| Field Goal receives..... | 20 Pieces |
| Free Throw receives..... | 10 Pieces |
| Dribble receives..... | 8 Pieces |
| Pass receives..... | 6 Pieces |
| Tip Off receives..... | 4 Pieces |
| Personal receives..... | 4 Pieces |
| Pivot receives..... | 2 Pieces |
| Guard receives..... | 2 Pieces |
| Foul receives..... | 1 Piece |
| Last sale in each section receives..... | 10 Pieces |

Sales of respondent's candy are made in accordance with the above legends. The said terms or words printed within the said disks are effectively concealed from purchasers and prospective purchasers until a purchase has been made and a disk separated or removed from said card. The said pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various push cards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's candy, directly or indirectly, expose 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 candy, in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers of said candy to purchase respondent's candy 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 additional pieces of candy without additional cost. 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 is contrary to an established public policy of the Government of the United States, and in violation of the criminal laws. The use by respondent of the said method has a tendency unduly to hinder competition, or to create a monopoly in that the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same method, or an equivalent method involving the same or an equivalent element of chance or lottery. Many persons, firms, and corporations

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who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale, or to sell, their products 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 any other method which is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate consumers 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 thereby are 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 sales plan or method. The use of said method by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent, trade and custom from its competitors who do not use the same or an equivalent method; to exclude from the 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 the candy trade; to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or an equivalent sales plan or method, and to deprive the purchasing public of the benefit of free competition. The use of said sales plan or 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 the same or an equivalent sales plan or method.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 17, 1938, issued, and on August 18, 1938, served its complaint in this proceeding upon respondent Ferrara Panned Candy Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, 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 alle-

gations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer and the Commission having duly considered the 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, Ferrara Panned Candy Co., Inc., is a corporation, organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 2200-10 West Taylor Street, Chicago, Ill. Respondent is now, and for some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes, and has caused, its products, when sold, to be transported from its place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia. There is now, and for some time last past has been, a course of trade by said respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its 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 and in 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 dealers, certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when distributed to the consumers thereof. One of said assortments is, and has been, sold and distributed to the consuming public in the following manner:

This assortment consists of a number of pieces of candy, together with a device commonly called a push card. The push card contains a number of partially perforated disks which are divided into four sections. On the face of each disk is printed the word "Push." Within each of said disks is printed one of a number of basketball terms, which lend themselves to legend use for the awarding of prizes. Sales are 1 cent each, and each purchaser is entitled to one push from said card. The said card bears statements or legends as follows:

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BASKETBALL 1¢

| | |
|-----------------------------------------|-----------|
| Field Goal receives | 20 Pieces |
| Free Throw receives..... | 10 Pieces |
| Dribble receives..... | 8 Pieces |
| Pass receives | 6 Pieces |
| Tip Off receives | 4 Pieces |
| Personal receives | 4 Pieces |
| Pivot receives..... | 2 Pieces |
| Guard receives..... | 2 Pieces |
| Foul receives..... | 2 Piece |
| Last sale in each section receives..... | 10 Pieces |

Sales of respondent's candy are made in accordance with the above legends. The said terms or words printed within the said disks are effectively concealed from purchasers and prospective purchasers until a purchase has been made and a disk separated or removed from said card. The said pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, various push cards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's candy, directly or indirectly, expose 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 candy, in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers of said candy to purchase respondent's candy 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 additional pieces of candy without additional cost. 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 is contrary to an established public policy of the Government of the United States, and in violation of the criminal laws. The use by respondent of the said method has a tendency unduly to hinder competition, or to create a monopoly in that the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same method, or an equivalent method involving the same or an equivalent element of chance or lottery. 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 to sell, their products 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 any other method which is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate consumers 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 thereby are induced to purchase substantial amounts of 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 sales plan or method. The use of said method by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent, trade and custom from its competitors who do not use the same or an equivalent method; to exclude from the 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 the candy trade; to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or an equivalent sales plan or method, and to deprive the purchasing public of the benefit of free competition. The use of said sales plan or 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 the same or an equivalent sales plan or method.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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 the Federal Trade Commission Act.

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 fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the fact and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Ferrara Panned Candy Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing 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 dealers or others, packages or assortments of candy which are to be or may be used to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of candy or any other article of merchandise to the public.

3. Supplying to or placing in the hands of dealers or others, assortments of candy or any other merchandise together with punchboards, push or pull cards or other lottery devices, which lottery devices are to be used or may be used in selling or distributing such candy or other merchandise to the public.

4. Supplying to or placing in the hands of dealers or others a lottery device either with assortments of candy or other merchandise or separately, which lottery device is to be used or may be used in selling or distributing such candy or other merchandise to the public.

5. Selling or otherwise disposing of any merchandise by the use of lottery devices.

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

D. A. SCHULTE, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3676. Complaint, Dec. 23, 1938—Decision, Feb. 15, 1939

Where a corporation engaged in sale and distribution of certain assortments of candy and other articles of merchandise which were (1) so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof, and for use with which (2) it shipped to its wholesaler, jobber, and retailer customers punchboards, and one of which (3) consisted of a number of boxes of assorted candy and additional articles of merchandise, together with punchboards for disposition of said candy and merchandise to consuming public under a plan in accordance with which, and board's explanatory legend, certain specified numbers entitled purchaser to a box of candy or other articles, and purchaser of last punch in each of three sections into which board was arranged received a pound box of candy, and purchaser of last punch on board received article of merchandise, and purchaser who failed thus to qualify and thereby secure one of said boxes of candy or articles, value of which was in excess of the 5 cents or 10 cents charged for punch, received nothing for such 5 cents or 10 cents other than privilege of making punch;

Sold to wholesalers, jobbers, and retailers such assortments and furnished punchboards as aforesaid to such assortments' purchasers, by whom such boards were made use of in sale and distribution of its candy and merchandise in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its candy and other merchandise in accordance with such sales plan involving game of chance or sale of a chance to procure candy or article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use such 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 persons were attracted by said sales plan or method employed by it in sale and distribution of its candy and other articles and element of chance involved therein and were thereby induced to buy and sell such candy and other articles in preference to such merchandise offered and sold by said competitors who do not use such or equivalent method, and of unfairly diverting trade because of said game of chance to it from its competitors who do not use such method, to the substantial injury of competition in commerce:

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

Mr. D. C. Daniel for the Commission.

Mr. Jerome Eisner, of New York City, for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that D. A. Schulte, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, D. A. Schulte, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 384 Broadway, New York City. Respondent is now, and for some time last past has been, engaged in the sale and distribution of candy and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be transported from his place of business aforesaid to purchasers thereof in the various States of the United States other than New York and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is, and for some time last past has been, in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of candy and other articles of merchandise 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 sells, and has sold, to wholesale dealers, jobbers, and retail dealers, certain assortments of candy and other articles of merchandise so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Respondent causes and has caused punchboards, which are designed to be, and are, used with the said assortments to be shipped to the aforesaid wholesale dealers, jobbers, and retail dealers. The wholesalers and jobbers, aforesaid, in turn, assemble the punchboards, candy and other articles of merchandise into one assortment and sell same to the retail trade. Respondent furnishes and has furnished various punchboards for use in the sale and distribution of its candy and other articles of merchandise by means of

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a game of chance, gift enterprise or lottery scheme. The sales plan or method involved in connection with the sale of all of said candy or other articles of merchandise by means of said punchboard is the same as the one hereinafter described, varying only in detail.

One of said assortments consists of a number of boxes of assorted candy and additional articles of merchandise, together with a device commonly called a punchboard. Said boxes of candy and other articles of merchandise are distributed to the consuming public by means of said punchboard in the following manner: The sales are 5 or 10 cents each and when a punch is made from the 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 the statement or statements informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a box of candy or other articles of merchandise. The punches on the board are arranged in four sections and the purchaser of the last punch in each section, except the last, receives a pound box of candy and the purchaser of the last punch on the board receives an article of merchandise. 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 in one of the sections, or 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 or 10 cents each and the purchaser who obtains one of the numbers calling for a box of candy, or an article of merchandise, receives the same for the price of 5 or 10 cents. The numbers 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 other articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes the said punchboards use the same in selling and distributing respondent's candy and 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 its candy and merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its candy and merchandise and the sale of said candy and merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public

policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy and other articles of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure candy or an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute candy and other articles of 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 said sales plan or method employed by respondent in the sale and distribution of its candy and other articles of merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's candy and other articles of merchandise in preference to candy and other articles of 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 a tendency and capacity to and does unfairly divert trade to respondent from its said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 23, 1938, issued and thereafter served its complaint in this proceeding upon respondent D. A. Schulte, Inc., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 13, 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, D. A. Schulte, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 384 Broadway, New York City. Respondent is now, and for some time last past has been, engaged in the sale and distribution of candy and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be transported from its place of business aforesaid to purchasers thereof in the various States of the United States other than New York and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is, and for some time last past has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and other articles of merchandise 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 sells, and has sold, to wholesale dealers, jobbers, and retail dealers, certain assortments of candy and other articles of merchandise so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Respondent causes and has caused punchboards, which are designed to be and are, used with the said assortments to be shipped to the aforesaid wholesale dealers, jobbers, and retail dealers. The wholesalers and jobbers, aforesaid, in turn, assemble the punchboards, candy, and other articles of merchandise into one assortment and sell same to the retail trade. Respondent furnishes and has furnished various punchboards for use in the sale and distribution of its candy and other articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said candy

or other articles of merchandise by means of said punchboard is the same as the one hereinafter described, varying only in detail.

One of said assortments consists of a number of boxes of assorted candy and additional articles of merchandise, together with a device commonly called a punchboard. Said boxes of candy and other articles of merchandise are distributed to the consuming public by means of said punchboard in the following manner: The sales are 5 or 10 cents each and when a punch is made from the 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 the statement or statements informing prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a box of candy or other articles of merchandise. The punches on the board are arranged in four sections and the purchaser of the last punch in each section, except the last, receives a pound box of candy and the purchaser of the last punch on the board receives an article of merchandise. 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 in one of the sections, or 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 or 10 cents each and the purchaser who obtains one of the numbers calling for a box of candy, or an article of merchandise, receives the same for the price of 5 or 10 cents. The numbers 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 other articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes the said punchboards use the same in selling and distributing respondent's candy and 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 its candy and other merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its candy and other merchandise and the sale of said candy and other merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy and other articles of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure candy or an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute candy and other articles of merchandise in competition with the respondent as above 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 said sales plan or method employed by respondent in the sale and distribution of its candy and other articles of merchandise and the element of chance involved therein and are thereby induced to buy and sell respondent's candy and other articles of merchandise in preference to candy and other articles of 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 a tendency and capacity to and does unfairly divert trade to respondent from its said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being and has been 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 aforesaid acts and practices of respondent as hereinabove found are all to the injury and prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

Order

28 F. T. C.

It is ordered, That the respondent, D. A. Schulte, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or any other merchandise so packed and assembled that sales of said products 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 dealers packages or assortments of candy or other merchandise which are to be used or which may be used to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of said products to the public.

3. Supplying to or placing in the hands of dealers assortments of candy or other merchandise together with punchboards, push or pull cards or any other lottery devices, which lottery devices are to be used or may be used in selling or distributing such products to the public.

4. Supplying to or placing in the hands of dealers a lottery device either with assortments of candy or other merchandise, or separately, which lottery device is to be used or may be used in selling or distributing such products to the public.

5. Selling or otherwise disposing of any merchandise by the use of punchboards, push or pull cards or other lottery devices.

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

Syllabus

IN THE MATTER OF

MORTIMER ALFRED GERSTEN AND LEE GERSTEN,
DOING BUSINESS AS GERSTEN BROTHERS

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

Docket 2810. Complaint, May 18, 1936—Decision, Feb. 16, 1939

Where two individuals engaged as partners in the manufacture of storage receptacles, chests, and closets for storing clothing and other materials against ravages of moths and deterioration caused by exposure to light and dust, and which were made of corrugated paper between thin sheets of fiber, about one-eighth of an inch thick, were supplied, in case of closets, with metal clothes hangers to support weight of 100 pounds of stored articles, and were provided, in case of both closets and chests, with built-in receptacle to hold chemicals or moth bullets or ant moth pellets placed therein prior to sale, and in selling said storage receptacles, closets, and chests to retail and wholesale dealers in such articles in the District of Columbia and in the various States, and in selling also, separately, for use in their storage receptacles, said so-called moth bullets or "Anti-Moth Pellets" and "Closet Moth Proofer," which contained, among other things, not more than about 2 ounces of a compound of cedar leaf and pine oils in about equal proportions, and, as thus engaged in selling as aforesaid their various articles, in substantial competition with those engaged in sale for similar purposes of various storage receptacles such as garment bags, closets, and chests—

(a) Branded or marked their said storage receptacles "Cedarol Closets" and "Cedarol Chests," in large letters, and receptacles used therein "Cedarol Closet Moth Proofer" and "Mothador," and caused said storage receptacles, thus branded or marked, and said receptacles, to be offered and sold by wholesale and retail dealers to public, and thereby falsely represented, through use of said first-named word, to wholesale and retail dealers and public, that such "Cedarol" closets and chests were effective storage receptacles against ravages of moths because of presence of cedar oil in their construction, and that such "Cedarol Closet Moth Proofers" were provided with sufficient cedar oil so as to give storage receptacles or other storage places in which used same qualities for storage purposes as possessed by efficient cedar wood storage receptacles, as long made in accordance with accepted and recognized practice, and as associated by public with such qualities and efficiency for storage purposes of such practically air-tight cedar wood receptacles as thus made, and falsely represented, through use of word "Mothador," to wholesale and retail dealers and public, that such contrivances, attached to or contained in its said storage receptacles, made the same, or others when supplied with its so-called moth bullets or other chemicals or oil compounds, efficient protection to contents thereof against ravages of moths;

Facts being loose construction of said receptacles, when in use for storage purposes, tended to and did cause seams thereof to spread and permit ingress

and egress of air and moths, and the fiber or cardboard material of which same were made was permeable to air and to vapor of gas from oils of chemicals used in moth bullets or other chemicals or oil materials supplied by them for protection of materials against such ravages, so that they not only permitted ingress of moths and air, but were useless for purpose of causing concentration of vapor or gas from chemicals or oils used therein to become sufficient as a fumigant to protect materials therein stored from said ravages and, in consequence, they did not afford protection to stored clothing and other materials in aforesaid respect, and from deterioration from exposure to dust and light;

- (b) Caused false and misleading statements to appear in advertisements concerning their storage receptacles, and "Mothadors" and "Closet Moth Proofer" used in connection therewith, in newspapers, trade papers, magazines, and other publications, to the effect that their closets and chests were "Cedarol" closets and chests, and that their "Cedarol Closet Moth Proofer," with moth bullets, protected clothes of user, when employed in respondents' storage receptacles or in cabinets and closets of members of the public, from the ravages of moths or moth larvae, and that they destroyed moths and kept the same out of the storage receptacles, and that use of one such moth proofer loaded with moth bullets for each 40 cubic feet of confined closed space, when placed in wardrobes in which clothing was stored, was insurance against moth damage, and that it destroyed moths, and that their said receptacles were efficient and sufficient protection to articles stored therein against aforesaid ravages; and
- (c) Caused wholesalers and retailers and others to make, in turn, statements similar to those above referred to, both in advertisements in newspapers, trade papers, and other publications, and verbally to members of the public, concerning their aforesaid products;

With effect of deceiving and misleading dealers in storage receptacles through such marking or branding, and such other false and fraudulent statements and representations, into the belief that they were true, and of causing them, in turn, to pass on such false and misleading representations to members of public, and of deceiving and misleading wholesalers and retailers and members of the public into the mistaken and erroneous belief that such false and fraudulent statements and representations were true, and, in reliance thereon, into purchasing their said receptacles for sums of 89 cents, more or less, and their said moth proofer for use in such receptacles, in place of storage receptacles of competitors which were efficient and sufficient protection against ravages of moth larvae to materials stored therein, and were customarily sold to public, according to size and other qualities, at prices ranging from approximately \$1 to \$10, and upwards, and trade in storage receptacles was thereby diverted to them from competitors:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. John N. Wheelock for the Commission.

Mock & Blum and *Mr. Abraham H. Brown*, of New York City, for respondents.

Complaint

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Mortimer Alfred Gersten and Lee Gersten, copartners, doing business under the trade name Gersten Brothers, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Mortimer Alfred Gersten and Lee Gersten, are and have been copartners doing business under the trade name, Gersten Brothers, at all times since more than 5 years immediately prior to the date hereof, having a place of business during said times and now at 516 West Thirty-fourth Street, Borough of Manhattan, city of New York, N. Y.

PAR. 2. During all the times above mentioned the respondents are and have been engaged in the business of the manufacture and in the business of the sale, among other things, of storage receptacles, chests, and closets made of corrugated fiber for use for the protection in storage, among other things, of clothing and other materials against the ravages of clothes' moths and the deterioration caused by exposure to light and dust.

PAR. 3. The respondents, during all the times above mentioned and referred to, have sold their storage receptacles, closets, and chests, to retail and wholesale dealers in such articles, purchasers thereof, located in the District of Columbia and in the various States of the United States other than New York, or the State of origin of the shipment, for resale to members of the public, users thereof, and the respondents have caused their storage receptacles, when so sold by them, to be transported from New York or from the State of origin of the shipment to, into, and through the District of Columbia and States other than New York or the State of origin of the shipment, to the purchasers there located.

PAR. 4. During all the times above mentioned and referred to, other individuals, firms, and corporations, located in the various States of the United States, hereinafter called sellers, are and have been engaged in the business of the sale of various storage receptacles, such as garment bags, boxes, closets, cabinets, and chests, for use in

the storage of clothing and other materials subject to the ravages of clothes' moths and to deterioration from exposure to light and dust, to retail and wholesale dealers therein, purchasers thereof, located in States other than the State of the seller or State of origin of the shipment, for resale to members of the public, users of such storage receptacles. The sellers, respectively, caused the storage receptacles, when so sold by them, to be transported from the State of the seller or from the State of origin of the shipment to, into, and through the District of Columbia and the other States, to the purchasers there located.

PAR. 5. The respondents during all the times above mentioned or referred to are, and have 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 their storage receptacles, chests, and closets.

PAR. 6. The aroma or odor of cedar oil is not a repellent and does not act as a repellent so as to prevent clothes' moths from entering closed storage receptacles, the interiors of which contain or are impregnated with cedar oil. The aroma or odor of cedar oil has no effect on any stage of moth life. As a fumigant, however, the vapor or gas from cedar oil, if of sufficient concentration, will kill young moth larvae and some of the older larvae, and it will also cause the activity of the older larvae to be suspended.

PAR. 7. Storage receptacles, garment bags, boxes, closets, cabinets, and chests are used for the storage of clothing and other materials ordinarily during a continuous period of seven months in a year.

In order to be effective upon moth larvae as a fumigant during the above storage period or any part thereof, cedar oil or other volatile oils or chemicals, must be held in practically airtight container in order that the evaporating gas or vapor therefrom may be confined and thereby become of sufficient concentration for that purpose.

PAR. 8. Storage receptacles, closets, cabinets, and chests made of wood and practically airtight and containing in the body proper (top, sides, and bottom) as much as 70 percent of $\frac{3}{4}$ -inch red cedar wood, furnish an atmosphere within them when in use and closed that does not permit the eggs of clothes moths in such receptacles to develop into larvae which can cause damage to stored material and later develop into clothes moths. Such storage receptacles by tests and by experience in their use as storage receptacles, are, and have been, definitely established as efficient preventives of moth damage to clothing and other materials stored in them.

PAR. 9. For more than 25 years last past manufacturers in the cedar wood chest industry in the United States have produced and

sold, in interstate commerce, storage receptacles made in part or entirely of red cedar wood, and marked, branded, or otherwise described and advertised as cedar chests, cedar closets and cedar cabinets when offered for sale and when sold.

PAR. 10. On December 2, 1932, the industry, engaged in the United States in the manufacture of cedar wood chests, held a Trade Practice Conference under the auspices of the Federal Trade Commission, to consider, among other things, the prevention of the practice in the sale of wood chests in interstate commerce, of representing such chests as cedar chests, when they contained in their body proper only cedar veneer, or cedar wood of only one-twentieth inch in thickness, and the said industry made and passed the resolutions or rules mentioned and referred to in paragraphs 11 and 12 hereof.

PAR. 11. On May 12, 1933, the Federal Trade Commission issued an official statement to the effect, among other things, that the rules as adopted by the Industry at the Trade Practice Conference mentioned in paragraph 10 hereof, and as set forth in Group I of the Commission's official statement were approved and accepted by the Commission.

PAR. 12. Among the Rules of the Trade Practice Conference of the Cedar Chest Industry, referred to in paragraph 10 hereof, and contained in Group I of the Federal Trade Commission's official statement, are Rules 1, 2, 3, and 14 as approved by the Federal Trade Commission, as follows:

Rule 1.—The use in advertising, selling, or offering for sale of such expressions as "moth proof," "moth killing," "moth repelling," "cedarized," or similar misleading representations, in describing any cedar chest, cedar container, or cedar receptacle which is not tightly constructed and which does not contain in the body proper (top, sides, ends, and bottom) at least seventy (70) percent of three-quarter inch red cedar (*Juniperus virginiana*), is an unfair trade practice.

Rule 2.—The making or causing or permitting to be made or published any false, untrue, or deceptive statement by way of advertisement or otherwise concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, having the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

Rule 3.—The false marking or branding of products of the industry with the effect of misleading or deceiving purchasers or prospective purchasers with respect to the quantity, quality, grade, substance or moth-killing, or moth-repelling properties of the goods purchased, is an unfair trade practice.

Rule 14.—Advertising, selling, or offering for sale as cedar chests, cedar containers, or cedar receptacles, chest containers, or receptacles which contain in the body proper (top, sides, ends, and bottom) more than thirty (30) percent by weight of wood or woods other than cedar (*Juniperus virginiana*) is an unfair trade practice.

At all times since on or about the year 1932 the said manufacturers in the cedar wood chest industry have made such storage receptacles from red cedar wood with a minimum of 70 percent (top, sides, and bottom) of three-quarter inch red cedar wood.

PAR. 13. During all the times above mentioned, the respondents' said storage receptacles were made of corrugated paper between thin sheets of fiber or cardboard of a total thickness of approximately one-eighth of an inch. The closets were supplied with metal clothes hangers intended to support a weight of 100 pounds of stored articles. Both closets and chests were provided with a built-in receptacle called a "Mothador" or "Cedarol Closet Moth Proofer" for the purpose of holding chemicals or moth bullets or Anti-Moth Pellets, one or more of which was placed in such receptacles when the closets and chests were sold by respondents to the wholesale and retail dealers above referred to for resale to the public.

PAR. 14. During the times above mentioned, the respondents also sold separately the so-called moth bullets or Anti-Moth Pellets and their "Closet Moth Proofer" for use in their storage receptacles. During said times the moth bullets or Anti-Moth Pellets or other such chemical material contained, among other things, not more than approximately two ounces of a compound of cedar leaf and pine oils in the proportions of about 50 percent of each.

PAR. 15. The respondents' storage receptacles, above referred to, when in use for storage purposes were of loose construction. The pressure from the bulk and weight of garments or other materials, which they were expected to accommodate for storage, when stored in them, tended to and did cause the seams of the receptacles to spread and permit the ingress and egress of air and moths. The fiber or cardboard material of which they were made was permeable to air and the vapor or gas from the oils or chemicals used in the moth bullets or other chemical or oil materials supplied by the respondents for protection of materials against the ravages of moths. Because of their loose construction, the permeability of the material of which they were made, and the tendency of their seams to spread when in use and the respondents' storage receptacles not only permitted the ingress of moths and air, but were useless for the purpose of causing concentration of the vapor or gas from the chemicals or oils used in them to become sufficient, as a fumigant, to protect stored materials therein from the ravages of clothes' moths. In consequence of the foregoing the respondents' storage receptacles were not a protection to stored clothing and other materials against the ravages of moth larvae and from deterioration from exposure to dust and light.

PAR. 16. During all the times above mentioned the respondents branded or marked their storage receptacles "Cedarol Closets" and "Cedarol Chests" in large letters before they were sold by them as above set forth, and branded or marked the receptacles used therein for chemicals or oils or moth bullets with the words "Mothador" and "Cedarol Closet Moth Proofer," and the so-marked or branded storage receptacles and so-called "Mothadors" and "Cedarol Closet Moth Proofers" were caused by respondents to be, in turn, offered for sale and sold by wholesale and retail dealers to the public.

PAR. 17. During all the times above mentioned the respondents, in advertisements, concerning their storage receptacles, "Mothadors" and "Closet Moth Proofers" used in connection therewith which were published in newspapers, trade papers, magazines and in other publications, caused statements to appear, among many others similar and of the same effect thereto, that their closets and chests were Cedarol closets and chests; that their Cedarol Closet Moth Proofers with the moth bullets protected the clothes of the user when used in respondents' storage receptacles or in cabinets or closets of members of the public from the ravages of moths or moth larvae; that they destroyed moths; that they kept moths out of the storage receptacles; that the use of one Cedarol Closet Moth Proofer loaded with moth bullets for each 40 cubic feet of confined closed space, when placed in a wardrobe in which clothing was stored was an insurance against moth damage; that it destroyed moths; and that their storage receptacles were efficient and sufficient protection to stored articles against the ravages of moths, or moth larvae.

The respondents caused wholesale and retail dealers and others to make, in turn, statements the same as those above mentioned and referred to and many others similar thereto, both in advertisements published in newspapers, trade papers, and other publications, as well as verbally to members of the public concerning its storage receptacles and its moth bullets, Anti-Moth Pellets, and Cedarol Closet Moth Proofers.

PAR. 18. During all the times above mentioned and long prior thereto the public, users of storage receptacles, knew of the use of storage receptacles made of cedar wood and of their efficiency for storage purposes, and that, not only because they were practically airtight and thereby prevented the ingress of moths, but more particularly because members of the public knew or believed that the vapor from the oil in the cedar wood of which they were composed furnished within such closed receptacles an atmosphere such as referred to in paragraph 8 hereof that was of further and complete

Complaint

protection to the articles stored therein against the ravages of moths in case the articles stored were infested with moths or moth larvae at the time they were placed in such receptacles.

PAR. 19. The marking or branding by the respondents of their storage receptacles, closets, and chests, using the word "Cedarol" and the use of the word "Cedarol" in branding its so-called "Closet Moth Proofers" was false and falsely represented to wholesale and retail dealers and to the public that the closets and chests were effective storage receptacles against the ravages of moths, because of the presence of cedar oil in their construction; that the "Cedarol Moth Proofers" were provided with sufficient cedar oil and in such a manner as to give the storage receptacles, or other storage places where they were used, the same qualities for storage purposes that efficient cedar wood storage receptacles had by reason of the presence of cedar oil which they contained. The marking or branding of respondents so-called "Closet Moth Proofer" with the word "Cedarol" likewise caused wholesale and retail dealers and members of the public to believe that the use of such contrivances was an efficient protection against the ravages of clothes' moths by reason of the presence in them of a sufficient quantity of cedar oil for that purpose. The marking or branding by the respondents of the contrivances called by them "Mothadors" was a representation by the respondents to wholesale and retail dealers and to the public that such contrivances attached to or contained in the respondents' storage receptacles when supplied with the so-called moth bullets or other chemical or oil compounds made the respondents', or others, storage receptacles efficient protection to stored materials against the ravages of clothes' moths.

PAR. 20. The marking or branding of their storage receptacles and of their closet moth proofer and the statements and representations made by the respondents and caused to be made verbally by their agents and in advertisements, as set forth above, were false and fraudulent statements and representations, and they had the capacity and tendency to deceive and mislead, and they did deceive and mislead, dealers in storage receptacles to whom they were made into believing that they were true; and, to cause wholesale and retail dealers, in turn, to pass on such false and misleading representations to members of the public. The said false statements and representations, as above set forth, had the capacity and tendency to deceive and mislead, and they did deceive and mislead, wholesale and retail dealers and members of the public into the mistaken and erroneous

belief that they were true, and, into relying upon such belief and purchasing the respondents said storage receptacles, which were sold for sums of approximately 89 cents, more or less, and into purchasing respondents' so-called "Cedarol Closet Moth Proofer" for use in storage receptacles in place of purchasing the storage receptacles of competitors of the respondents which were efficient and sufficient protection against the ravages of moth larvae to stored materials, and which were customarily sold to the public according to their size and other qualities at prices ranging from approximately \$1 to \$10 and upwards, and trade in storage receptacles was thereby diverted to the respondents from competitors.

PAR. 21. 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 the Federal Trade Commission Act, the Federal Trade Commission on the 18th day of May 1936, issued its complaint in this proceeding and caused it to be served upon the respondents, Mortimer Alfred Gersten and Lee Gersten, copartners, doing business under the trade name Gersten Brothers, charging them 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 the respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw their answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the said facts, and the substitute answer was duly filed November 29, 1938, in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, advises that this proceeding is in the interest 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, Mortimer Alfred Gersten and Lee Gersten, are and have been copartners doing business under the trade name, Gersten Brothers, at all times since more than 5 years immediately prior to the date hereof, having a place of business during said times and now at 516 West Thirty-fourth Street, Borough of Manhattan, City of New York, N. Y.

PAR. 2. During all the times above mentioned the respondents are and have been engaged in the business of the manufacture and in the business of the sale, among other things, of storage receptacles, chests, and closets made of corrugated fiber for use for the protection in storage, among other things, of clothing and other materials against the ravages of clothes moths and the deterioration caused by exposure to light and dust.

PAR. 3. The respondents, during all the times above mentioned and referred to, have sold their storage receptacles, closets, and chests, to retail and wholesale dealers in such articles, purchasers thereof, located in the District of Columbia and in the various States of the United States other than New York, or the State of origin of the shipment, for resale to members of the public, users thereof, and the respondents have caused their storage receptacles, when so sold by them, to be transported from New York or from the State of origin of the shipment to, into, and through the District of Columbia and States other than New York or the State of origin of the shipment, to the purchasers there located.

PAR. 4. The respondents during all the times above mentioned or referred to are, and have been, in substantial competition in interstate commerce with the other individuals, firms, and corporations referred to as sellers in paragraph 4 in the complaint filed in this cause, in the sale of their storage receptacles, chests, and closets.

PAR. 5. The aroma or odor of cedar oil is not a repellent and does not act as a repellent so as to prevent clothes moths from entering closed storage receptacles, the interiors of which contain or are impregnated with cedar oil. The aroma or odor of cedar oil has no effect on any stage of moth life. As a fumigant, however, the vapor or gas from cedar oil, if of sufficient concentration, will kill young moth larvae and some of the older larvae, and it will also cause the activity of the older larvae to be suspended.

PAR. 6. Storage receptacles, garment bags, boxes, closets, cabinets, and chests are used for the storage of clothing and other materials ordinarily during a continuous period of 7 months in a year.

In order to be effective upon moth larvae as a fumigant during the

above storage period or any part thereof, cedar oil or other volatile oils or chemicals, must be held in practically airtight container in order that the evaporating gas or vapor therefrom may be confined and thereby become of sufficient concentration for that purpose.

PAR. 7. Storage receptacles, closets, cabinets, and chests made of wood and practically airtight and containing in the body proper (top, sides, and bottom) as much as 70 percent of three-quarter-inch red cedar wood, furnish an atmosphere within them when in use and closed that does not permit the eggs of clothes moths in such receptacles to develop into larvae which can cause damage to stored material and later develop into clothes moths. Such storage receptacles by tests and by experience in their use as storage receptacles, are, and have been, definitely established as efficient preventatives of moth damage to clothing and other materials stored in them.

PAR. 8. For more than 25 years last past manufacturers in the cedar wood chest industry in the United States have produced and sold, in interstate commerce, storage receptacles made in part or entirely of red cedar wood, and marked, branded, or otherwise described and advertised as cedar chests, cedar closets, and cedar cabinets when offered for sale and when sold.

PAR. 9. On December 2, 1932, the industry, engaged in the United States in the manufacture of cedar wood chests, held a Trade Practice Conference under the auspices of the Federal Trade Commission, to consider, among other things, the prevention of the practice in the sale of wood chests in interstate commerce, of representing such chests as cedar chests, when they contained in their body proper only cedar veneer, or cedar wood of only one-twentieth inch in thickness, and the said industry made and passed the resolutions or rules mentioned and referred to in paragraphs 10 and 11 hereof.

PAR. 10. On May 12, 1933, the Federal Trade Commission issued an official statement to the effect, among other things, that the rules as adopted by the Industry at the Trade Practice Conference mentioned in paragraph 9 hereof, and as set forth in Group I of the Commission's official statement were approved and accepted by the Commission.

PAR. 11. Among the rules of the Trade Practice Conference of the Cedar Chest Industry, referred to in paragraph 9 hereof, and contained in Group I of the Federal Trade Commission's official statement, are Rules 1, 2, 3, and 14 as approved by the Federal Trade Commission, as follows:

Rule 1.—The use in advertising, selling or offering for sale of such expressions as "moth proof," "moth killing," "moth repelling," "cedarized," or similar misleading representations, in describing any cedar chest, cedar container, or cedar receptacle which is not tightly constructed and which does not contain in the

Findings

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body proper (top, sides, ends, and bottom) at least seventy (70) percent of three-quarter inch red cedar (*Juniperus virginiana*) is an unfair trade practice.

Rule 2.—The making or causing or permitting to be made or published any false, untrue, or deceptive statement by way of advertisement or otherwise concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, having the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

Rule 3.—The false marking or branding of products of the industry with the effect of misleading or deceiving purchasers or prospective purchasers with respect to the quantity, quality, grade, substance or moth-killing or moth-repelling properties of the goods purchased, is an unfair trade practice.

Rule 14.—Advertising, selling, or offering for sale as cedar chests, cedar containers, or cedar receptacles, chest containers, or receptacles which contain in the body proper (top, sides, ends, and bottom) more than thirty (30) percent by weight of wood or woods other than cedar (*Juniperus virginiana*) is an unfair trade practice.

PAR. 12. At all times since on or about the year 1932 the said manufacturers in the cedar wood chest industry have made such storage receptacles from red cedar wood with a minimum of 70 percent (top, sides, and bottom) of three-fourths inch red cedar wood.

PAR. 13. During all the times above-mentioned, the respondents' said storage receptacles were made of corrugated paper between thin sheets of fiber or cardboard of a total thickness of approximately one-eighth of an inch. The closets were supplied with metal clothes hangers intended to support a weight of 100 pounds of stored articles. Both closets and chests were provided with a built-in receptacle called a "Mothador" or "Cedarol Closet Moth Proofer" for the purpose of holding chemicals or moth bullets or Anti-Moth Pellets, one or more of which was placed in such receptacles when the closets and chests were sold by respondents to the wholesale and retail dealers above referred to for resale to the public.

PAR. 14. During the times above-mentioned, the respondents also sold separately the so-called moth bullets or Anti-Moth Pellets and their "Closet Moth Proofer" for use in their storage receptacles. During said times the moth bullets or Anti-Moth Pellets or other such chemical material contained, among other things, not more than approximately 2 ounces of a compound of cedar leaf and pine oils in the proportions of about 50 percent of each.

PAR. 15. The respondents' storage receptacles, above referred to, when in use for storage purposes were of loose construction. The pressure from the bulk and weight of garments or other materials, which they were expected to accommodate for storage, when stored in them, tended to and did cause the seams of the receptacles to spread and permit the ingress and egress of air and moths. The fiber or

cardboard material of which they were made was permeable to air and to the vapor or gas from the oils or chemicals used in the moth bullets or other chemical or oil materials supplied by the respondents for protection of materials against the ravages of moths. Because of their loose construction, the permeability of the material of which they were made, and the tendency of their seams to spread when in use, the respondents' storage receptacles not only permitted the ingress of moths and air, but were useless for the purpose of causing concentration of the vapor or gas from the chemicals or oils used in them to become sufficient, as a fumigant, to protect stored materials therein from the ravages of clothes moths. In consequence of the foregoing the respondents' storage receptacles were not a protection to stored clothing and other materials against the ravages of moth larvae and from deterioration from exposure to dust and light.

PAR. 16. During all the times above mentioned the respondents branded or marked their storage receptacles "Cedarol Closets" and "Cedarol Chests" in large letters before they were sold by them as above set forth, and branded or marked the receptacles used therein for chemicals or oils or moth bullets with the words "Mothador" and "Cedarol Closet Moth Proofer," and the so-called branded or marked storage receptacles and so-called "Mothadors" and "Cedarol Closet Moth Proofers" were caused by respondents to be, in turn, offered for sale and sold by wholesale and retail dealers to the public.

PAR. 17. During all the times above mentioned the respondents, in advertisements, concerning their storage receptacles, "Mothadors" and "Closet Moth Proofers" used in connection therewith which were published in newspapers, trade papers, magazines, and in other publications, caused statements to appear, among many others similar and of the same effect thereto that their closets and chests were Cedarol closets and chests; that their Cedarol Closet Moth Proofers with the moth bullets protected the clothes of the user when used in respondents' storage receptacles or in cabinets or closets of members of the public from the ravages of moths or moth larvae; that they destroyed moths; that they kept moths out of the storage receptacles; that the use of one Cedarol Closet Moth Proofer loaded with moth bullets for each 40 cubic feet of confined closed space, when placed in a wardrobe in which clothing was stored was an insurance against moth damage; that it destroyed moths; and that their storage receptacles were efficient and sufficient protection to stored articles against the ravages of moths, or moth larvae.

The respondents caused wholesale and retail dealers and others to make, in turn, statements the same as those above mentioned and referred to and many other statements similar thereto, both in adver-

tisements published in newspapers, trade papers, and other publications, as well as verbally to members of the public concerning their storage receptacles and their moth bullets, Anti-Moth Pellets, and Cedarol Closet Moth Proofers.

PAR. 18. During all the times above mentioned and long prior thereto the public, users of storage receptacles, knew of the use of storage receptacles made of cedar wood and of their efficiency for storage purposes, and that they were efficient, not only because they were practically airtight, and thereby prevented the ingress of moths, but, more particularly, because members of the public knew or believed that the vapor from the oil in the cedar wood of which they were composed furnished within such closed receptacles an atmosphere such as referred to in paragraph 7 hereof that was of further and complete protection to the articles stored therein against the ravages of moths in case the articles stored were infested with moths or moth larvae at the time they were placed in such receptacles.

PAR. 19. The marking or branding by the respondents of their storage receptacles, closets and chests, using the word "Cedarol" and the use of the word "Cedarol" in branding their so-called "Closet Moth Proofers" was false and falsely represented to wholesale and retail dealers and the public that the closets and chests were effective storage receptacles against the ravages of moths, because of the presence of cedar oil in their construction; that the "Cedarol Moth Proofers" were provided with sufficient cedar oil and in such a manner as to give the storage receptacles, or other storage places where they were used, the same qualities for storage purposes that efficient cedar wood storage receptacles had by reason of the presence of cedar oil which they contained. The marking or branding of respondents' so-called "Closet Moth Proofer" with the word "Cedarol" likewise caused wholesale and retail dealers and members of the public to believe that the use of such contrivances was an efficient protection against the ravages of clothes moths by reason of the presence in them of a sufficient quantity of cedar oil for that purpose. The marking or branding by the respondents of the contrivances called by them "Mothadors" was a representation by the respondents to wholesale and retail dealers and to the public that such contrivances attached to or contained in the respondents' storage receptacles when supplied with the so-called moth bullets or other chemical or oil compounds made the respondents' or others, storage receptacles efficient protection to stored materials against the ravages of clothes moths.

PAR. 20. The marking or branding of their storage receptacles and of their closet moth proofer and the statements and representations made by the respondents and caused to be made verbally by their

agents and in advertisements, as set forth above, were false and fraudulent statements and representations, and they had the capacity and tendency to deceive and mislead, and they did deceive and mislead, dealers in storage receptacles to whom they were made into believing that they were true; and, to cause wholesale and retail dealers, in turn, to pass on such false and misleading representations to members of the public. The said false statements and representations, as above set forth, had the capacity and tendency to deceive and mislead, and they did deceive and mislead, wholesale and retail dealers and members of the public into the mistaken and erroneous belief that they were true, and, into relying upon such belief and purchasing the respondents' said storage receptacles, which were sold for sums of approximately 89 cents, more or less, and into purchasing respondents' so-called "Cedarol Closet Moth Proofer" for use in storage receptacles in place of purchasing the storage receptacles of competitors of the respondents which were efficient and sufficient protection against the ravages of moth larvae to stored materials, and which were customarily sold to the public according to their size and other qualities at prices ranging from approximately one dollar to ten dollars and upwards, and trade in storage receptacles was thereby diverted to the respondents from competitors.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Mortimer Alfred Gersten and Lee Gersten, individually and as copartners doing business under the trade name Gersten Brothers, or under any other name or names, their representatives, agents, and employees, directly or through any

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corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of storage receptacles, and devices and preparations intended for use in storage receptacles and closets to protect articles stored therein from moths, do forthwith cease and desist from:

1. Marking, branding, or in any other manner designating or describing, through advertisements or otherwise, such storage receptacles, or any part or accessory to the use thereof, with the word "cedar" or with any derivation of the word "cedar" such as the word "cedarol," either alone or in association with any other word or words, unless and until such storage receptacles shall be so constructed and be so provided with cedar oil that when used for storage, such receptacles

(a) will not afford access to clothes moths to articles stored therein; and

(b) will, when closed, cause and maintain within them concentration of the vapor or gas from the cedar oil sufficient as a fumigant to kill young moth larvae within a reasonable time after articles infested with such larvae are deposited in such receptacles.

2. Marking, branding, or in any other manner designating or describing, through advertisements or otherwise, such devices and preparations, or any part or accessory to the use thereof, with the word "cedar" or with any derivation of the word "cedar," such as the word "cedarol," either alone or in association with any other word or words, unless and until such devices and preparations shall be so provided with cedar oil that, when they are placed within the storage receptacles and closets of the size in which respondents represent that such devices and preparations will be effective in use, such devices and preparations will cause and maintain within such receptacles and closets concentration of the vapor or gas from the cedar oil sufficient as a fumigant to kill young moth larvae within a reasonable time after articles infested with such larvae are deposited within such storage receptacles and closets.

3. Representing, directly or by implication, through advertisements or in any other manner, that clothes moths or their eggs or moth larvae which may infest articles stored in respondents' said storage receptacles will be killed, or that their activities with respect to moth damage to such articles will be allayed or suspended by reason of any oil or oils or chemicals with which such receptacles may be provided, unless and until such is the fact.

4. Representing, directly or by implication, through advertisements or otherwise, by the use of the words "moth proofer," "mothador,"

or any other word or words, or in any other manner, that clothes moths or their eggs or moth larvae, which may infest articles stored in the receptacles or closets in which respondents represent such devices or preparations to be effective in use, will be killed, or that their activities with respect to moth damage to such articles will be delayed or suspended, by reason of any oil or oils or chemicals with which such devices and preparations may be provided, unless and until such is the fact.

5. Representing directly or by implication, through advertisements or in any other manner, that such storage receptacles are of a construction that is proof against the access of clothes moths to materials stored therein, unless and until such storage receptacles shall be in fact so constructed.

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

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IN THE MATTER OF

HAY & PEABODY CEMENT VAULT COMPANY

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

Docket 3157. Complaint, June 18, 1937—Decision, Feb. 16, 1939

Where a corporation engaged in manufacture of cement burial vaults, and in sale thereof to purchasers at various points in other States, in substantial competition with others engaged in manufacture, sale, and distribution of steel, stone, concrete, and other vaults, and including those who, engaged in such manufacture and sale, truthfully advertise their products—

Represented in its advertising of its cement vaults that they afforded positive protection for all time, endured for all time, and were everlasting, and were absolutely waterproof, sweatproof, watertight, airtight, and verminproof, and would not disintegrate but would become stronger and better the longer they remained in the ground;

Facts being concrete, in presence of water, sulphides or alkalies, will corrode and eventually disintegrate, certain amount of moisture is always present in soil at depth at which such vaults are placed, varying from time to time, sulphides and alkalies are also present in soils in varying amounts, and soil conditions vary both as to particular locality and from locality to locality, and while said vaults are carefully and scientifically constructed so as to increase durability in use, and will exclude air, moisture, vermin, and water until natural process of corrosion, which they will resist but cannot prevent, has advanced to stage of producing disintegration permitting penetration, they are not everlasting, absolutely waterproof, sweatproof, verminproof, or airtight when sold and placed in the ground in accordance with practice used, and richer composition of cover than balance of vault may result in causing severance of cover from base;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that all such representations were true and with result that public, acting under mistaken and erroneous beliefs induced by such false and misleading statements and representations, purchased substantial volume of its vaults, and trade was unfairly diverted to it from its competitors who truthfully advertise their products:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. M. E. Sturtevant and *Mr. David T. Montague*, of Somerville, Mass., and *Mr. Hazen K. Sturtevant*, of Plymouth, N. H., 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 Hay & Peabody Cement Vault Co., a corporation, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect.

PARAGRAPH 1. Respondent, the Hay & Peabody Cement Vault Co., is a corporation, organized and existing under and by virtue of the laws of the State of Maine, with its office and principal place of business located at 201-05 Arlington Street, Watertown, Mass. Respondent is now, and has been for several years last past, engaged at said location in the manufacture and sale of cement burial vaults used to encase or enclose coffins in the burial of the dead. The respondent sells and has sold these said vaults to undertakers, who in turn sell the same to ultimate purchasers thereof. These said vaults are so sold in different States of the United States, and when orders are received therefor, they are shipped by respondent from its said place of business into and through other States of the United States to the respective places of business of such undertakers, many of whom are located in States other than the State of Massachusetts. There is now and has been during all of the times herein mentioned, a constant current of trade in said products so sold by said respondent in commerce between and among various States of the United States. In the course and conduct of said business, respondent is in substantial competition with individuals, copartnerships, and corporations, likewise engaged in the manufacture and sale and transportation between and among various States of the United States of steel, stone, concrete and other vaults used in the burial of the dead.

PAR. 2. In aid of the sale of said vaults respondent advertises the same by and through the use of circulars, letters, booklets, pamphlets, catalogs, leaflets, and other printed and illustrated materials, which are furnished by respondent to its said undertaker customers for use in aid of the sale of said vaults to the consuming public, and which are so used. In and through such media respondent makes among others the false and misleading representations that:

(a) Hay & Peabody Cement Burial Vault insures positive protection for all time.

(b) Its cement vault is everlasting, absolutely waterproof, sweat-proof, verminproof, and airtight.

(c) Its cement vault will endure and provide positive protection for all time.

(d) Wood decays; metal rusts and disintegrates, but concrete improves with age and that the older a cement vault and the longer it

remains in the ground, the better and stronger it becomes, because moisture and other underground conditions further solidify cement.

(e) Its vault is the one vault that will meet all the requirements necessary to insure absolute, permanent protection.

(f) Its vault is an absolutely airtight and watertight vault, a vault that will not disintegrate from burial.

PAR. 3. The statements and representations set forth in the preceding paragraph are false and misleading in that respondent Hay & Peabody's Cement Burial Vault does not insure positive protection for all time. Said vault is not ever-lasting, absolutely waterproof, sweatproof, verminproof, or airtight. It will not endure and provide positive protection for all time and it will not meet all the requirements necessary to insure absolute, or permanent protection. Concrete does not always improve with age, nor does it always get better and stronger the longer it remains in the ground. Moisture and other underground conditions do not always further solidify the cement of which said vault is made. Respondent's said vault will, and often does, disintegrate and permit both air and water to enter the same under burial conditions.

PAR. 4. Said statements and representations so made by respondent as set forth in paragraph 2 above, 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 to purchase respondent's vaults, in and on account of said erroneous and mistaken belief induced as aforesaid. Thereby trade has been, and is, unfairly diverted to respondent from its said competitors who do not make use of similar misrepresentations with respect to their respective products. As a result, injury is done by respondent to competition in commerce among and between the various States of the United States and to the public.

PAR. 5. 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 the Federal Trade Commission Act, the Federal Trade Commission on June 18, 1937, issued and on June 21, 1937, served its complaint in this proceeding upon respondent,

Hay & Peabody Cement Vault Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of the complaint were introduced by W. F. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by M. E. Sturtevant, attorney for respondent, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, and the said testimony and other evidence were duly recorded and filed in the office of the Commission. 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 oral argument, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Hay & Peabody Cement Vault Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its office and principal place of business located at 201-05 Arlington Street, Watertown, Mass.

The respondent is now and has been since the year 1915 engaged in the business of manufacturing and selling to undertakers cement burial vaults used to encase or enclose coffins in the burial of the dead.

Some of said undertakers do business and reside in the State of Massachusetts and others reside and do business in States other than the State of Massachusetts.

When orders are received for respondent's vaults, they are transported by respondent from its place of business in the State of Massachusetts into and through other States of the United States to the purchasers thereof located at various points in States of the United States other than the State from which said shipments are made.

There is now and has been during all of the times herein mentioned a course of trade and commerce in said vaults so sold by respondent between and among the various States of the United States.

Respondent is now and has been in substantial competition with other corporations, individuals, and partnerships also engaged in the manufacture, sale, and transportation of steel, stone, concrete, and

other vaults used in the burial of the dead, between and among the various States of the United States.

Respondent does a gross business of approximately \$35,000 a year. Respondent has sold as many as 1,200 vaults in 1 year, and in the year 1937 respondent sold approximately 1,100 vaults.

PAR. 2. Respondent, in order to sell its vaults, advertises the same by and through the use of illustrated catalogs, leaflets, blotters, and pamphlets. This advertising matter was furnished by respondent to its undertaker customers for use by them in advertising and selling respondent's vaults to the consuming public.

The following statements are illustrative of the representations respondent makes concerning its concrete vaults, but are not all inclusive:

The Hay & Peabody Cement Burial Vault, most substantial in construction, insures positive protection for all time.

The Hay & Peabody Cement Burial Vault is without question the finest, the strongest, and most substantial vault obtainable today. It is everlasting, absolutely waterproof, sweatproof, verminproof, and airtight. It will endure and provide positive protection for all time. Wood decays; metal rusts and disintegrates, but concrete improves with age. The older a cement vault and the longer it remains in the ground, the better and stronger it becomes, because moisture and other underground conditions further solidify the cement.

The Hay & Peabody vault is absolutely watertight.

The complete Hay & Peabody vault consists of a heavy, waterproof concrete box and cover. It is constructed upon sound scientific principles from properly proportioned "Super-Cement," clean sand, crushed stone, and water. * * * Both laboratory tests and actual practice have proved that this special "Super-Cement" mixture forms an absolutely airtight and watertight vault, and a vault that will not disintegrate from burial.

The Hay & Peabody Burial Vault is exceptionally strong and positively waterproof.

In all of its advertising literature, respondent represents, through statements and representations herein set out, and through statements of similar import and effect, that,

1. Its cement vaults are everlasting, waterproof, sweatproof, verminproof, and airtight;
2. Its cement vaults will not disintegrate from burial but will get stronger the longer they remain in the ground; and
3. Its cement vaults insure absolute positive and permanent protection for all times.

PAR. 3. Respondent manufactures vaults in 12 different sizes.

Respondent's vaults are made in two separate parts, the base, which is box-like in shape and appearance, and a cover. The cover is concave on its inner surface and convex on its outer surface, excepting that part of the top or outer surface of the cover which is a rectangular

flat surface less than the full length and width of the cover as it rests on the base. The base is made with a built-in shoulder into which the cover fits when in position. The segment of cover outlined by the flat surface is slightly thicker than the rest of the cover and is reinforced by three metal rods running lengthwise and imbedded in its center, the flat surface being less than the full length and width of the cover and the convex ends and sides of the cover when in position, sloped from the base, leaving a small V-shaped space between the cover and the shoulder on the base of the vault.

Respondent's vaults vary in weight from 1,600 pounds to a ton.

When a coffin is placed inside the base of respondent's vault, a space of from 2 to 3' or 4 inches is left between the sides of the vault and the coffin. When a coffin is enclosed for burial in respondent's vault, the cover of the vault is sealed to the base by filling in the V-shaped space with a cement or concrete of a richer mix than is used in the manufacture of the vault. The covers of the vaults sold by respondent are sealed in all cases by an employee of respondent who accompanies the vault to the cemetery when interment takes place.

Concrete is made of a mixture of cement, sand, and ground stone. The concrete used by respondent in the manufacture of its vaults is a 1-2-1½ mix, which means one part cement, two parts sand, and 1½ parts ground stone. This is a rich mixture. The cement which respondent uses and designates as "Super-Cement" is a standard portland cement with gypsum and tannin added. It has the same properties as other cements. The average mixture used in building and construction work is in a 1-3-6 proportion, that is, one part cement, three parts sand, and six parts ground stone.

Respondent's vaults, when used in burials, are sunk into the ground anywhere from 4½ to 7 feet. Thus, the tops of the vaults are in all cases placed from 1½ to 2 feet below the surface of the ground. The earth on top of the vaults when buried weighs approximately 1 ton.

The testimony shows and the Commission finds that the vaults manufactured and sold by respondent are not everlasting, absolutely waterproof, sweatproof, verminproof, or airtight, when sealed by respondent and placed in the ground in the manner above stated.

Soil conditions with reference to the type of soil and the amount of moisture present in soil vary from locality to locality. Similarly, the type of soil and the amount of moisture will vary in the same cemetery. Certain parts of a cemetery are lower than other parts of the same cemetery and the soil, because of this difference in location and ground elevation, may be saturated with water. Soils also contain sulphides and alkalis in varying amounts.

There is always a certain amount of moisture in the soil at the depth at which respondent's vaults are placed because of the seepage of water caused by normal rainfall. The amount of moisture varies from time to time with the result that the soil at the depth at which respondent's vaults are placed is alternately wet and dry, dependent upon rainfall, snowfall, frost, thawing, and freezing.

The Commission finds that concrete in the presence of water, sulphides, or alkalis will corrode and eventually disintegrate.

The rate of deterioration or disintegration is slow in some soils and more rapid in others, depending upon the climatic conditions of the locality and the chemical and mineral composition and content of the soil in a particular place.

The Commission further finds that respondent's concrete vaults when placed in soil in such a manner as to subject them to contact with water, sulphides, or alkalis will corrode and eventually disintegrate.

Respondent's vaults are carefully and scientifically constructed in such a manner as to increase their durability in underground service. These vaults will exclude air, moisture, vermin, and water until the natural process of corrosion, which these vaults will resist, but cannot prevent, has advanced to the stage of producing disintegration of the vaults which will permit penetration.

Concrete placed in soil that is alternately wet and dry will corrode and disintegrate. Concrete, however, continuously exposed to the same moisture conditions will last a longer period of time than concrete placed in soil subject to alternate wetting and drying, but will also corrode and eventually disintegrate.

The Commission finds that respondent's vaults are not waterproof or watertight.

The concrete used by respondent in sealing its vaults is of a richer mixture than the concrete of which the cover and the base of respondent's vaults are made. This difference in grade between the concrete used in sealing the cover to the base of the vault and the concrete used in the construction of the base and cover may result in causing a severance of the cover from the base. This severance would be caused by alternations of wetting and drying, freezing, and thawing. Such a severance might be a complete severance of the cover from the base of the vault or a partial and imperceptible severance of the cover from the base. Even in the case of a partial or an imperceptible severance, there would be an increased corrosion at the point of severance, with the result that moisture and air and, upon further corrosion and disintegration, vermin, would enter the vault.

PAR. 4. There are among the competitors of respondent corporations, individuals, firms, and partnerships also engaged in the business of manufacturing and selling in commerce similar steel, stone, concrete, and other vaults used in the burial of the dead who truthfully advertise their vaults.

PAR. 5. Each and all of the false and misleading statements and representations made by respondent in its advertising in illustrated catalogs, pamphlets, leaflets, in offering for sale and selling its vaults, had, and now has, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. Acting under the mistaken and erroneous beliefs induced by the false and misleading statements and representations herein referred to, the public has purchased a substantial volume of respondent's vaults, with the result that trade has been unfairly diverted to respondent from its competitors who truthfully advertise their vaults.

CONCLUSION

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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission, and by Hazen K. Sturtevant, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Hay and Peabody Cement Vault Co., its officers, representatives, agents, and employees, directly or indirectly in connection with the offering for sale, sale and distribution of concrete burial vaults in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that:

1. Said vaults afford positive protection for all time, endure for all time, or are everlasting.

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2. Said vaults are absolutely waterproof, sweatproof, watertight, airtight, and verminproof.

3. Said vaults will not disintegrate but will become stronger and better the longer they remain in the ground.

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

JACOB SHERMAN, TRADING AS CHICAGO MATTRESS
COMPANY

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

Docket 3324. Complaint, Feb. 3, 1938—Decision, Feb. 16, 1939

Where an individual engaged in manufacture of mattresses, and sale and distribution thereof to purchasers in other States, in competition with others also engaged in sale and distribution of new and renovated mattresses in commerce among the various States, and including those who do not in any manner represent their said products as of a retail value or price in excess of the actual one, and place in the hands of customers mattresses bearing fictitious and grossly marked up prices, and misrepresent kind or quality of contents thereof—

- (a) Represented, designated, described, and referred to certain of his said mattresses as being composed entirely of new material, and attached and caused to be attached thereto labels reading "Official Statement. *Manufactured of New Material. Materials Used in Filling Manufactured and Guaranteed by Chicago Mattress Co. 1500 W. Roosevelt Rd., Chicago, Ill.,*" and "This mattress must not be exposed for sale or sold without this label being attached under severe penalties", notwithstanding fact certain of the mattresses thus advertised, labeled, sold, and distributed by him as being composed of all new materials were actually composed in whole or in part of second-hand and used materials and not of new and unused materials; and
- (b) Attached and affixed to mattresses thus made, sold, and distributed by him in commerce as above set forth, and which were grossly inferior in quality and workmanship to such products generally available on the market at the various retail prices set forth on labels thereof, woven and printed labels and tags which represented the retail prices of such products as being substantially in excess of the actual retail value or price thereof, and substantially in excess of the retail prices at which such mattresses were customarily and regularly sold, and in substantial excess of those at which they were offered and intended to be offered to purchasing public by dealers in and retailers thereof;

With effect of misleading and deceiving purchasing and consuming public as to actual value of said products or as to regular, usual, and customary retail selling prices thereof, and with intent so to do, and result of placing in hands of unscrupulous dealers and merchants instrumentalities for deception of purchasing public, and effect of misleading and deceiving such public in aforesaid respects, and as to the grade, quality, and prices of such mattresses, and of aiding and enabling dealers to sell same to consuming public as and for new products at prices purporting to constitute substantial, but in fact false and fictitious, reductions, and with result, as consequence of such mistaken and erroneous beliefs, that number of purchasing public bought substantial volume of mattresses sold by him, and trade was unfairly diverted to him from his competitors likewise engaged in manufacture, sale, and distribution of such products, and who truthfully advertise and represent the contents and values thereof:

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

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

Mr. Merle P. Lyon for the Commission.

Rappaport & Rappaport, 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 Jacob Sherman, an individual, trading under the name and style of Chicago Mattress Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Jacob Sherman, is an individual, trading under the name and style of Chicago Mattress Co., with his principal place of business located at 1500 West Roosevelt Road, in the city of Chicago, State of Illinois. Respondent is now, and for more than 3 years last past has been, engaged in the manufacture of mattresses, and in the sale and distribution of said product in commerce among and between the various States of the United States. He causes said mattresses, when sold, to be shipped from his place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois. In the course and conduct of his business, respondent, Jacob Sherman is now, and was at all times herein referred to, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of new and renovated mattresses 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, in soliciting the sale of, and in selling and distributing mattresses in commerce among and between various States of the United States for more than 3 years last past, has represented, designated, described, and referred to certain of the said mattresses as containing and being composed entirely of new material, and has attached or caused to be attached to said

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mattresses, so sold and distributed by him, labels containing the following statements and representations:

Official Statement

MANUFACTURED OF NEW MATERIAL

Materials Used in Filling

Manufactured and Guaranteed by

Chicago Mattress Co.

1500 W. Roosevelt Rd., Chicago, Ill.

KIND

SIZE

This Mattress must not be exposed for sale or sold without this Label being attached under severe penalties.

IMPORTANT!

When first unpacked this Mattress may appear smaller than ordered owing to the compact method of baling. If so, stretch to its full length and after a few nights use you will find the size correct.

In truth and in fact, respondent's mattresses so advertised, labeled, sold, and distributed by him in commerce as herein set out as being composed of all new materials, such as cotton, cotton felt, cotton rags, jute, wool, wool rags, and wool mattress ticking, are composed wholly or in part of second-hand or used materials and not of new or unused materials as represented.

PAR. 3. In the course and conduct of his business as described in paragraph 1 hereof, said respondent has attached and affixed to the said mattresses so manufactured, sold, and distributed in commerce as aforesaid, woven and printed labels and tags, representing the prices of such mattresses as being substantially in excess of the actual retail value or price thereof, and substantially in excess of the prices at which such mattresses are customarily and regularly sold. It is the custom and practice of said respondent to sell and distribute in commerce as herein set out bed mattresses manufactured by him to which are attached labels as follows:

Price \$19.50—Price \$19.50

Price \$19.75—Price \$19.75

Price \$24.50—Price \$24.50

Price \$27.50—Price \$27.50

Price \$39.50—Price \$39.50

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The products of the respondent, the retail prices of which are stated to be, variously, \$19.50, \$19.75, \$24.50, \$27.50, and \$39.50, are in truth and in fact, offered and intended to be offered to the purchasing public by the dealers and retailers thereof at prices substantially less than those marked or labeled as aforesaid.

PAR. 4. In truth and in fact, the mattresses so advertised are greatly inferior in quality and workmanship to those mattresses generally available on the market at the retail prices of \$19.50, \$19.75, \$24.50, \$27.50, and \$39.50, respectively.

PAR. 5. The labels, as above set forth, remain displayed upon the mattresses, as affixed thereto by the respondent, throughout the channels of trade and distribution to the consuming public, and are used pursuant to the intention and purpose on the part of the respondent, to mislead and deceive the purchasing and consuming public as to the actual value of said mattresses, or as to the regular, usual, and customary retail selling price of such mattresses, and place in the hands of unscrupulous dealers and merchants instrumentalities for the deception of the purchasing public.

PAR. 6. There are among the competitors of respondent in commerce as herein set out various individuals, firms, partnerships, and corporations engaged in the manufacture, sale, and distribution of bed mattresses, who do not, in any manner, represent their said products to be of a retail value or price in excess of the actual value or price thereof, and who do not place in the hands of their customers mattresses bearing fictitious and grossly marked-up prices, and who do not misrepresent the kind or quality of the contents thereof.

PAR. 7. Respondent's practices of affixing such false and fictitious price marks to his said mattresses, and of misrepresenting the kind and quality of contents thereof have the capacity and tendency to mislead and deceive, and have misled and deceived, the purchasing and consuming public as to the value, grade, quality, and prices of such mattresses, and to aid and enable dealers to sell such mattresses to the consuming public as and for new mattresses at prices purporting to constitute substantial reductions, which purported reductions are, in fact, false, and fictitious.

PAR. 8. The use by respondent of such false and fictitious labels as to contents and as to prices of his said mattresses, and of the above and foregoing misrepresentations has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations and statements are true. As a consequence of such mistaken and erroneous beliefs indicated as aforesaid, a number of the pur-

chasing public have purchased a substantial volume of mattresses sold by the respondent, with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of manufacturing, selling, and distributing mattresses who truthfully advertise and represent the contents and values 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.

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, and have been and are unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 3rd day of February 1938 issued and subsequently served its complaint in this proceeding upon the respondent Jacob Sherman, an individual, trading under the name and style of Chicago Mattress Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, William C. Reeves, Esq., an examiner of the Commission was designated and appointed to take testimony and receive evidence in this proceeding. Pursuant thereto a hearing was held at Chicago, Ill., on November 4, 1938, at which hearing a stipulation of facts was entered into between counsel for the Commission and for the respondent, subject to the approval of the Federal Trade Commission, which stipulation of facts was read into the record, reduced to writing, and filed in the office of the Commission. Thereafter the proceeding regularly came on for hearing before the Commission upon the said complaint, the answer thereto, and said stipulation of facts, and brief in support of the allegations of the complaint (no brief having been filed on behalf of the respondent and no oral argument having been requested or made) 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, Jacob Sherman, is an individual trading under the name and style of Chicago Mattress Co., with his principal place of business located at 1500 West Roosevelt Road in the city of Chicago, State of Illinois. Respondent is now, and for more than 3 years last past has been, engaged in the manufacture of mattresses and in the sale and distribution of said product in commerce among and between the various States of the United States. He causes said mattresses when sold to be shipped from his place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois, and maintains courses of trade in such mattresses. In the course and conduct of his business, the respondent, Jacob Sherman, is now and was at all times herein referred to in competition with other individuals, firms, partnerships, and corporations also engaged in the sale and distribution of new and renovated mattresses in commerce among and between the various States of the United States.

PAR. 2. In soliciting the sale of and in selling and distributing mattresses in commerce among and between various States of the United States, respondent has represented, designated, described, and referred to certain of the said mattresses as being composed entirely of new material and has attached and caused to be attached to said mattresses so sold and distributed by him labels containing the following statements and representations:

Official Statement
Manufactured of New Material
Materials Used in Filling
Manufactured and Guaranteed by
Chicago Mattress Co.
1500 W. Roosevelt Rd., Chicago, Ill.

This mattress must not be exposed for sale or sold without this label being attached under severe penalties.

The Commission finds that, in truth and in fact, certain of the mattresses so advertised, labeled, sold, and distributed by respondent in commerce, as herein set-out as being composed of all new materials, were actually composed wholly or in part of second-hand and used materials and not of new and unused materials. A sample of the filling in one of respondent's mattresses was removed from a mattress which had been shipped by respondent from his place of business in Chicago, Ill., to a retailer customer of respondent in Minneapolis, Minn., and which had on it a label stating that said mattress was made of new material. Said sample was tested by the

Bedding and Upholstery Section of the Department of Labor and Industry of the State of Pennsylvania, and was found to consist of new excelsior and second-hand cotton linters.

A sample of the filling in one of respondent's mattresses was removed from a mattress manufactured by respondent and found in his place of business in Chicago, Ill., and which had on it a label stating that it was made of new material. Said sample was tested by the National Bureau of Standards and found to contain second-hand cotton.

PAR. 3. In the course and conduct of his business as described in paragraph 1, said respondent has attached and affixed to the said mattresses so manufactured, sold, and distributed in commerce, as aforesaid, woven and printed labels and tags representing the retail prices of such mattresses as being substantially in excess of the actual retail value or price thereof and substantially in excess of the retail prices at which such mattresses are customarily and regularly sold. It is the custom and practice of said respondent to sell and distribute in commerce as herein set-out bed mattresses manufactured by him to which are attached labels as follows:

Price \$19.50
 Price \$19.75
 Price \$24.50
 Price \$27.50
 Price \$39.50

The products of the respondent, the retail prices of which are stated to be, variously, \$19.50, \$19.75, \$24.50, \$27.50, and \$39.50, are in truth and in fact offered and intended to be offered to the purchasing public by the dealers and retailers thereof at prices substantially less than those marked or labeled as aforesaid.

PAR. 4. In truth and in fact, the mattresses so advertised are greatly inferior in quality and workmanship to those mattresses generally available on the market at the retail prices of \$19.50, \$19.75, \$24.50, \$27.50, and \$39.50 respectively.

PAR. 5. The labels as above set forth remain displayed upon the mattresses, as affixed thereto by the respondent, throughout the channels of trade and distribution to the consuming public, and are used pursuant to the intention and purpose on the part of the respondent to mislead and deceive the purchasing and consuming public as to the actual value of said mattresses or as to the regular, usual, and customary retail selling price of such mattresses, and place in the hands of unscrupulous dealers and merchants instrumentalities for the deception of the purchasing public.

PAR. 6. There are among the competitors of respondent in commerce as herein set-out, various individuals, firms, partnerships, and corporations engaged in the manufacture and sale and distribution of bed mattresses who do not in any manner represent their said products to be of a retail value or price in excess of the actual value or price thereof, and who do not place in the hands of their customers mattresses bearing fictitious and grossly marked-up prices and who do not misrepresent the kind or quality of the contents thereof.

PAR. 7. Respondent's practices of affixing such false and fictitious price marks to his said mattresses and of representing the kind and quality of contents thereof have the capacity and tendency to mislead and deceive and have misled and deceived the purchasing and consuming public as to the value, grade, quality, and prices of such mattresses, and to aid and enable dealers to sell such mattresses to the consuming public as and for new mattresses at prices purporting to constitute substantial reductions, which purported reductions are in fact false and fictitious.

PAR. 8. The use by respondent of such false and fictitious labels as to contents and as to prices of his said mattresses and of the above and foregoing misrepresentations has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations and statements are true. As a consequence of such mistaken and erroneous beliefs indicated as aforesaid, a number of the purchasing public have purchased a substantial volume of mattresses sold by the respondent, with the result that trade has been unfairly diverted to the respondent from his competitors likewise engaged in the business of manufacturing, selling, and distributing mattresses who truthfully advertise and represent the contents and values of their products.

CONCLUSION

The above and foregoing acts, practices and representations of the respondent have been and are all to the prejudice and injury of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act.

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 of facts 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 brief of counsel for the Commission filed herein, no brief having been filed on behalf of the respondent, and no oral arguments 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 the Federal Trade Commission Act.

It is ordered, That the respondent Jacob Sherman, individually, trading under the name and style of Chicago Mattress Co., his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of mattresses in commerce among and between the various States of the United States and in the District of Columbia, cease and desist from:

1. Representing, directly or through failure to affix or attach tags or labels thereto clearly and conspicuously showing that such mattresses are composed, in whole or in part, as the case may be, of second-hand and used materials, or through any other means or device, that mattresses made from second-hand and used materials in whole or in part, are new or are composed of new materials.

2. Representing, as the customary or regular retail prices for such mattresses, prices which are in fact fictitious and greatly in excess of the prices at which said mattresses are regularly and customarily offered for sale and sold at retail.

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 the order.

IN THE MATTER OF
HILD FLOOR 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 3356. Complaint, Mar. 12, 1938—Decision, Feb. 16, 1939

Where a corporation engaged in assembling, selling, and distributing rug and carpet cleaning machines which operated through rotating action of a motor-driven brush, applying on rug or carpet shampoo solution fed to it from tank on machine, and in selling its said machines and devices to purchasers in other States and in the District of Columbia, in substantial competition with those likewise engaged in sale and distribution of carpet and rug cleaning machines and other similar devices in commerce and in said District; in soliciting sale of its said machines and devices in newspapers, magazines, pamphlets, circulars, letters, and other forms of advertising having interstate circulation, and in its booklet entitled "How to Make Money Cleaning Rugs and Carpets the Hild Way," distributed in large numbers to the public generally throughout the various States and in the District through its distributors, sales branches, and sales persons—

- (a) Represented that its said carpet and rug cleaning equipment, costing less than \$400, cleaned carpets and rugs without removal from floor as well as or better than the more expensive installations of cleaning equipment, costing as much as \$30,000, and usually installed and used in plants especially equipped for the cleaning of carpets and rugs after removal from floor;
- (b) Represented that only with its system could the dirtiest tacked-down rugs and carpets be flawlessly shampooed and cleaned, and that nothing remained in rug or carpet that needed rinsing out; and
- (c) Represented that its rug shampoo employed in operation and functioning of said equipment was highly volatile and evaporated completely, and that grease and grime evaporated with it;

Facts being its said machine and device did not, as claimed, do work of cleansing rugs and carpets as well as or better than the more expensive installations as above set forth, its said machine and device did not clean dirtiest tacked-down carpets and rugs flawlessly, nor remove all grime and grease from rugs and carpets without rinsing, and said shampoo did not evaporate completely from such rugs or carpets and leave them free from grease and grime, with nothing needing rinsing out;

With effect of confusing, misleading, and deceiving purchasing public into mistaken and erroneous belief that its said machine and device and shampoo fluid possessed properties claimed and would accomplish results thus represented, and without removal of rugs and carpets, and that they would accomplish such results as well as or better than more expensive installations used in plants especially equipped for such cleaning after removal from floor; and with capacity and tendency to induce members of purchasing public to buy and use its said products because of aforesaid erroneous beliefs thus engendered, and with result of placing in hands of others means and instrumentality whereby they might misrepresent to

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public efficacy of its said machine and rug cleaning solution, and of diverting trade unfairly to it and its licensees from competitors engaged in manufacture and sale, in commerce and in said District, of machines and solutions for cleaning rugs and carpets and for similar purposes for which it represented its said machine and solution:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. George Foulkes* for the Commission.

Mr. Samuel E. Davidson, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress dated September 26, 1914, entitled "An Act to 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 Hild Floor Machine Co., 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 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, Hild Floor Machine Co., is a corporation organized in 1928 under and by virtue of the laws of the State of Illinois. Respondent's office and principal place of business is located at 1313 West Randolph Street, Chicago, Ill. Said respondent is now, and at all times since its organization in 1928 has been, engaged in the business of assembling, selling, and distributing rug and carpet cleaning machines, essentially consisting of a round electric motor-driven brush to which a supply of shampoo solution is fed from a tank on the machine. When placed on a rug or carpet the rotating action of the brush works the shampoo solution into a foamy lather, thus washing or scrubbing the rug and carpet without removing it from the floor. Respondent now causes, and at all times since the date of its organization has caused, its said carpet cleaning machines and devices, when sold, to be shipped from its principal place of business in Chicago, Ill., to purchasers thereof, some located in the State of Illinois, others located in the various States of the United States other than Illinois and in the District of Columbia.

Respondent is now, and at all times since the date of its organization has been, in substantial competition with other corporations and with persons, firms, and partnerships likewise engaged in the sale

and distribution of carpet and rug cleaning machines, and other devices 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 soliciting the sale of and selling its carpet and rug cleaning machines and devices, as herein detailed respondent now states, and has stated in newspapers, magazines, pamphlets, circulars, letters, radio broadcasts, and other forms of advertising media having an interstate circulation and in a booklet entitled "How to Make Money Cleaning Rugs and Carpets the Hild Way," which it distributes in large numbers to the public generally throughout the various States of the United States and in the District of Columbia through its distributors, sales branches, and sales people as follows:

Hild rug and carpet cleaning equipment, costing less than \$400.00, now does the work of installations, costing as much as \$30,000.00, and does it better, too.

Only with the Hild system can you render satisfactory on-the-floor service.

Tacked down carpets flawlessly shampooed.

Clean dirtiest carpets flawlessly.

Hild Rug Shampoo is highly volatile—Evaporates completely, leaving rugs and carpeting dry, bright and clean—Grease and grime evaporates with the shampoo.

With Hild Rug Shampoo nothing remains in the rug or carpet which needs rinsing out.

which representations are accompanied by a pictorial illustration of a man operating a machine in the act of running it over a rug on the floor, and other pictorial representations of like machines.

The aforesaid statements and representations on the part of the respondent serve as representations that respondent's aforesaid machine and liquid shampoo will flawlessly clean and remove all grease and grime from the dirtiest rugs and carpets while tacked down on the floor; that said machine and device of respondent costing less than \$400 will clean rugs and carpets as well as or better than installations costing up to \$30,000; that rugs and carpets can be satisfactorily cleaned on the floor only with respondent's machine; that respondent's shampoo solution has properties which enable it to evaporate completely carrying with it all grease and grime and leaving rugs and carpets dry, bright, and clean; and that when respondent's shampoo solution is used all grease and grime are evaporated so that nothing remains in the rugs or carpets which needs rinsing.

PAR. 3. In truth and in fact, the Hild carpet and rug cleansing machine and device does not clean the dirtiest tacked-down rugs and carpets flawlessly. The use of the Hild shampoo preparation applied by the Hild machine or device to rugs and carpets tacked

down on the floor does not remove all grime and grease therefrom without rinsing. The Hild rug shampoo does not evaporate completely from rugs or carpets tacked down on the floor leaving them free from grease and grime with nothing in them that needs rinsing. The Hild rug and carpet cleansing equipment costing less than \$400 does not do the work of cleansing rugs and carpets as well as or better than installations costing up to \$30,000.

PAR. 4. The representations of respondent as aforesaid are false and grossly exaggerated and have had, and do have, the capacity and tendency to and do confuse, mislead, and deceive members of the purchasing public into the mistaken and erroneous belief that respondent's said machine or device and fluid possess the properties claimed and will accomplish the results represented as aforesaid and to induce members of the purchasing public to buy and use respondent's said products because of the aforesaid erroneous beliefs engendered as above set forth.

The acts and practices of the respondent as herein detailed place in the hands of others a means and instrumentality whereby the public may be deceived and misled into the erroneous beliefs that respondent's said machine and fluid will accomplish the results claimed. As a result of the use of the aforementioned false, exaggerated, and misleading representations trade is unfairly diverted to the respondent from competitors who do not misrepresent the properties, functions, or merits of their respective products. 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. 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."

REPORTS, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 12th day of March 1938, issued and thereafter served its complaint in this proceeding upon the respondent, Hild Floor Machine Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent filed a statement with exhibits attached as

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an answer to the complaint. Thereafter, to wit, on June 4, 1938, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission, before Arthur F. Thomas, an examiner of this Commission, duly appointed for that purpose and in opposition to the allegations of said complaint by Samuel E. Davidson, attorney for the respondent, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, to expedite the proceedings and to dispense with taking of further oral testimony, respondent's attorney and the Chief Counsel for the Commission agreed upon a statement of facts to be made a part of the record in addition to the testimony already of record, and said stipulated statement of facts was approved January 3, 1939, by the Commission, and made part of the record. 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, Hild Floor Machine Co., is a corporation organized in 1928 and existing under and by virtue of the laws of the State of Illinois. Respondent's office and principal place of business is located in Chicago, Ill. Said respondent is now, and at all times since its organization in 1928 has been, engaged in the business of assembling, selling, and distributing rug and carpet cleaning machines essentially consisting of a round electric motor-driven brush to which a supply of shampoo solution is fed from a tank on the machine. When placed on a rug or carpet, the rotating action of the brush works the shampoo solution into a foamy lather, thus washing or scrubbing the rug or carpet without removing it from the floor. Respondent now causes, and at all times since the date of its organization has caused, its said carpet cleaning machines and devices, when sold, to be shipped from its principal place of business in Chicago, Ill., to purchasers thereof, some located in the State of Illinois and others located in the various States of the United States other than Illinois, and in the District of Columbia.

Respondent is now, and at all times since the date of its organization has been, in substantial competition with other corporations and with persons, firms, and partnerships likewise engaged in the sale and distribution of carpet and rug-cleaning machines and other devices 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 soliciting the sale of and selling its carpet and rug cleaning machines and devices, respondent now states and has stated in newspapers, magazines, pamphlets, circulars, letters, and other forms of advertising media having interstate circulation, and in its booklet entitled "How to Make Money Cleaning Rugs and Carpets the Hild Way," which it distributes in large numbers to the public generally, throughout the various States of the United States and in the District of Columbia through its distributors, sales branches, and sales persons, as follows:

Hild rug and carpet cleaning equipment costing less than \$400 now does the work of installations costing as much as \$30,000—and does it better, too.

Only with the Hild system can you render satisfactory on-the-floor service.

Tacked-down carpets flawlessly shampooed.

Clean dirtiest carpets flawlessly.

Hild rug shampoo is highly volatile—evaporates completely, leaving rugs and carpets dry, bright and clean—grease and grime evaporate with the shampoo.

With the Hild rug shampoo nothing remains in the rug or carpet which needs rinsing out.

These representations are accompanied by a pictorial illustration of a man operating a machine, in the act of running it over a rug on the floor, and other pictorial representations of like machines.

The said representations of respondent, as set out above, serve as representations that respondent's aforesaid machines and liquid shampoo will flawlessly clean and remove all grease and grime from the dirtiest rugs and carpets while tacked down on the floor; that said machine and device, costing less than \$400, will clean rugs and carpets better than installations costing up to \$30,000; that rugs and carpets can be satisfactorily cleaned on the floor only with respondent's machine; that respondent's shampoo solution has properties which enable it to evaporate completely, carrying with it all grease and grime and leaving the rugs and carpets dry, bright, and clean; that when respondent's shampoo solution is used, all grease and grime are evaporated, so that nothing remains in the rugs or carpets which needs rinsing out.

PAR. 3. In truth and in fact, the Hild carpet and rug cleaning machine and device does not clean the dirtiest tacked-down carpets and rugs flawlessly; the use of the Hild shampoo preparation, applied by the Hild machine and device to rugs and carpets tacked down on the floor, does not remove all grime and grease therefrom without rinsing; the Hild rug shampoo does not evaporate completely from rugs or carpets tacked down on the floor, leaving them free from grease and grime, with nothing in them that needs rinsing out; the Hild rug and carpet cleaning equipment costing

less than \$400, does not do the work of cleansing rugs and carpets as well as, or better than, installations costing up to \$30,000.

PAR. 4. The representations of respondent as aforesaid, are false and grossly exaggerated and have had and do have the capacity and tendency to, and do, confuse, mislead, and deceive the purchasing public into the mistaken and erroneous belief that respondent's said machine or device and shampoo fluid possess the properties claimed and will accomplish the results represented as aforesaid, and more particularly into the mistaken belief that respondent's equipment cleans carpets and rugs, without removal of such carpets and rugs from the floor where used, as well as, or better than, the more expensive installations of cleaning equipment usually installed and used in plants especially equipped for the cleaning of carpets and rugs after removal from the floor where used, and to induce members of the purchasing public to buy and use respondent's said products because of the aforesaid erroneous beliefs, engendered as above set forth.

PAR. 5. The acts and practices of the respondent, as herein set out, by distribution of circulars and pamphlets through the United States mail and otherwise, have placed in the hands of others a means and instrumentality whereby they may misrepresent to the public the efficacy and use of respondent's machine and its rug-cleaning solution. Said acts and practices on the part of respondent have the tendency and capacity to, and do, divert trade unfairly to the respondent and its licensees from competitors engaged in the manufacture and sale in commerce between and among the several States of the United States and in the District of Columbia of machines and solutions for cleaning rugs and carpets and for similar purposes for which respondent represents its machines and solutions are to be used.

CONCLUSION

The aforesaid acts and practices of the respondent, Hild Floor Machine Co., 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 the Federal Trade Commission Act.

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 Arthur F.

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Thomas, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the agreed stipulation of facts entered into between respondent herein, Hild Floor Machine Co., and W. T. Kelley, chief counsel for the Commission, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Hild Floor Machine Co., its officers, representatives, agents, and employees in connection with its offering for sale, sale, and distribution of its rug and carpet cleaning system, now known as "Hild Rug and Carpet Cleaning Machine" and "Hild Rug Shampoo," in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that its carpet and rug cleaning equipment cleans carpets and rugs, without removal from the floor where used, as well as, or better than, the more expensive installations of cleaning equipment usually installed and used in plants especially equipped for the cleaning of carpets and rugs after removal from the floor where used.

2. Representing that only with its system can the dirtiest tacked-down rugs and carpets be flawlessly shampooed and cleaned and that nothing remains in the rug or carpet which needs rinsing out.

3. Representing that Hild Rug Shampoo is highly volatile, evaporates completely, and that grease and grime evaporate with the shampoo.

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
STORYK BROS., INC.

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

Docket 3600. Complaint, Sept. 21, 1938—Decision, Feb. 16, 1939

Where a corporation engaged in sale and distribution of women's dresses and other wearing apparel for women, and in offer and sale, as thus engaged, under group trade name, of dresses and garments made wholly of silk, and also of those made in whole or in part of rayon, but with appearance and feel of silk, and in offering and selling, as thus engaged, its said products to purchasers in other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of such dresses and apparel among the various States and in said District, and including many who sell and distribute such dresses and apparel without in any way misrepresenting the material of which their garments are made or the point of origin thereof, and who properly disclose the materials of which their said products are composed—

- (a) Described certain dresses, in their advertisements thereof under its said group trade name in newspapers and other publications of general circulation throughout the United States, as "crepe, storycord, and satin," and also thus described and referred to said garments under said trade name and in such advertisements and otherwise, as "crepes," "organdies," and "satins," without qualification of any character, and thereby represented, through use of words "satin" and "crepe" as aforesaid, long associated in minds of public with material of product of cocoon of silk worm, and highly esteemed as such and in the fabrics in which used for preeminent qualities thereof, that such dresses or garments were silk; and
- (b) Described in such advertisements, under said group trade name, and also on labels affixed to such garments, certain of its products thus offered as "imported" and as "celanese storycord" and "celanese fabric," and thereby represented, through use of terms aforesaid, directly and by inference, that all of its said products thus described, designated, and referred to were made of silk, product of cocoon of silk worm, and were imported;

Facts being, while some of garments described and designated as hereinabove set forth were made wholly of silk, product of cocoon of silk worm, long held, in products thereof, in great public esteem and confidence for their preeminent qualities, and associated with such products by words "satin" and "crepe," as used in connection with designation and description of women's dresses and other garments of wearing apparel, many of garments designated and described as aforesaid were not made of silk, but were made in whole or in part of rayon or other nonsilk materials, and none of garments aforesaid were imported, but were all domestically made in Puerto Rico, insular possession of United States;

With effect of misleading and deceiving, through such representations and intermingling of rayon and part-rayon garments, as above set forth, with garments made wholly of silk, substantial portion of purchasing public into belief that all of products aforesaid were composed of silk wholly, and

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of deceiving substantial portion of purchasing public, through such false and misleading statements and representations and failure to disclose rayon presence in garments in question, into erroneous belief that all of said representations were true, and that all of such garments, designated, described, and labeled as aforesaid, were made wholly and entirely of silk and were imported, and of placing in hands of retailers means and instrumentality with which to mislead and deceive substantial portion of purchasing public into such erroneous belief, and with result, by reason of such erroneous and mistaken beliefs, that number of consuming public bought substantial volume of its garments and trade was diverted unfairly to it from competitors who truthfully advertise their merchandise; to the substantial injury of competition in commerce among the various States and in said District:

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

Mr. James L. Fort for the Commission.

Leon & Weill, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Storyk Bros., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Storyk Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 135 Madison Avenue in the city of New York, State of New York.

Respondent is now, and for several years last past has been, engaged in selling and distributing women's dresses and other wearing apparel for women.

Respondent causes said merchandise when sold to be transported from its 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.

Respondent maintains, and at all times herein mentioned has maintained a course of trade in said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations and with individuals.

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firms, and partnerships engaged in the sale and distribution of women's dresses and other wearing apparel for women 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 aforesaid business, respondent, in soliciting the sale of and selling such merchandise in commerce as herein described, caused, and now causes, advertising matter to be inserted in newspapers and other publications having an interstate circulation. In certain of said advertisements respondent, under the group trade name "Everglade," has made various statements purporting to be descriptive of the nature, quality and character of its merchandise, among which are the following:

3 feature promotions, in crepe, storycord, and satin;

Crepe, storycord, and satin dresses.

Respondent has also caused said garments sold under the group trade name "Everglade" to be variously described and referred to in the aforesaid advertisements and otherwise as "crepes," "organdies," and "satins" without qualification of any character. Respondent also causes certain of the garments so sold under the group trade name "Everglade" to be described in said advertisements, on labels affixed to said garments and otherwise as "imported" and as "celanese storycord" and "celanese fabric."

All of said statements, together with similar statements appearing in respondent's advertising literature and on the labels affixed to its garments, purport to be descriptive of the nature of the material out of which said garments are made and of the place of origin of said garments. By use of said advertising literature and said labels describing said garments by use of the terms "celanese fabric," "celanese storycord," and "imported" and by other means, respondent has represented, directly and by inference, that all of its said garments so described, designated, and referred to are made of silk, the product of the cocoon of the silkworm, and that said garments are imported.

PAR. 3. The aforesaid representations made by respondent with respect to the materials out of which many of its garments are made and with respect to the place of origin of all of its garments are false, misleading, and untrue. The true facts are that some of said garments so described and designated are made wholly of silk, while many of such garments are not made of silk, the product of the cocoon of the silkworm, but are made in whole or in part of rayon or other materials which are not silk. None of said garments are imported but all are domestically manufactured in Puerto Rico, an insular possession of the United States.

PAR. 4. The word "silk" for many years has had, and still has, in the mind of the purchasing and consuming public generally, a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk products have for many years held, and still hold, great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics and a variety of distinctive terms have been applied to the fabrics resulting from this type of treatment and weaving of silk fiber. The words "satin," "crepe," and "organdy" and other words of similar import and meaning have been for a long time, and still are, associated in the minds of the public with the materials made of the product of the cocoon of the silkworm. When such words are used in connection with the designation and description of women's dresses and other garments of wearing apparel, and are used alone and unaccompanied by the name of a specific fabric or fiber, they are considered by members of the purchasing public as being descriptive designations of silk fabrics.

The word "rayon" is the name of a chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk.

Women's dresses and other wearing apparel imported into the United States are considered by a substantial portion of the purchasing public as having superior quality and greater value than similar dresses and other wearing apparel of domestic manufacture. For this reason there exists in the minds of a considerable portion of the purchasing public a preference for women's dresses and other wearing apparel which have been imported into this country over similar products of domestic manufacture. The use of the term "imported" in connection with the sale and distribution of women's dresses and other wearing apparel places the users thereof at a competitive advantage over competitors who do not so represent their respective products.

PAR. 5. Respondent offers for sale and sells certain dress and other garments which are made wholly of silk. Respondent also offers for sale and sells certain other dresses and garments which are made in whole or in part of rayon but which have the appearance and feel of silk and which are described and referred to as "storycord," "celanese storycord," and "celanese fabric." Both of these groups of garments are offered for sale under the general trade name "Everglade" and without any disclosure that one group of said garments is in fact made in whole or in part of rayon. The representations set out hereinabove and the intermingling of rayon and part-rayon garments in the manner hereinabove set out with the garments which are made

wholly of silk, have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the belief that all of said garments are made wholly of silk.

PAR. 6. There are among respondent's competitors many who sell and distribute dresses and other wearing apparel for women who do not in any way misrepresent the material out of which their garments are made or the point or origin of said garments, and who properly disclose the materials out of which their garments are made.

PAR. 7. The use of the aforesaid false and misleading statements and representations by the respondent in describing its dresses and like garments as hereinabove set out, and the failure of respondent to indicate the presence of rayon in said garments as aforesaid, had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that all said garments designated, described, and labeled as aforesaid are made wholly and entirely of silk, and are imported garments. The use of said representations and statements by respondent also places in the hands of retail dealers a means and instrumentality with which to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said garments are all made of "silk" and are imported garments. On account of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's garments with the result that trade has been diverted unfairly to respondent from competitors who truthfully advertise their merchandise. As a consequence thereof, 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. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 21st day of September 1938, issued and, on September 22, 1938, served its complaint in this proceeding upon respondent, Storyk Bros., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On November 1, 1938, the respondent filed its answer, in which answer it admitted all the material allegations

of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, Storyk Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 135 Madison Avenue in the city of New York, State of New York.

The respondent is now, and for several years last past has been, engaged in selling and distributing women's dresses and other wearing apparel for women.

Respondent causes said merchandise when sold to be transported from its place of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations and with individuals, firms, and partnerships likewise engaged in the business of selling and distributing women's dresses and other wearing apparel for women in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in soliciting the sale of and selling said merchandise, has caused, and now causes, advertisements to be inserted in newspapers and other publications having general circulation throughout the United States.

In certain of said advertisements respondent, under the group trade name "Everglade," has made various statements purporting to be descriptive of the nature, quality, and character of its merchandise, among which are the following:

- 3 feature promotions, in crepe, storycord, and satin;
- Crepe, storycord, and satin dresses.

Respondent has also caused said garments sold under the group trade name "Everglade" to be variously described and referred to in the aforesaid advertisements and otherwise as "crepes," "organ-dies," and "satins" without qualification of any character.

Respondent also causes certain of the garments so sold under the group trade name "Everglade" to be described in said advertisements, on labels affixed to said garments and otherwise as "imported" and as "celanese storycord" and "celanese fabric."

All of said statements, together with similar statements appearing in respondent's advertising literature and on the labels affixed to its garments, purport to be descriptive of the nature of the material out of which said garments are made and of the place of origin of said garments.

By use of said advertising literature and said labels describing said garments, by use of the terms "celanese fabric," "celanese storycord," and "imported" and by other means, respondent has represented, directly and by inference, that all of its said garments so described, designated and referred to are made of silk, the product of the cocoon of the silkworm, and that said garments are imported.

PAR. 3. The Commission finds that the representations made by respondent with respect to the materials out of which many of its garments are made and with respect to the place of origin of all of its garments are false, misleading, and untrue. In truth and in fact, while some of said garments so described and designated are made wholly of silk, many of such garments are not made of silk, the product of the cocoon of the silkworm, but are made in whole or in part of rayon or other materials which are not silk. The Commission further finds none of said garments are imported but all are domestically manufactured in Puerto Rico, an insular possession of the United States.

PAR. 4. The word "silk" for many years has had, and still has, in the mind of the purchasing and consuming public generally, a definite and specific meaning, to wit: The product of the cocoon of the silkworm.

Silk products have for many years held, and still hold, great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics and a variety of distinctive terms have been applied to the fabrics resulting from this type of treatment and weaving of silk fiber.

The words "satin" and "crepe," and other words of similar import and meaning have been for a long time, and still are, associated in the minds of the public with the materials made of the product of the

coöcoon of the silkworm. When such words are used in connection with the designation and description of women's dresses and other garments of wearing apparel, and are used alone and unaccompanied by the name of a specific fabric of fiber, they are considered by members of the purchasing public as being descriptive designations of silk fabrics.

The word "rayon" is the name of a chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk and is indistinguishable by members of the purchasing public from silk.

Women's dresses and other wearing apparel imported into the United States are considered by a substantial portion of the purchasing public as having superior quality and greater value than similar dresses and other wearing apparel of domestic manufacture. For this reason there exists in the minds of a considerable portion of the purchasing public a preference for women's dresses and other wearing apparel which have been imported into this country over similar products of domestic manufacture. The Commission finds that the use of the term "imported," in connection with the sale and distribution of women's dresses and other wearing apparel places the users thereof at a competitive advantage over competitors who do not so represent their respective products.

PAR. 5. The respondent offers for sale and sells certain dresses and other garments which are made wholly of silk. Respondent also offers for sale and sells certain other dresses and garments which are made in whole or in part of rayon but which have the appearance and feel of silk and which are described and referred to as "storycord," "celanese storycord," and "celanese fabric." Both of these groups of garments are offered for sale under the general trade name "Everglade" and without any disclosure that one group of said garments is in fact made in whole or in part of rayon.

The Commission finds that representations set out hereinabove and the intermingling of rayon and part-rayon garments in the manner hereinabove set out with the garments which are made wholly of silk, have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the belief that all of said garments are made wholly of silk.

PAR. 6. There are among respondent's competitors many who sell and distribute dresses and other wearing apparel for women who do not in any way misrepresent the material out of which their garments are made or the point of origin of said garments, and who properly disclose the materials out of which their garments are made.

PAR. 7. The use by respondent of the false and misleading statements and representations herein found in describing its dresses and

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like garments, and the failure of respondent to indicate the presence of rayon in said garments, had, and now has, the tendency and capacity to mislead and deceive, and does deceive, a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that all of said garments designated, described, and labeled as above found are made wholly and entirely of silk, and are imported garments.

The use by respondent of said representations and statements also places in the hands of retail dealers a means and instrumentality with which to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said garments are all made of "silk" and are imported garments.

On account of these erroneous and mistaken beliefs, a number of the consuming public have purchased a substantial volume of respondent's garments with the result that trade has been diverted unfairly to respondent from competitors who truthfully advertise their merchandise.

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 above found 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 the Federal Trade Commission Act.

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 fact set forth in said complaint and stated that it waives all intervening procedure and further hearings as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Storyk Bros. Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution, of women's dresses and other wearing apparel for women, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

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1. Using the words "crepe," or "satin," or any other word or words of similar import or meaning, to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, unless said descriptive word or words are used to designate the type of weave or construction, in which case such word or words shall be qualified by using in immediate connection or conjunction therewith in letters of at least equal size and conspicuousness, a word or words clearly naming or describing the fibers or materials from which said fabric or product is made.

2. Using the word "imported" or any other word or term of similar import or meaning, to describe, designate, or refer to any cloth, fabric, or garment which has not been actually imported from a foreign country.

3. Advertising, offering for sale, or selling fabrics or any other products composed in whole or in part of rayon without clearly disclosing the fact that such fabrics or products are composed of rayon, and when such fabrics or products are composed in part of rayon and in part of other fibers or materials, such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

4. Using the word "celanese," or any other trade-mark or trade name of an manufacturer of rayon, or any name indicative of any process of manufacturing rayon, to describe or designate any fabrics, garments, or other products made from materials other than rayon, and when such words may be properly used to describe, designate, or refer to fabrics, garments, or other products made from rayon, they shall appear in immediate conjunction with the word "rayon" in type of equal size and conspicuousness.

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

MARCUS A. WEINBERG AND BELLE WEINBERG TRADING
AS PACIFIC CHINA COMPANY, AND RAY Y. CLIFFE
TRADING AS PACIFIC CHINA COMPANY

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

Docket 3385. Complaint, Apr. 21, 1938—Decision, Feb. 17, 1939

Where two individuals engaged, under trade name including words "Pacific China Company," and as officers of the business, in sale and distribution of earthenware products or "chinaware," together with so-called sales plan which included redeemable trade cards with numbers thereon ranging from 5 cents to 50 cents and totaling \$5, coupons, certificates, and bonds and other printed matter relating to said products, and a third individual similarly engaged under said trade name in sale of such "chinaware," sales plan, cards, etc., which were offered and sold to various retail selling enterprises under plan including so-called "Agreements of Co-Operation" under which they undertook, for a valuable consideration paid by the retail dealer signers thereof—

(1) To sell and distribute, and did sell and distribute, number of so-called punch cards, certificates, or bonds and display set of earthenware or so-called "chinaware," to be used by retailer as such in his place of business, and certain other advertising displays, catalogs, store signs, window cards, etc.; and

(2) To redeem said coupon cards for customer of retailer, following purchase of the \$5 worth of merchandise called for, and when punched out, upon the remitting of the card to them or through the dealer, together with payment of specified sum amounting to 81 cents, 91 cents, or 99 cents, as case might be, for their 10-piece dinner service or "Foundation Set" of "Pacific Chinaware," as described on their said cards and other literature, or for their 6-piece dinner service or "Starter Set," or so-called "Coronado Colored Pottery," with right in remitting customer to supplement and complete said sets by direct purchase from them at quoted list prices set-out in the catalogs which they distributed, either directly or through the dealer;

In soliciting of various retail selling enterprises in various States and in the District of Columbia, through salesmen employed and sent out by them, purchase of said chinaware and sales plans, in substantial competition in commerce as aforesaid with others engaged in sale and distribution of earthenware and chinaware products, and with sellers and distributors of so-called sales plans including redeemable cards, coupons, certificates, bonds, and literature relating thereto, and including many who do not in any manner misrepresent their products, plans, and aforesaid offers in connection therewith, and do not make any other false statements in connection with the sale and distribution of their products and sales plans—

(a) Represented in certain literature, advertising matter, banners, and displays which they caused to be placed in the hands of the aforesaid dealers in the various States and in said District, and to be thereby distributed and displayed through them to said dealers' customers, that the so-called chinaware sets being offered were free, and might be obtained without expense or

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cost to persons participating in their said sales plan, facts being such sets of chinaware were not obtained free or without expense or cost by persons thus participating, but they were required to pay therefor in the manner and at the prices above described;

- (b) Represented, as aforesaid, that the offer being made by so-called Pacific China Co. to dealers handling such offer, and to customers of such dealers, was "An Introductory Offer" to introduce the products of said china company, and that the same was a "Special Offer" open for a limited time and for the purpose only of advertising such chinaware; facts being such offer was not made for such advertising or introductory purpose, and no special offer or opportunity was given or provided by them in connection therewith, but such offer constituted a part of their sales-promotion plan continuously employed by them in the course of their business aforesaid, and trading as "Pacific China Company"; and
- (c) Represented, as aforesaid, and as immediately above described, that such supposed china company was the manufacturer of the products which they were offering for sale and selling as aforesaid, facts being they were not the manufacturers thereof and did not own, operate, or maintain a plant in which said products were made;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, misrepresentations, and advertisements were true, and of causing, by reason of said erroneous and mistaken belief, substantial portion of such public, among whom there are a substantial number who prefer to buy direct from the manufacturer as affording them better prices, superior quality, more satisfactory service, and other advantages not obtainable through purchase through middleman, to undertake a program of purchasing merchandise from retail dealers aforesaid as a means of procuring their said products, and, further, to buy substantial quantities of their said products from them, and of misleading and deceiving also substantial number of retail dealers into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and of causing substantial number of such dealers, because of such mistaken and erroneous belief, to purchase and participate in their said sales-promotional plan, and with result that trade was diverted unfairly to them from their competitors in said commerce who truthfully represent their respective merchandise, sales plans and offers in connection therewith; to the injury of competition in commerce:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Jay L. Jackson for the Commission.

Hickey, Hall & Junge, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Marcus A. Weinberg and Belle Weinberg, individuals, and trading as Pacific China

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Co., and as managing officers thereof, and Ray Y. Cliffe, an individual, and trading as Pacific China Co., and as an officer thereof, hereinafter referred to as respondents, have violated the provisions of 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, Marcus A. Weinberg and Belle Weinberg, are individuals, trading as Pacific China Co., and officers in charge of the management and direction of the business of said company. Respondent Ray Y. Cliffe is an individual trading as the Pacific China Co. The office and principal place of business of said respondents is located at 812 South La Brae Avenue, in the city of Los Angeles, State of California. For more than 1 year last past the said respondents have been, and now are, engaged in the business of offering for sale, selling, and distributing in commerce among and between the various States of the United States earthenware products, described by respondents as "chinaware," together with a so-called sales plan, inclusive of redeemable cards, coupons, certificates, and bonds, and literature relating to said products. They have caused, and now cause, said merchandise and products, when sold or ordered, to be shipped and transported from their aforesaid place of business in California to buyers and purchasers thereof located in various States of the United States other than the State of California and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, respondents have been, and now are, in competition with other individuals and with corporations, partnerships, and firms engaged in the sale and distribution of earthenware and chinaware products, and also with sellers and distributors of so-called sales plans, inclusive of redeemable cards, coupons, certificates, and bonds, and literature relating thereto, who sell and distribute said merchandise and products 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 their business aforesaid, it has been, and is, the practice of respondents to employ and send out salesmen to solicit individuals, firms, companies, corporations, and partnerships engaged in various retail selling enterprises who have direct contact with the purchasing public at large. The so-called "Agreements of Co-Operation" entailing the payment of a valuable consideration by signers thereto, are obtained from said members of the retail trades. For the consideration so paid and under said contracts, in the name of Pacific China Co., respondents agree to and

do sell and distribute to the said retailers, called dealers, a certain number of so-called punch cards and certificates or bonds at a stated consideration for each of said instruments, or at a stated consideration for a stated quantity of such instruments, together with a display set of earthenware, or so-called chinaware, to be retained as the property of the said dealer and to be used as a display in his place of business, together with certain other advertising displays and literature in the form of catalogs, store signs, window cards, etc.

The aforesaid cards on one side bear the printed name and address of the dealer and on the other side printed matter descriptive of the earthenware products offered in connection with said cards, and certain numbers ranging from 5 cents to 50 cents, totalling \$5, which are so arranged that they may be, and are, punched out in an amount corresponding with the amount of purchase made by the said dealer's customer from the said dealer. In accordance with respondents' selling plan, the said dealers distribute the said cards among their customers and otherwise invite the attention and interest of the said customers through and by means of the cards and literature supplied by respondents. When a customer of the dealer has purchased and paid for \$5 worth of the merchandise sold by the said dealer, and the said card has been punched out in that amount, the customer becomes entitled to redeem the said card for one of the so-called chinaware sets represented thereon, upon remitting the said card to respondents, or through the said dealer, together with the payment of a specified sum of money, in some cases being specified as 99 cents, and in others 81 cents and 91 cents.

The aforesaid earthenware is described on respondents' cards and other literature as "Pacific Chinaware." The choice of the dealers' customers upon the redemption of the said cards is described thereon (1) as "A Foundation Set" consisting of a 10-piece dinner service for 2 persons, or (2) as "A Starter Set" consisting of a 6-piece dinner service for 1 person, also described as "Coronado Colored Pottery." Dealers' customers remitting the specified amount and receiving such sets may and do supplement and complete the said sets by direct purchase from respondents at the quoted list prices set-out in the catalogs distributed to them by respondents either directly or through the dealer.

PAR. 4. In the course and conduct of business aforesaid, respondents have caused, and cause, certain literature, advertising matter, banners, and displays to be placed in the hands of the aforesaid dealers and through said dealers to be distributed and displayed to customers of said dealers, which, among other things, state and represent the following:

1. That the so-called chinaware sets being offered by the Pacific China Co. are "Free".
2. That the so-called chinaware offered and distributed by Pacific China Co. is "High Class," "High Quality," and "A Compliment to the Finest Home."
3. That the offer made by Pacific China Co. to the dealers handling the same and to customers of said dealers is "An Introductory Offer" for the purpose of introducing the products of Pacific China Co. and of "Pacific Chinaware," that the same is a "Special Offer," open for a limited time only, and for the purpose only of advertising "Pacific Chinaware."

The aforesaid statements and representations are false and misleading and have had, and have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and prospective purchasers of earthenware or chinaware, into the false and erroneous belief that the said statements and representations are true; that "Pacific Chinaware" may be obtained "Free" and without expense or cost, and that the same is "High Class" and of high or superior quality; that an offer of, and opportunity to obtain, "Pacific Chinaware" is being made for the purpose of advertising and introducing "Pacific Chinaware," and that the said offer and the catalog prices listed in connection therewith partake of the nature of a "Special Offer" or opportunity which is open for a limited time only. In truth and in fact, and contrary to said representations, the earthenware sets, or so-called chinaware, offered and distributed by respondents, cannot be obtained free or without expense or cost; the same is not high class or of high or superior quality, but is of low and inferior quality; the offer made is not for the purpose of advertising or introducing "Pacific Chinaware" and no "Special Offer" or opportunity is given or provided by respondents in connection therewith, but the said offer constitutes a part of the selling promotion plan continuously employed by respondents in the course of the business of Pacific China Co.

The aforesaid false and misleading statements and representations have the tendency and capacity to, and did and do, cause a substantial portion of the purchasing public and prospective purchasers of earthenware and chinaware, in reliance upon the aforesaid erroneous beliefs, to enter and undertake a program of purchasing from retail dealers, through whom the aforesaid offers are made, as a means of securing earthenware or so-called chinaware, more particularly the products of Pacific China Co., and further to purchase said products, all to the benefit and profit of respondents and the owners of said Pacific China Co., and to the injury of competitors.

PAR. 5. In the course and conduct of the business aforesaid, respondents further represent to the aforesaid dealers and to the purchasing public that the earthenware, or so-called chinaware, offered and sold in the name of Pacific China Co., is "High Class" and "High Quality"; that the offer made by respondents to said dealers, and the transaction in connection therewith, is for the purpose of "advertising" and "introducing" the products of Pacific China Co. It is the further practice of respondents to state and represent to said dealers and to the purchasing public that Pacific China Co. is the manufacturer of the products it offers and sells. The aforesaid statements and representations are false and misleading in that the earthenware, or so-called chinaware, offered and sold is of very low and inferior quality; the offer made and the transaction in connection therewith are not for the purpose of "advertising" or "introducing" the products of Pacific China Co., but constitute the method of sale and distribution regularly employed by respondents, and Pacific China Co. is not a manufacturer and does not manufacture the products which respondents offer and sell.

There are among the purchasing public a substantial number who prefer to purchase direct from the manufacturers of the products being purchased believing that in so doing they secure better prices, superior quality, more satisfactory service, and other advantages not obtainable in purchasing through middlemen.

PAR. 6. The aforesaid false and misleading representations on the part of respondents herein have the tendency and capacity to, and do, mislead and deceive many retail dealers into the false and erroneous belief that said representations are true and into participation in respondents' plan or merchandising in reliance on the truthfulness of such representations. The aforesaid false and misleading representations on the part of the respondents have the tendency and capacity to, and do, mislead and deceive many members of the purchasing public into the false and erroneous belief that said representations are true and into the purchase of respondents' earthenware or so-called chinaware in and on account of such beliefs induced as above set forth. As a result, the aforesaid false and misleading statements and representations on the part of respondents have the tendency and capacity to, and do, divert trade unfairly to the respondents and to said Pacific China Co. and owners thereof from competitors who truthfully represent their merchandise, sales plans, and offers in connection therewith. In consequence thereof injury is being done, and has been done, by respondents herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 21st day of April 1938, issued, and on the 26th day of April 1938, served, its complaint in this proceeding upon respondents, Marcus A. Weinberg and Belle Weinberg, individuals, and trading as Pacific China Co., and Ray Y. Cliffe, an individual, and trading as Pacific China 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' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to the facts which were admitted in said answer, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the 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 respondents, Marcus A. Weinberg and Belle Weinberg, are individuals and prior to December 15, 1937, traded as the Pacific China Co. and were the officers in charge of the management and direction of the business of said company. The respondent Ray Y. Cliffe is an individual and prior to December 15, 1937, traded as the Pacific China Co. The respondents, during the times mentioned herein, had their office and principal place of business at 812 South LeBrae Avenue in the city of Los Angeles, State of California. The respondents, for a substantial period of time prior to December 15, 1937, and trading as the Pacific China Co., were engaged in the business of selling and distributing in commerce among and between the various States of the United States, earthenware products described by respondents as "Chinaware," together with a

so-called sales plan, inclusive of redeemable cards, coupons, certificates, and bonds and other literature relating to said products. The respondents caused the said products, sales plan, and other literature, when sold by them, to be transported from their aforesaid place of business in the State of California to the purchasers thereof at their respective points of location in the various States of the United States other than the State of California and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, the respondents, during all the times mentioned herein, were in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other individuals and with corporations, partnerships, and firms engaged in the sale and distribution of earthenware and chinaware products, and also with sellers and distributors of so-called sales plans, inclusive of redeemable cards, coupons, certificates, bonds, and literature relating thereto. Among such competitors in said commerce are many who do not and did not in any manner misrepresent their products, sales plans, and offers in connection therewith, and who do not and did not make any other false statements in connection with the sale and distribution of their products and sales plans.

PAR. 3. In the course and conduct of their business as aforesaid, it has been the practice of the respondents, during the times mentioned herein, to employ and send out salesmen to solicit individuals, firms, companies, corporations, and partnerships, situated in various States of the United States and in the District of Columbia, engaged in various retail selling enterprises. The respondents' so-called "Agreements of Co-Operation" entailing the payment of a valuable consideration by signers thereto, are obtained from said members of the retail trades. For the consideration so paid and under said contracts, in the name of Pacific China Co., respondents agree to and do sell and distribute to the said retailers, called dealers, a certain number of so-called punch cards and certificates or bonds at a stated consideration for each of said instruments, or at a stated consideration for a stated quantity of such instruments, together with a display set of earthenware, or so-called chinaware, to be retained as the property of the said dealer and to be used as a display in his place of business, together with certain other advertising displays and literature in the form of catalogs, store signs, window cards, etc.

The aforesaid cards on one side bear the printed name and address of the dealer and on the other side printed matter descriptive of the earthenware products offered in connection with said cards, and certain numbers ranging from 5 cents to 50 cents, totalling \$5, which

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are so arranged that they may be, and are punched out in an amount corresponding with the amount of purchase made by the said dealer's customer from the said dealer. In accordance with respondents' selling plan, the said dealers distribute the said cards among their customers and otherwise invite the attention and interest of the said customers through and by means of the cards and literature supplied by respondents. When a customer of the dealer has purchased and paid for \$5 worth of the merchandise sold by the said dealer, and the said card has been punched out in that amount, the customer becomes entitled to redeem the said card for one of the so-called chinaware sets represented thereon, upon remitting the said card to respondents, or through the said dealer, together with the payment of a specified sum of money, in some cases being specified as 99 cents, and in others 81 cents and 91 cents.

The aforesaid earthenware is described on respondents' cards and other literature as "Pacific Chinaware." The choice of the dealers' customers upon the redemption of the said cards is described thereon (1) as "A Foundation Set" consisting of a 10-piece dinner service for 2 persons, or (2) as "A Starter Set" consisting of a 6-piece dinner service for 1 person, also described as "Coronado Colored Pottery." Dealers' customers remitting the specified amount and receiving such sets may and do supplement and complete the said sets by direct purchase from respondents at the quoted list prices set-out in the catalogs distributed to them by respondents either directly or through the dealer.

PAR. 4. In the course and conduct of business aforesaid, respondents have caused certain literature, advertising matter, banners, and displays to be placed in the hands of the aforesaid dealers, situated in various States of the United States and in the District of Columbia, and through said dealers to be distributed and displayed to customers of said dealers, which, among other things, state and represent the following:

1. That the so-called chinaware sets being offered by the Pacific China Co. are "Free";

2. That the offer made by Pacific China Co. to the dealers handling the same and to customers of said dealers in "An Introductory Offer" for the purpose of introducing the products of Pacific China Co. and of "Pacific Chinaware," that the same is a "Special Offer," open for a limited time only, and for the purpose only of advertising "Pacific Chinaware."

Through the use of the statements and representations hereinabove set forth and others similar thereto, not herein set-out, all of which

purport to be descriptive of respondents' products and sales plan, the respondents have represented directly and by implication, among other things; that "Pacific Chinaware" may be obtained "Free" and without expense or cost to the persons participating in respondents' sales plan; that the offer of, and opportunity to obtain, "Pacific Chinaware" is being made for the purpose of advertising and introducing "Pacific Chinaware" and that the said offer and the catalog prices listed in connection therewith partake of the nature of a special offer or opportunity which is open for a limited time; and that the Pacific China Co. is the manufacturer of the said products which respondents offer to sell and sell as aforesaid.

PAR. 5. The aforesaid representations used and disseminated by the respondents in the manner above described, are grossly exaggerated, misleading, and untrue. In truth and in fact, the earthenware sets, or so-called "Pacific Chinaware," sold and distributed by the respondents as aforesaid, are not obtained free or without expense or cost by persons participating in respondents' said sales plan but such persons are required to pay for such products in the manner and at the prices hereinabove described. The offer of such products is not made for the purpose of advertising or introducing "Pacific Chinaware" and no "Special Offer" or opportunity is given or provided by respondents in connection therewith, but the said offer constitutes a part of the sales-promotion plan continuously employed by respondents in the course of their aforesaid business trading as Pacific China Co. The respondents are not the manufacturers of said products and do not own, operate, or maintain the plant at which said products are manufactured.

PAR. 6. During all the times mentioned herein there were, and are now, a substantial number of members of the purchasing public who prefer to purchase merchandise direct from the manufacturer thereof, believing that in so doing they procure better prices, superior quality, more satisfactory service, and other advantages not obtainable in purchasing merchandise through middlemen.

PAR. 7. The use by the respondents of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to said products and to said plan of merchandising, has had and now has the capacity and tendency to and does and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, misrepresentations, and advertisements were true, and caused a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to undertake a program of purchasing

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merchandise from the aforesaid retail dealers as a means of procuring the respondent's said products and further to purchase substantial quantities of respondent's said products from the respondents.

The use by the respondents of the foregoing false and misleading statements, representations, and advertisements, has had and now has the capacity and tendency to and did mislead and deceive a substantial number of retail dealers into the erroneous and mistaken belief that such false statements, representations, and advertisements were true and caused a substantial number of such retail dealers, because of said erroneous and mistaken belief, to purchase and participate in respondents' sales-promotional plan. As a result, trade has been diverted unfairly to respondents from their competitors in said commerce who truthfully represent their respective merchandise, sales plans, and offers in connection therewith. In consequence thereof, 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 as herein found 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 the Federal Trade Commission Act.

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 the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said admitted facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Marcus A. Weinberg, Belle Weinberg and Ray Y. Cliffe, their representatives, agents, and employees, individually and directly, or trading as the Pacific China Co., or through any corporate or other device, in connection with the offering for sale, sale and distribution of earthenware or so-called chinaware products and so-called sales plans, inclusive of redeemable cards, coupons, certificates, bonds, and literature relating to said products, in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

1. Using the terms "free," "without cost," or any other terms of similar import or meaning, to describe, designate, or refer to products offered or delivered to holders of so-called "punch cards" or "certificates" in redemption thereof, where any part of the cost of the products is paid by such holders, and where all of the terms and conditions under which such products will be delivered to holders of such cards or certificates are not clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the terms "free," "without cost," or any other terms of similar import or meaning, and there is no deception as to the price, quality, character, or any other feature of such products.

2. Representing that the offer of any of said products is "introductory," or for the purpose of advertising and introducing the same, when in fact said offer is made for the purpose of selling the particular items or set of products included in said offer, and constitutes an offer regularly and continuously made and used in the course of offering for sale and selling said products.

3. Representing that the offer of any of said products, or any catalog prices listed in connection therewith, constitutes or partakes of the nature of a "special" offer or opportunity provided by respondents for a limited time only, when in fact the same constitutes an offer or prices regularly and continuously made or used in the course of offering for sale and selling said products.

4. Representing that the respondents or any of them are the manufacturers of the products sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a manufacturing plant wherein such products are manufactured by them.

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
LOUIS D. LIVINGSTON ET AL., TRADING AS
L. D. LIVINGSTON & SONS

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

Docket 3627. Complaint, Oct. 8, 1938—Decision, Feb. 18, 1939

Where five individuals engaged in manufacture of women's wearing apparel, and in sale and distribution thereof to members of the purchasing public in various States and in the District of Columbia, in substantial competition with those engaged in similar sale and distribution of such products, and including many who do not in any way misrepresent the material of which their respective merchandise is made and do not make any other false statements in connection with sale and distribution thereof;

Described certain shirts thus offered and sold by them, on labels permanently attached thereto, as "Homespun Crepe—Pure Dye," and thereby represented that such wearing apparel was made of silk, product of cocoon of silk worm, products of which have long been held in great public esteem and confidence for their preeminent qualities and various fabrics of which have come to be designated by variety of distinctive terms, notwithstanding fact that such garments, thus labeled, were not made of silk, but were composed of rayon entirely, which, with appearance and feel of former, is practically indistinguishable therefrom by purchasing public;

With tendency and capacity, through use of word "crepe" as aforesaid, and such statement and representation and failure to disclose such rayon composition, to conceal fact that such merchandise was thus composed, and with effect of so concealing, and of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations were true, and that said merchandise was made of silk as aforesaid, and of causing substantial portion of such public to buy substantial quantities of their said merchandise, and with capacity and tendency so to mislead and deceive, and result of placing in hands of retail dealer purchasers of such apparel means and instrumentality whereby they might mislead and deceive said purchasing public into erroneous and mistaken belief that such merchandise was made wholly of silk, and effect of diverting thereby unfairly trade to them from their competitors in commerce who truthfully label and represent their merchandise; to the injury of competition in commerce:

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

Mr. James L. Fort for the Commission.

Mr. N. F. Presson and *Mr. Louis Casper*, of New York City, for respondents.

Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Louis D. Livingston, Arnold Livingston, Joseph A. Livingston, Norman Livingston, and Theodore H. Livingston, copartners, trading as L. D. Livingston & Sons, hereinafter referred to as respondents, have violated the provisions of the 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, Louis D. Livingston, Arnold Livingston, Joseph A. Livingston, Norman Livingston, and Theodore H. Livingston, are members of a partnership trading as L. D. Livingston & Sons, and have their office and principal place of business at 132 West Thirty-sixth Street in the city of New York, State of New York.

PAR. 2. The respondents are now, and have been for more than 2 years last past, engaged in the business of manufacturing, selling, and distributing women's wearing apparel. Respondents sell said products to members of the purchasing public situated in various States of the United States and in the District of Columbia and cause the said products, when sold by them, to be transported from their aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States in the United States, other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said products among and between various States of the United States and the District of Columbia.

PAR. 3. Respondents are engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other partnerships and with corporations, individuals, and firms selling and distributing women's wearing apparel. Among such competitors in said commerce are many who do not in any manner misrepresent the material out of which their products are made and who do not make any other false statements in connection with the sale and distribution of their said products.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their women's wearing apparel, the respondents have caused false advertisements containing representations and claims with respect to the material out of which such

garments are made to be disseminated in commerce as defined in the Federal Trade Commission Act through the use of permanent labels placed by respondents on such garments, on which labels are statements purporting to be descriptive of the nature, quality, and character of such merchandise, among which is the following:

Hollyvogue
Mannish-Tailored
Shirt Washable
Homespun Crepe—Pure Dye

PAR. 5. Through the use of statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of such garments and of the material of which they are made, respondents have represented directly and by implication, among other things, that the garments are made of silk, the product of the cocoon of the silkworm.

PAR. 6. The representations made by respondents with respect to the materials out of which the garments are made are false, misleading, and untrue. In truth and in fact, the said garments are not made of silk, the product of the cocoon of the silkworm.

The true facts are that said garments are made entirely of rayon.

The representations above set forth were, and are, false and misleading in that said garments so represented, designated, and referred to were not described as being rayon, and in that the word "rayon" was not used in said labels with said descriptive words and representations. Such representations, together with the failure to so describe the materials of which said garments were made, had and have the tendency, capacity, and effect of concealing the fact that such garments were and are made of rayon when it was, and is, the duty of the respondents in any circumstances to make disclosure of the fact that such garments were, and are, composed of rayon by the use of the word "rayon" in immediate connection with said descriptive words and in such a way and manner as to apprise and inform the purchasing and consuming public that such garments were and are composed wholly of rayon.

PAR. 7. The word "silk" for many years last past has had, and still has, in the minds of the purchasing 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 fiber has long been woven into a variety of fabrics and a variety of distinctive terms have been applied to the fabrics resulting from different types of treatment and weaving of silk fiber. The words

“pure dye” and “crepe” or words of similar import or meaning, when used alone or unaccompanied by the name of a specific fabric or fiber in connection with the designation or description of wearing apparel for women, have been for a long time, and still are, associated in the minds of the public with the materials made of the product of the cocoon of the silkworm and such words, when used as aforesaid, are considered as being descriptive of silk fabrics.

The word “rayon” is the name of a chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk and is, by the purchasing public, practically indistinguishable from silk.

PAR. 8. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations disseminated as aforesaid with respect to said garments, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and that said garments are made of silk of the product of the cocoon of the silkworm and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondents' said garments. The use of said representations and statements also placed in the hands of the retail dealers a means and instrumentality whereby they mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said garments are made wholly of silk. As a result trade has been diverted unfairly to the respondents from their competitors in said commerce, who truthfully label and represent their garments as described in paragraph 3. In consequence thereof injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States and District of Columbia.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 8th day of October 1938, issued, and subsequently served, its complaint in this proceeding upon respondents, Louis D. Livingston, Arnold Livingston, Joseph A. Liv-

ingston, Norman Livingston and Theodore H. Livingston, copartners, trading as L. D. Livingston & Sons, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Louis D. Livingston, Arnold Livingston, Joseph A. Livingston, Norman Livingston, and Theodore H. Livingston, are members of a partnership trading as L. D. Livingston & Sons, and having their office and place of business at 132 West Thirty-sixth Street in the city of New York, State of New York.

PAR. 2. The respondents are now and have been for more than 2 years last past engaged in the business of manufacturing, selling, and distributing women's wearing apparel. Respondents sell said merchandise to members of the purchasing public situated in various States of the United States and in the District of Columbia, and cause said merchandise, when sold by them, to be transported from their aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said merchandise among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents are engaged in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with other partnerships, and with corporations, individuals, and firms selling and distributing women's wearing apparel. Among such competitors in said commerce are many who do not in any manner misrepresent the material out of

which their respective merchandise is made, and who do not make any other false statements in connection with the sale and distribution of their respective merchandise.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their said women's wearing apparel, the respondents have caused false advertisements containing representations and claims with respect to the material out of which such merchandise is made, to be disseminated in commerce among and between the various States of the United States and in the District of Columbia through the use of permanent labels affixed by respondents to such merchandise, on which labels are statements purporting to be descriptive of the material, quality, and character of such merchandise, among which statements are the following:

Hollyvogue
Mannish-Tailored
Shirt Washable
Homespun Crepe—Pure Dye

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of the said women's wearing apparel and of the material of which such merchandise is made, respondents have represented, directly and by implication, among other things, that such merchandise is made of silk, the product of the cocoon of the silkworm.

PAR. 6. The aforesaid representation by the respondents that said wearing apparel is made of silk, the product of the cocoon of the silkworm, is false, misleading, and untrue. In truth and in fact the said merchandise is not made of silk, the product of the cocoon of the silkworm. Said merchandise is made entirely of rayon.

PAR. 7. The word "silk" for many years last past has had, and now has, in the minds of the purchasing and consuming public situated in various States of the United States and in the District of Columbia a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk products for many years have held and now hold great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics and a variety of distinctive terms have been applied to the fabrics resulting from different types of treatment and weaving of silk fabrics.

The words "Pure Dye" and "Crepe" and words of similar import and meaning, when used either alone or unaccompanied by the name of a specific fabric or fiber, to describe wearing apparel for women

have caused, and now cause, members of the purchasing public to have the understanding and belief that the merchandise so described is made of silk, the product of the cocoon of the silkworm. The words "Pure Dye" and "Crepe," used and disseminated as aforesaid, have the capacity and tendency to, and do cause members of the purchasing public to have the erroneous and mistaken belief that respondents' said merchandise is made of silk, the product of the cocoon of the silkworm.

PAR. 8. The said statements and representations used and disseminated by the respondents as aforesaid are false and misleading for the reason that respondents' merchandise, represented and labeled as "Crepe," is not described as being made of rayon, and the word "rayon" is not placed on said labels in connection with the use of the aforesaid statement and representation. The use by respondents of said statement and representation, and the failure by the respondents to disclose the fact that said merchandise is made of rayon has the tendency, capacity, and effect of concealing the fact that such merchandise is made of rayon.

The word "rayon" is the name of a chemical fiber, or fabric that simulates silk in that it has the appearance and feel of silk, and is practically indistinguishable from silk by the purchasing public.

PAR. 9. The use by respondents of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, with respect to said women's wearing apparel has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and that such merchandise is made of silk, the product of the cocoon of the silkworm, and causes a substantial portion of the purchasing public because of said erroneous and mistaken belief to purchase substantial quantities of respondents' said merchandise.

The use of said statements and representations also places in the hands of retail dealers to whom respondents sell and distribute such merchandise, a means and instrumentality whereby said dealers mislead and deceive the purchasing public into the erroneous and mistaken belief that said merchandise is made wholly of silk. As a result, trade has been diverted unfairly to respondents from their competitors in said commerce, who truthfully label and represent their merchandise. In consequence thereof, injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and state that they waive all intervening procedure and future hearings as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Louis D. Livingston, Arnold Livingston, Joseph A. Livingston, Norman Livingston, Theodore H. Livingston, individually and trading as L. D. Livingston & Sons, or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of women's dresses and other wearing apparel for women, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "pure dye," or any other term of similar import or meaning, to describe or designate any fibers, fabrics, or other products which are not composed wholly of unweighted silk, the product of the cocoon of the silk worm.

2. Using the word "crepe" or any other word or words of similar import or meaning to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silk worm, unless said descriptive word or words are used to designate the type of weave or construction, in which case such word or words shall be qualified by using in immediate connection or conjunction therewith in letters of at least equal size and conspicuousness, a word or words clearly naming or describing the fibers or materials from which said fabric or product is made.

3. Advertising, offering for sale, or selling fabrics or any other products composed in whole or in part of rayon without clearly disclosing the fact that such fabrics or products are composed of rayon,

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and when such fabrics or products are composed in part of rayon and in part of other fibers or materials, such fibers or materials, including the rayon, shall be named in the order of their predominance by weight beginning with the largest single constituent.

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

Syllabus

·IN THE MATTER OF
EL MORO 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 2603. Complaint, Oct. 31, 1935—Decision, Feb. 21, 1939

Where a corporation engaged in the manufacture of various brands of cigars, and in sale and distribution thereof to wholesale and retail dealers in various States for resale to members of the purchasing public, in substantial competition with others engaged in similar sale and distribution of cigars, and including among said competitors thus engaged (1) many who sell such products composed in whole, and also such products composed in part, of Havana tobacco, and truthfully advertise, represent, brand, and label their said products as containing such tobacco; (2) many who sell and distribute such products containing none of such tobacco, but only tobacco grown in the United States or elsewhere than on the Island of Cuba and do not brand, label, advertise, or otherwise represent their said products as containing any tobacco grown on said island; and (3) those who thus sell and distribute cigars which, by reason of imperfections in shape, size, or other respects, are culled or removed from lots of higher grade and more expensive cigars and, by reason of their odd shapes, sizes, and other imperfections, are correctly designated as "Throw Outs" or by other words of similar import, and sold at materially reduced prices, and are truthfully advertised, branded, and labeled by them as aforesaid—

(a) Branded or labeled as "Havana Counts" certain of its said cigars and featured said words on the exterior and on the interior of the containers thereof, and also displayed on exterior of such containers, and on the inside of the lids thereof, words "Original Old Style" and "Guaranteed Hand Made Imported and Domestic Stock," and later discontinued said last-named phrase and placed on top and sides of exterior of its said containers, in much smaller type than "Havana Counts," words "Domestic Filler Domestic Wrapper," and thereafter discontinue also, on inside of lid of containers, phrase referred to and inserted, in much smaller type than words "Havana Counts," "Notice! These cigars are made in the United States entirely and only of domestic tobacco," facts being none of the cigars made, sold, and distributed by it under aforesaid "Havana Counts" label at any time contained any Havana tobacco or tobacco grown on island of Cuba, long imported into the United States and there widely used in manufacture of cigars, and long associated by word "Havana" with tobacco grown on said island, on which, and in vicinity of Havana, is grown finest cigar tobacco, and notice aforesaid was contradictory and inconsistent with representation contained in use of word "Havana" and did not place purchasers of product in question on notice or sufficiently inform them that such products were not made from and did not contain Havana tobacco, but were made only and entirely from the domestic product, with effect of misleading and deceiving substantial portion of members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief, through use as aforesaid of word "Havana" and words "Guaranteed

Hand Made Imported and Domestic Stock," that such cigars were made from tobacco grown on the island of Cuba; and

- (b) Branded, labeled and designated certain of its said cigars as "Throw Outs" and "Factory Throw Outs," and later displayed and featured words, on exterior and interior of containers of certain of its said cigars, "REES' FAMOUS TAKE-OUTS 2 FOR 5¢," and displayed on inside of lids of containers of said "Throw Outs," words "Factory Throw Outs" and "Throw Outs from 10¢ And Up Sizes," and for a time also displayed on inside of lid of said "Take Outs" words "Odd sizes and Shapes," notwithstanding fact none of the cigars thus designated were of that type commonly known and understood by cigar dealers and purchasing public as "Throw Outs" or "Take Outs," or culls or discards, which, by reason of certain defects or imperfections, are removed or thrown out or taken out from more expensive lots and brands of cigars during process of manufacture, and sold at reduced price by reason of such defects or imperfections, but said cigars were made by it to be sold at retail for 2 for 5 cents, in simulation of a throw-out or take-out cigar, and from a grade of tobacco which permitted it to make and sell said cigars at such prices for a profit, with effect, through use of words "Take Outs" and "Odd Sizes and Shapes," of misleading and deceiving substantial portion of members of the purchasing public in various States into the erroneous and mistaken belief that they were buying a higher-priced cigar, made of high-grade tobacco, and sold at a reduced price as culls, rejects, or "Throw Outs," because of the odd sizes and shapes and because of defects or imperfections in manufacture thereof;

With result that, through use of such false and misleading statements and representations, it deceived members of the purchasing public in various States concerning the quality and character of its cigars thus sold and distributed by it, and thereby induced members of public to purchase said cigars under erroneous and mistaken belief that such false and misleading statements and representations were true, and trade was diverted unfairly to it from its competitors in such commerce who truthfully advertise, represent and label their respective products, to the injury of competition in commerce, and with result of placing in hands of its dealers and distributors an instrument by means of which they mislead and deceive, and have misled and deceived, members of purchasing public in various States:

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

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

Mr. Marshall Morgan and *Mr. Astor Hogg* for the Commission.
Crawford & May, of Jacksonville, Fla., 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 El Moro

Cigar 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, El Moro Cigar Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 636 South Elm Street, in the city of Greensboro, N. C. Respondent is now and for more than 3 years last past has been engaged as hereinafter described in the business of manufacturing various brands of cigars and selling and distributing the same to dealers in various parts of the United States, more particularly in the States of North Carolina, South Carolina, Georgia, Florida, Virginia, and Maryland. The said cigars are manufactured by respondent in Greensboro, N. C., where they are packed, branded, and labeled by respondent for sale and distribution by itself and by its dealer-customers to the purchasing and consuming public of the United States. In consummating such sales and in distributing such products, respondent causes the cigars so sold to be transported and delivered from its place of business in Greensboro, in the State of North Carolina, through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of its business the respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of cigars, and offering such products for sale in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. The cigar originated in the Spanish West Indies. The finest quality of tobacco for cigar purposes is grown in Cuba, not far from the city of Havana. The word "Havana," also spelled "Habana," is the name and designation of the tobacco grown on the island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar-purchasing and consuming public of the United States, and by cigar manufacturers and dealers throughout the United States, as meaning and designating tobacco which has been grown on the island of Cuba. Said tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured in whole and in part only from such tobacco. Such Havana tobacco has the reputa-

tion among the cigar consuming and purchasing public of the United States as being cigar tobacco of highest quality and excellence, and cigars made in whole or in part from said tobacco are in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco and have believed, and still believe, that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

The outer leaf, or wrapper, of a cigar comprises about 5 percent of the entire cigar, while the filler and binder, constituting 95 percent of the cigar, are the controlling factors in its size, strength, and flavor. The filler controls, primarily, the designed length, thickness, and shape of the cigar as rolled into a binder or binder wrapper of desired size. A dark cigar can be mild if it has a mild filler and binder, while a light-colored cigar can be quite strong if the filler and binder are of a strong grade of leaf. The filler of the cheapest grades of cigars, such as "2 for 5's," is composed principally of what is known as "scrap," being clippings from cigars in the process of manufacture.

The expressions "throw-outs" and "take-outs" are similar in import and meaning in connection with the manufacture of cigars, and indicate and are intended to indicate culls, or discards, which, by reason of certain defects or imperfections, are removed or thrown or taken out from more expensive lots and brands of cigars and sold at a reduced price by reason of such defects or imperfections.

PAR. 3. In the course and conduct of respondent's business as described in paragraph 1 hereof, sales of cigars are made and purchase orders therefor obtained through and as a result of the personal solicitation of salesmen, the use of circulars and by means of written correspondence and other communications with respondent's customers and prospective customers.

The said cigars, manufactured, sold, and distributed competitively by respondent in interstate commerce, as set forth in paragraph 1 hereof, are and for several years last past have been sold and distributed by respondent in large and substantial quantities under such names and brands, among others, as "Havana Counts," "Rees' Famous Take-Outs," and "R S M Famous Take-Outs," each of said brands comprising cigars sold 2 for 5 cents. The following hereinafter-described brands and labels have been affixed by respondent to the cigars themselves and to the containers thereof. The labels attached to the cigars themselves consist of a paper band placed by respondent around each cigar and bearing conspicuously the words "Havana Counts," or the words "Famous Take-Outs," as descriptive of the

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cigars. The containers for such cigars are the usual and customary cigar boxes or cigar containers of respective capacities of 50 and 100 cigars each. The labels and brands attached to each box or container have been designed and affixed thereto by respondent and are as follows:

1. Centered on the outside of the lid of the box a label or brand bearing the words "Havana counts" in large, white letters on a ribbon-like background of solid black. To the left and above this brand appear the words "Original Old Style." In smaller black type, below the brand, are printed the words "Guaranteed Hand Made Imported and Domestic Stock." To the right of the brand appears a facsimile of the stamp or insignia of the "NRA." Around the edges of the box on both top and sides, spread an inch or more apart, appear the words, alternately used, "Counts—Havana—Counts."

The above-described brand and labeling are carried also on the under side of the box top, the words "Havana Counts" printed in large, heavy black type on a white ribbon field appearing conspicuously when the box is opened. On the under side of the top also appear the words "Havana Counts." Beneath this, the words "Process Tax Paid" and in a black-lined border or box, the following:

| |
|----------------------------------------------------------------------------------------------------------------------------------|
| <p>The Cigars herein contained were manufactured to retail at not more than Five Cents each and are so tax paid.</p> |
|----------------------------------------------------------------------------------------------------------------------------------|

The "N. R. A." insignia and the legend "2 for 5¢" complete the descriptive matter appearing on the outside front of the box or container. On the inside of the box on its back wall or surface, near the top, are printed in large type the words "Havana Counts," and on either side the legend "2 for 5 cts." The left outside end of the box contains the words "Havana Counts" printed in bold, heavy type, black on a white background. Above this brand appear the words "Original Old Style" and below it, the words "Guaranteed Hand Made."

2. Centered on the outside of another box, a brand or label reading:

REES'
FAMOUS TAKE-OUTS
TITLE REGISTERED
2 for 5¢

At each end of the outside top, again appears the legend "2 for 5¢," and at the upper left corner the insignia of the "N. R. A."

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On the inside of the box top, showing conspicuously when the lid thereof is lifted, the following brand or label is printed in bold red letters nearly an inch and a half tall:

**REES
FAMOUS TAKE-OUTS**

To the left of the brand there are respectively printed the legend "2 for 5¢," the insignia of the "N. R. A.," and the words:

ALL GOOD SMOKES ODD SIZES AND SHAPES

To the right of the brand appears the same legend:

**ALL GOOD SMOKES
ODD SIZES & SHAPES**

and again the further legend, "2 for 5¢." Beneath the red label or brand appear the words "Title Registered," and below these, printed in a long box in conspicuous blue type, the following:

Every Cigar a Splendid Quality, Mild, Free-Burning Smoke—Made from Tobacco Especially Selected for Its Ripeness and Fragrance—Tobacco from all the Choice Growing Sections. Blended to Please 100% of the Smokers.

On the inside of the box or container, on the back side, at the top, and likewise easily visible when the box top is lifted, again appears the brand, this time printed in large blue letters:

REES FAMOUS TAKE-OUTS

and at the other end again the legend "2 for 5¢."

On the outside front of the box the brand "Rees Famous Take-Outs" is printed in black type and beneath, the legend "Process Tax Paid." To the right of this label, carried in a box, is printed the following, in small, inconspicuous type:

The Cigars Herein Contained Were Manufactured to Retail at Not More Than Five Cents Each and Are So Tax Paid.

On each outside end of the box, printed in black type, appears the brand:

**REES
FAMOUS TAKE-OUTS**

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PAR. 4. In connection with the operation of said business, the brand of cigar heretofore referred to and described as "Rees' Famous Take-Outs" was originated by the president of respondent company and put on the market about January 1, 1933. Prior to this time, that is, from July 30, 1932, until December 23, 1932, respondent company manufactured what were termed and branded "Throw-Outs," at 2 for 5¢.

On March 27, 1931, respondent company purchased from Herman Hyman's Sons, of Sinking Springs, Pa., property rights in and to the trade name "*Havana Counts*," and subsequent to such time, respondent has been manufacturing and selling in interstate commerce, also at a price of 2 for 5 cents, the cigar hereinbefore described and known as "*Havana Counts*."

The "*Rees' Famous Take-Outs*" are manufactured especially for the trade, being put up in boxes of 100 each. Approximately 14,000 of these "*Take-Outs*" are sold a month. About 3,000 boxes of "*Havana Counts*" are manufactured and sold each month, or 300,000 cigars of that brand. "*Take-Outs*" are made in six different sizes. Neither "*Rees' Famous Take-Outs*" nor the "*Havana Counts*" are uniform in size and shape, owing to variations in the blocks used in their manufacture.

Both the "*Take-Outs*" and the "*Havana Counts*" are and have been made from what is termed "No. 2 Scrap," alleged to contain "some little imported tobacco." Respondent has no warehouse of its own and does not mix its own filler tobacco, but, on the contrary, purchases the same ready-mixed from factories and dealers located in the State of Pennsylvania. Said "Scrap No. 2" consists of clippings gathered from cigars in the process of their manufacture, the same being mixed by the said Pennsylvania concerns which sell the said "scrap" to respondent. Respondent has no personal knowledge that, or as to whether, the "No. 2 Scrap" tobacco used by it as fillers for its "*Havana Count*" and "*Take-Out*" brands contains any, or any appreciable amount, of Cuban, or other imported tobacco.

PAR. 5. On or about April 1, 1935, respondent changed the labeling of its boxes intended as containers for "*Havana Counts*" by printing on the outside top thereof, beneath the brand "*Havana Counts*," the legend:

Domestic Filler
Domestic Wrapper

and on the inside of the cover, beneath the brand reading

Havana Counts
Guaranteed
Hand Made—Imported
and Domestic Stock

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the following:

Notice! These Cigars are made
in the United States entirely
and only of domestic tobacco.

On one end of the new boxes the label was made to read:

Domestic Filler
HAVANA COUNTS
Domestic Wrapper.

On another of the new boxes the outside top contains the original legend:

Guaranteed
Hand Made
Imported and Domestic Stock.

The brand "Havana Counts" is printed in heavy type in both the outside front and top of the box as well as on the inside of the top and at the bottom of the top appears the above-quoted "Notice," printed again beneath the legend, "Guaranteed Hand Made Imported and Domestic Stock."

Notwithstanding the addition on April 1, 1935, of the legend, "Notice: These cigars are made in United States entirely and only of domestic tobacco," respondent did not change the label theretofore employed on the "Havana Counts" cigar, and each of the said cigars now carries and has at all times heretofore carried a label in red and white design, on which are printed in black the words "Havana Counts."

About September, 1935, a new label was put out for "Rees' Famous Take-Outs," from which were deleted the words, "Odd Shapes and Sizes."

PAR. 6. In truth and in fact none of respondent's cigars branded, labeled, advertised, and described as "Havana Counts" and sold by the respondent and by dealers to the purchasing and consuming public as hereinbefore described, contain any Havana tobacco or tobacco grown on the island of Cuba nor have they at any time contained such tobacco, but are and have been manufactured entirely from, and wholly composed of, tobacco grown in the United States. The effect of the use of the word "Havana" in said designation "Havana Counts" in branding, labeling, describing, and advertising said cigars containing no Havana tobacco, all as hereinbefore set forth, is misleading and has, and has had, the capacity and tendency to and did mislead and deceive a large and substantial number of the purchasing and consuming public into purchasing said cigars in the erroneous belief that they are and were composed in whole or in part of Havana tobacco, that is, tobacco grown on the island of Cuba.

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Further, in truth and fact none of respondent's cigars manufactured, branded, labeled, advertised, and sold by the respondent to the purchasing and consuming public as "Rees' Famous Take-Outs" or "Take-Outs" as hereinbefore described, consist of that type of cigar commonly known as a "throw-out" or "take-out" but are and have been manufactured to be sold at and for 2 for 5 cents, in simulation of a "throw-out" or "take-out," from a grade of "scrap" tobacco which would and does permit respondent to manufacture and sell them at a larger profit. The effect of the use of the term "Take-Outs" in said designation "Rees' Famous Take-Outs" and in the further use of the legend "Odd Sizes and Shapes" in advertising, branding, labeling, and describing said cigars was and is misleading and has, and has had, the capacity and tendency to and did and does misled and deceive a large and substantial number of the purchasing and consuming public into the erroneous belief that they are and were getting a higher-priced cigar, made of high-grade tobacco, and sold to them at a reduced price because of odd sizes and shapes or for other defect or imperfection.

PAR. 7. Among the competitors of respondent referred to in paragraph 1 hereof there are many who sell and distribute in competition with respondent cigars composed in whole and also cigars composed in part only of Havana tobacco and who rightfully and truthfully advertise, represent, brand, and label such cigars as containing said Havana tobacco. There are also many of said competitors who sell and distribute, between and among the several States in competition with respondent, cigars containing no Havana tobacco, and being composed wholly of tobacco grown in the United States or elsewhere than on the island of Cuba, and who do not brand, label, advertise, or otherwise represent that said cigars contain any Havana or Cuban tobacco.

There are also various competitors who sell and distribute, between and among the several States in competition with respondent cigars which by reason of imperfections in shape, size, or other respect, are culled or removed from lots of higher grade, more expensive cigars, and which by reason of their odd shapes and sizes and other imperfections are designated as "throw-outs" or "take-outs" or words of like import and meaning, are sold at materially reduced prices, and are rightfully and truthfully advertised, represented, branded, and labeled as "Throw-Outs," "Take-Outs," or in other words and terms of like import and meaning.

Respondent's so-called "Havana Counts" and "Rees' Famous Take-Outs" cigars are displayed, offered for sale, and sold to the consuming public by respondent and in and by cigar stores and

other dealer-establishments in competition with the said cigars of competitors. The respondent's use of the word "Havana" and of the words or expression "Take-Outs" as hereinabove described in relation to cigars having no Havana tobacco and cigars which are not "culls," "Take-Outs," or "Throw-Outs," respectively, are false and misleading. As a result of such false and misleading representations on the part of respondent the consuming public is being and has been injured, trade is being and has been diverted to respondent from such competitors in interstate commerce and thereby substantial injury is done and has been done by the respondent to substantial competition in interstate commerce and there is and has been placed in the hands of respondent's dealers and distributors an instrument by means of which they mislead and deceive and have mislead and deceived the purchasing public.

PAR. 8. Said representations of respondent contained in its respective brands, labels, advertisements, circulars, or other media through which the trade and consuming public are reached have resulted in injury to respondent's competitors and to retail dealers, and to the prejudice of the buying public, and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 31, 1935, issued and thereafter served its complaint in this proceeding upon respondent, El Moro Cigar Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of said complaint were introduced by Marshall Morgan and Astor Hogg, attorneys for the Commission, and in opposition to the allegations of the complaint by Crawford & May, attorneys for the respondent, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final 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, oral argument not having been requested; 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, El Moro Cigar Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, and having its principal office and place of business at 636 South Elm Street, in the city of Greensboro, State of North Carolina.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, selling, and distributing various brands of cigars. Respondent sells substantial quantities of said cigars to wholesale and retail dealers situated in various States of the United States for resale to members of the purchasing public, and causes the said cigars, when sold by it, to be transported from its aforesaid place of business in the State of North Carolina to the purchasers thereof at their respective points of location in various States of the United States other than the State of North Carolina. The cigars are manufactured by the respondent at its aforesaid place of business in the State of North Carolina where they are packed, branded, and labeled by respondent, as hereinafter described, for sale and distribution to the aforesaid purchasers of said cigars. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in commerce in said cigars among and between various States of the United States.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has been during all the times mentioned herein, and is now, in substantial competition with other corporations and with firms, individuals, and partnerships engaged in the sale and distribution of cigars in commerce among and between various States of the United States.

PAR. 4. In the course and conduct of its business as aforesaid, respondent sells and distributes, and has sold and distributed, the cigars manufactured by it under various names and brands, to wit: "Havana Counts," "Throw Outs," and "Rees' Famous Take-Outs." The containers in which respondent sells and distributes said cigars as aforesaid are the usual and customary cigar boxes of a capacity of either 50 or 100 cigars each. Said cigars sell at retail at 2 for 5 cents.

Respondent brands, labels, and describes its cigars which it sells and distributes as aforesaid in the manner hereinafter described.

The words "Havana Counts" appear in large letters on the tops and sides of the containers or boxes in which respondent sells and distributes as aforesaid its cigar designated as "Havana Counts." There has also appeared on the exterior of said containers the words "Original Old Style," and the words "Guaranteed Hand Made Imported and Domestic Stock." There also appear repeatedly around the exterior edges of said containers the words, alternately used: "Counts Havana Counts." On the inside of the lid of said containers the words "Havana Counts" appear in large heavy black type on a white background. There has also appeared on the inside of the lid the words "Original Old Style," and the words "Guaranteed Hand Made Imported and Domestic Stock."

In the year 1935 respondent made certain changes in the wording on the labels on the containers of its said "Havana Counts" cigars. The words "Havana Counts" continued to appear in large letters on the outside of the container, and on the top and sides of the exterior of said containers respondent inserted the words "Domestic Filler Domestic Wrapper," respondent discontinuing the use of the words "Guaranteed Hand Made Imported and Domestic Stock" on the outside of said container. The words "Domestic Filler Domestic Wrapper" were printed in much smaller type than the words "Havana Counts." In the year 1935 the respondent discontinued the use of the words "Guaranteed Hand Made Imported and Domestic Stock" on the inside of the lid of said container. In the year 1935 respondent inserted on the inside of the lid of said container the words "Notice! These cigars are made in United States entirely and only of domestic tobacco." Respondent continued to use the words "Havana Counts" in large black letters on a white background on the inside of the lid, the language comprising the aforesaid "Notice" being printed in much smaller type than the words "Havana Counts." During all the times mentioned herein, the cigars sold and distributed by respondent in said containers were encircled by a band bearing a label containing two words, "Havana Counts."

In the course and conduct of its business as aforesaid, the respondent, prior to December 1932, sold and distributed a cigar which it designated as "Throw Outs," and "Factory Throw Outs." On the inside of the lid of the containers in which such cigars were sold and distributed there appeared the words "Factory Throw Outs" and the words "Throw Outs From 10¢ And Up Sizes." Subsequent thereto respondent sold and distributed, and is now selling and distributing in commerce, among and between various States of the United States, a cigar which it designates as "Rees' Famous Take-Outs." Said cigars are sold and distributed by respondent as afore-

said in containers or boxes on the exterior of which there appear in large letters on the sides and on the top the words "Rees' Famous Take-Outs 2 For 5¢." On the inside of the lid of said containers there appear the words "Rees' Famous Take-Outs" in large red letters on a white background. During the year 1935 and at various times prior thereto there also appeared on the inside of said lid the words "Odd Sizes and Shapes."

PAR. 5. The brand or label reading "Havana Counts," printed in large letters on the exterior and on the inside of the container of said cigars manufactured, sold, and distributed by the respondent as aforesaid, is legible at a distance of from 15 to 25 feet away. The words in small type appearing on the inside of said lid and used by respondent subsequent to 1935 and reading "Notice! These cigars are made in United States entirely and only of domestic tobacco," are illegible except from a short distance from the eye and cannot be read farther away than a distance of 3 to 5 feet. A very small percentage of the members of the purchasing public read the small type statements appearing on cigar-box labels. The average customer going into a store to buy a cigar does not stop to read the statements in small type on cigar boxes but does read the brands or labels prominently displayed on cigar boxes, such as the label "Havana Counts," displayed on respondent's cigar boxes as aforesaid.

PAR. 6. The finest quality of tobacco used in the manufacture of cigars is grown on the island of Cuba near the city of Havana. The word "Havana" is the name and designation of the tobacco grown on the island of Cuba, which name and designation is and has been since the origin of the cigar used and understood by the cigar purchasing and consuming public throughout the United States, and by cigar manufacturers and dealers throughout the United States, as meaning and designating tobacco grown on the island of Cuba. Such tobacco has been for many years, and is now, imported into the United States and is, and has been, widely used in the manufacture of cigars in the United States. Havana tobacco has had, and now has, the reputation among a substantial number of members of the cigar purchasing public throughout the United States as being tobacco of the highest quality and excellence, and cigars made in whole or in part from said tobacco are in great demand throughout the United States. A substantial number of members of the purchasing public and cigar dealers situated in various States of the United States prefer to purchase cigars containing Havana tobacco, and have believed during all the times mentioned herein, and now believe, that the use of Havana tobacco in the manufacture of cigars adds to and increases the quality and desirability of cigars.

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PAR. 7. None of the cigars manufactured, sold, and distributed by the respondent as aforesaid under the label "Havana Counts" contain any Havana tobacco or tobacco grown on the island of Cuba, nor have such cigars at any of the times mentioned herein contained such tobacco, but are, and have been during all the times mentioned herein, manufactured entirely from tobacco grown in the United States.

PAR. 8. Based upon the testimony of cigar manufacturers, dealers, and smokers situated in various States of the United States, the Commission finds that the statement "Notice! These cigars are made in United States entirely and only of domestic tobacco" placed on the boxes containing the cigars sold and distributed under the designation "Havana Counts," when used in conjunction with the principal brand name and label on said boxes, to wit, "Havana Counts," does not qualify or explain respondent's representation by the use of the word "Havana" that such cigars are made from tobacco grown on the island of Cuba, but is contradictory and inconsistent with such representation. A substantial number of the members of the purchasing public have the understanding and belief that cigars branded, labeled, or described with the word "Havana" are cigars made from tobacco grown on the island of Cuba, and the use of such aforesaid notice to the effect that said cigars are in fact made from domestic tobacco solely does not in fact place the purchasers of such cigars on notice, or sufficiently inform them that said cigars are not made from and do not contain Havana tobacco but are made only and entirely from domestic tobacco.

PAR. 9. The expression "Throw Outs," and words of similar import and meaning, such as the words "Take Outs," are understood in the cigar trade and by a substantial number of members of the purchasing public situated in various States of the United States to indicate culls or discards which by reason of certain defects or imperfections are removed or thrown out or taken out from more expensive lots and brands of cigars during the process of manufacturing and are sold at a reduced price by reason of such defects or imperfections.

PAR. 10. None of the cigars manufactured, sold, and distributed by the respondent as aforesaid, under the brand or label "Rees' Famous Take Outs," or "Take Outs," are of that type of cigar commonly known and understood by cigar dealers and the purchasing public as "Throw Outs" or "Take Outs," or culls or discards, as hereinbefore described, but are, and have been, manufactured by the respondent to be sold at retail for 2 for 5 cents in simulation of a "Throw Out" or "Take Out" cigar from a grade of tobacco which

permits respondent to manufacture and sell said cigars at such prices for a profit.

PAR. 11. Among the competitors of the respondent referred to in paragraph 3 hereof are many who sell and distribute in commerce among and between the various States of the United States, in competition with respondent, cigars, composed in whole, and also cigars composed in part, of Havana tobacco and who truthfully advertise, represent, brand, and label such cigars as containing Havana tobacco. There are also among said competitors of respondent many who sell and distribute in commerce, among and between the various States of the United States, in competition with respondent, cigars containing no Havana tobacco, but containing tobacco grown in the United States or elsewhere than on the island of Cuba, and who do not brand, label, advertise, or otherwise represent that said cigars contain any tobacco grown on the island of Cuba.

There are also various of the respondent's said competitors who sell and distribute in commerce among and between the various States of the United States in competition with respondent, cigars which by reason of imperfections in shape, size, or other respect are culled or removed from lots of higher grade—the more expensive cigars—and which by reason of their odd shapes and sizes and other imperfections are correctly designated as "Throw Outs" or words of similar import and meaning, and which are sold at materially reduced prices and are truthfully advertised, branded and labeled by said competitors as "Throw Outs" or other words of similar import and meaning.

PAR. 12. The use by the respondent of the word "Havana" in the manner aforesaid and the use by the respondent of the word "Havana" in conjunction with the words "Guaranteed Hand Made and Imported Stock" to describe, brand, and label its cigars made from tobacco grown in the United States have the capacity and tendency to, and do, mislead and deceive, and have misled and deceived a substantial portion of members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief that such cigars are and were made from tobacco grown on the island of Cuba.

The use by the respondent of the words "Take Outs" in the manner aforesaid and the use by the respondent of the words "Take Outs" in conjunction with the words "Odd Sizes and Shapes" to describe, brand, and label its cigars which are not factory "Throw Outs" or "Take Outs," culls or rejects, as such terms are understood in the cigar trade and by the purchasing public as aforesaid, have the capacity and tendency to, and do, mislead and deceive and have misled and deceived,

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a substantial portion of members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief that they are purchasing a higher priced cigar made of high-grade tobacco and sold at a reduced price as culls, rejects, or "Throw Outs" because of the odd sizes and shapes and because of defects or imperfections in the manufacture of such cigars.

By the use of the aforesaid false and misleading statements and representations, disseminated as aforesaid, respondent has deceived, and is now deceiving, members of the purchasing public situated in various States of the United States concerning the quality and character of respondent's cigars, sold and distributed as aforesaid, and has thereby induced, and is now inducing, members of the public to purchase said cigars under the erroneous and mistaken belief that such false and misleading statements and representations are true. As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise, represent and label their respective cigars. 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, and there is, and has been, placed by respondent in the hands of respondent's dealers and distributors an instrument by means of which they mislead and deceive, and have misled and deceived, members of the purchasing public situated in various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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 the Federal Trade Commission Act.

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 in support of the allegations of the said complaint and in opposition thereto, taken before Robert S. Hall, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, El Moro Cigar Co., a corporation, its officers, representatives, agents, and employees, directly or through

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any corporate or other device, in connection with the offering for sale, sale, and distribution of cigars in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Havana," or any other words, terms or picturizations indicative of Cuban origin, or descriptive of Cuba, alone or in conjunction with any other word or words, to describe, designate, or in any way refer to cigars which are not made from tobacco grown on the island of Cuba.

2. Using the words or expression "Take Outs," "Throw Outs," or any other word or words of similar import or meaning, alone or in conjunction with any other word or words, to describe, designate or in any way refer to cigars, unless such cigars are culled, removed, thrown out, or taken out from more expensive brands or lots of cigars as a result of defects or imperfections arising from normal manufacturing processes and are sold at reduced prices by reason 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.

IN THE MATTER OF
JOSEPH W. GRAFF, INDIVIDUALLY, AND TRADING AS
THE SYLVAN COMPANY

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

Docket 3182. Complaint, July 22, 1937—Decision, Feb. 21, 1939

Where an individual engaged in offer and sale of clocks, pen and pencil sets, radios, traveling bags, and various other articles of merchandise to purchasers in various States; in soliciting sale of and in selling and distributing his said products—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes by which such merchandise was distributed to members of the consuming public wholly by lot or chance, and which involved distribution to members of purchasing public and to dealers of certain literature, order blanks, circular letters, instructions, and push cards for distribution of his said products under a plan or scheme and in accordance with card's explanatory legend by which purchaser paid for chance varying amount, dependent upon number pushed by chance, and received article or articles of merchandise being thus disposed of or nothing other than privilege of punch or push, in accordance with success or failure in selecting feminine name or names corresponding to that or those under card's master seal or two master seals, as case might be, and thereby supplied to and placed in the hands of others, means of conducting lotteries in the sale of his merchandise in accordance with the sales plan above described, under which such merchandise was sold and distributed to purchasing public and amounts paid for chances were determined wholly by lot or chance and involving game of chance or sale of a chance to procure merchandise at a price much less than normal retail prices thereof, contrary to an established public policy of the United States Government and in competition with those who do not sell their merchandise by use of lotteries or games of chance;

With result that many purchasers of his said merchandise were attracted by element of chance involved in his said sales method and were thereby induced to purchase his said products in preference to same or similar merchandise of competitors who do not use same or equivalent methods, and public purchased substantial volume of his said products and trade was unfairly diverted to him from his competitors aforesaid:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

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COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Joseph W. Graff, individually and trading as The Sylvan Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual trading under the name and style, The Sylvan Co., with his principal office and place of business located at 4224 Lincoln Avenue, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in offering for sale and selling various articles of merchandise including, among others, clocks, pen and pencil sets, tableware sets, radios, electric razors, traveling bags, waffle irons, coffee-making sets and comb and brush sets, to purchasers thereof located in various States of the United States. He causes said merchandise when sold to be shipped or transported from his 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 his business, respondent is in competition with other individuals and with partnerships and corporations 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 his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing his 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

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blanks, and advertisements containing illustrations of his 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:

OWN THIS BEAUTIFUL

R O T A R Y C L O C K

The Modern Timekeeper
Tells Time Without Hands

Numbers Under 15 Pay What You Draw
Numbers over 15 Pay 15¢ Only

| | | |
|-------|-----------------|------------------------------------------------------|
| CLOCK | \$5.00 VALUE | Name Under Seal Receives Rotary Clock |
|-------|-----------------|------------------------------------------------------|

The other push cards bear similar legends, but vary in detail. Such variations cover the merchandise to be distributed, the quantity thereof and the price to be paid therefor. Said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is to 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 amount which a customer pays for a particular push is also determined wholly by lot or chance.

PAR. 3. Respondent, in selling his 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 his

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 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.

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 his 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 the Federal Trade Commission Act, the Federal Trade Commission on July 22, 1937, issued and thereafter served its complaint in this proceeding upon respondent Joseph W. Graff, individually, and trading as The Sylvan Co., charging him with the use of unfair methods of competition 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 intro-

duced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by John A. Nash, attorney for the respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, brief in support of the complaint (respondent having filed no brief nor requested oral argument), and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Joseph W. Graff, is an individual trading under the name The Sylvan Co., with its principal office and place of business located at 4224 Lincoln Avenue, Chicago, Ill. Respondent is now, and since November 1935, has been engaged in offering for sale and selling clocks, pen and pencil sets, tableware sets, radios, electric razors, traveling bags, waffle irons, coffee-making sets, comb and brush sets, and other articles of merchandise, to the purchasers thereof located in various States of the United States, at their respective points of location. During the time above mentioned, respondent has caused said merchandise, when sold, to be transported from his aforesaid place of business in the State of Illinois, to purchasers thereof located at various points in the various States of the United States other than the State from which said shipments were made. Respondent has been at all times mentioned herein in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In so carrying on said business as described in paragraph 1 hereof, respondent, in soliciting the sale of, and in selling and distributing his merchandise, has furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise was distributed to members of the consuming public wholly by lot or chance.

The methods used by respondent in the sale and distribution of his merchandise were as follows: Respondent distributed to mem-

bers of the purchasing public, and to dealers, devices commonly known as push cards, together with certain literature, order blanks, and circular letters. On the face of said push cards are printed legends showing the manner in which said card is to be operated. The said order blanks and circular letters contained additional instructions concerning the operation of said card and the sale and distribution of said merchandise by the use thereof.

Each of the push cards had printed thereon a number of feminine names with blank spaces opposite an alphabetical list of the names for writing in the names of the customers who purchased chances on the push cards. Each push card had a corresponding number of partially perforated disks marked "Push." Either below or above each disk was printed one of the feminine names printed elsewhere on the card. Concealed within each disk was a number which was disclosed when the disk was pushed or separated from the card. One of said cards had one master seal and others of said cards had two master seals, but the master seal in each connection had concealed therein one of said feminine names. The cards contained legends or statements explaining that persons pushing certain designated numbers received articles of merchandise.

When all the disks had been selected or pushed by customers and the master seal or seals removed from the card, the person who had selected the name corresponding to the name concealed within the master seal, or 1 of the designated numbers, received specified articles of merchandise without further charge. The only difference between the card containing the 1 master seal and the card containing 2 master seals is that 1 more prize or article of merchandise was distributed by the card containing 2 master seals than was distributed by the card containing 1 master seal. Customers paid in cents the amount of money indicated by the number revealed when the disk was removed or pushed by them from the said card. On 1 of said cards purchasers securing numbers over 29 paid only 29 cents. On 2 of said cards, purchasers pushing numbers over 35 paid only 35 cents. Customers selecting names which did not correspond with the name revealed by the removal of the master seal, or customers pushing numbers which did not correspond to the numbers designated on said cards received nothing for their money other than the privilege of pushing or removing a disk from said card. In this manner the respondent sold and distributed substantial quantities of his said merchandise to members of the general public.

The Commission finds that respondent's merchandise was sold and distributed to the purchasing public wholly by lot or chance and that the amounts paid for chances on said cards were determined wholly by lot or chance.

PAR. 3. The Commission finds that the persons to whom respondent furnished his push cards used the same in purchasing, selling, and distributing respondent's merchandise 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 his merchandise in accordance with the sales plan hereinabove described. The Commission further finds that the sale of respondent's merchandise to the purchasing public as hereinabove found involved a game of chance or the sale of a chance to procure respondent's merchandise at prices much less than the normal retail prices thereof, and that the use of said method in the sale and distribution of merchandise was and is a practice of the sort which is contrary to an established public policy of the United States.

PAR. 4. There are among the competitors of respondent persons, firms, partnerships, and corporations engaged in the business of selling and distributing like or similar articles of merchandise, in commerce between and among the various States of the United States, who do not sell their merchandise by use of lotteries or games of chance. Many purchasers of respondent's merchandise were attracted by the element of chance involved in respondent's sales method, and were thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise of respondent's competitors who did not and do not use the same or equivalent methods. Because of said preference, the public has purchased a substantial volume of respondent's merchandise with the result that trade has been unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove found 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 the Federal Trade Commission Act.

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 Wm. C. Reeves, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto brief filed by counsel for Commission (counsel for respondent not having filed brief or 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 the Federal Trade Commission Act:

It is ordered, That the respondent, Joseph W. Graff, individually and trading as The Sylvan Co., or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of clocks, pen and pencil sets, tableware sets, radios, electric razors, traveling bags, waffle irons, coffee-making sets, comb and brush sets, or any other articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Supplying to, or placing in the hands of others push or pull cards, punchboards or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents or to distributors or to members of the public push or pull cards, punchboards or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling, or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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

IN THE MATTER OF

**NORTH WESTERN PRINTING HOUSE, INC., IN ITS OWN
NAME AND RIGHT AND TRADING AS FEDERAL TRADE
BUILDERS; AND LOUIS ROVNER AND MORRIS LEAVITT
AS OFFICERS THEREOF; AND EDWIN J. PEARSON AS
EMPLOYEE THEREOF**

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

Docket 3429. Complaint, May 19, 1938—Decision, Feb. 21, 1939

Where a corporation and three individuals, officers thereof and in direction and control of its sales policies and business activities, acting together and in cooperation, and engaged in the manufacture, sale, and distribution of sales-promotion cards which were so designed and arranged as to involve use of a lottery scheme or gift enterprise when used by dealers in promoting and increasing sales of their merchandise to consuming public, and for the use of which, through their literature and representatives, they suggested various methods involving, in all cases, lottery scheme, game of chance, or gift enterprise, and which consisted of several groups of such sales-promotion cards involving, in all cases, lottery scheme or gift enterprise and varying only in detail, and which included, as illustrative—

(1) Group of cards arranged for punching out \$5 in trade, enclosed and concealed within so-called "Lucky Seal" of which cards were legends varying in amount from 20 cents to \$5, and entitling customer of merchant securing same to such varying amount as thus determined by chance, with other cards similarly arranged in principle, but providing for purchases up to \$10 worth of merchandise and the winning of amounts up to \$10 by legends under seal, and with still other cards prepared primarily for gasoline filling and service stations and providing for recording purchase of 100 gallons of gasoline and 10 quarts of oil by the numbers arranged around the border, and for the winning of from 1 to 25 quarts of oil by legends under seal; and—

(2) Group of "Bank Day" cards provided with number on detachable tag thereof, and place for insertion of holder's name and address, and providing for weekly or, in some cases, as arranged, for daily or semiweekly, biweekly, or monthly drawings and awards to the particular customer of the merchant involved securing by chance, along with purchase therefrom, card containing lucky number as thus determined wholly by lot or chance—
Sold, along with various display posters and circulars, and with advertisements for use by dealer customers in distributing and using such cards, such various assortments of sales-promotion cards as above described and suggested, to dealer purchasers for distribution to said dealer's customers and prospective customers, and the honoring of the awards as shown thereon as above set forth and indicated; contrary to the established public policy of the United States Government, and in competition with various manufacturers and distributors of sales-promotion cards, premium cards, price concession cards, coupons, and trading stamps which, when used by

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dealers, do not involve a lottery scheme, game of chance, or gift enterprise, and in competition with many who make and sell various cards or devices for promoting or increasing sales of dealers and are unwilling to offer or sell cards or devices so designed and arranged, as above or otherwise, as to involve game of chance, lottery scheme, or gift enterprise, and refrain therefrom;

With result that consuming public was induced to deal with or purchase merchandise from dealers using their cards, in preference to dealers using devices of their competitors, because of lottery scheme, game of chance, or gift enterprise connected with former, and were thereby induced to purchase their said cards in preference to devices of competitors, and substantial trade was thus unfairly diverted to them from their said competitors, and with tendency unduly to hinder competition or create monopoly through tendency and capacity to exclude from sales-promotion card trade competitors who do not adopt and use same or equivalent or similar methods involving same or equivalent or similar elements of chance, lottery scheme, or gift enterprise:

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. D. C. Daniel for the Commission.

Mr. William Shapiro, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by the authority vested in it by said act, the Federal Trade Commission having reason to believe that North Western Printing House, Inc., a corporation in its own name and right and trading as Federal Trade Builders, and Louis Rovner and Morris Leavitt, individually and as officers of corporate respondent, and Edwin J. Pearson, individually and as an employee of corporate respondent, hereinafter referred to as respondents, have violated the provisions of the 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 North Western Printing House, Inc., is a corporation organized and operating under the laws of the State of Illinois and is doing business in its own name and also under the trade name, Federal Trade Builders. Respondent Louis Rovner is the president of corporate respondent and Morris Leavitt is the vice president and secretary of said corporation. Edwin J. Pearson is the general manager of the corporate respondent. The individual respondents direct and control the sales policies and business activities of the corporate respondent and all of the respondents act together and in cooperation in doing the acts and things hereinafter alleged.

Respondents have their principal office and place of business located at 631 West Jackson Boulevard, Chicago, Ill. Respondents are now, and for some time last past have been, engaged in the manufacture of sales-promotion cards and in the sale and distribution thereof to dealers located at points in the various States of the United States and in the District of Columbia. Respondents cause, and have caused, their said products, when sold, to be transported from their principal place of business in the city of Chicago, State of Illinois, to purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia, at their respective places of business. There is now, and has been for some time last past, a course of trade by said respondents in such sales-promotion cards in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are in competition with other corporations and with individuals and partnerships engaged in the manufacture of sales-promotion cards, trade cards, discount cards, premium cards, coupons and trading stamps and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise, when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondents manufacture and distribute several groups of sales promotion cards but they all involve a lottery scheme or gift enterprise and vary only in detail. Two of such groups are herein described for the purpose of showing arrangements, design and principle involved.

(a) One group has on the front of such cards the following:

| | | | | | | | | | | | | | | | | | | | |
|----|-----------------|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|----|
| 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 |
| 15 | | | | | | | | | | | | | | | | | | | 5 |
| 15 | WORTH UP | | | | | | | | | | | | | | | | | | 5 |
| 15 | | | | | | | | | | | | | | | | | | | 10 |
| 15 | Every card wins | | | | | | | | | | | | | | | | | | 10 |
| 15 | | | | | | | | | | | | | | | | | | | 10 |
| 15 | No Blanks | | | | | | | | | | | | | | | | | | 10 |
| 15 | | | | | | | | | | | | | | | | | | | 10 |
| 15 | | | | | | | | | | | | | | | | | | | 10 |

THIS CARD A SURE WINNER

(Read Rules on Other Side)

15 15 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10

Under the "SEAL" is the following:

Good for 20¢ in Trade.

Complaint

The seal referred to on said card has a dotted line near the margin thereof with the words "Cut Here" to indicate where it may be opened, but until the said seal is opened the legend thereunder is effectively concealed from the holder of said card. The said legends under the seal vary in amount from 20 cents to \$5. The amount which the holder of said card will receive in trade is thus determined wholly by lot or chance.

On the reverse side or back of the said sales-promotion card is the following language:

When this card is fully punched, present same to us intact. We will then open the LUCKY SEAL. You will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THE LUCKY SEAL, CARD BECOMES VOID.

(Merchant's advertisement)

Other cards in this group manufactured and distributed by the respondent provide for recording the sale of \$10.00 worth of merchandise by the numbers arranged around the border of the card and provide for the winning of amounts up to \$10.00 by the legends under the seal. Other cards in the same group are prepared primarily for automobile gasoline filling and service stations and provide for recording the purchase of 100 gallons of gasoline and 10 quarts of oil by the numbers arranged around the border of the card and provide for the winning of from one to 25 quarts of oil by the legends under the seal.

(b) Sales promotion cards in another group have printed on the front thereof the following:

| | | |
|----------------------------------------------------------------------------------------------------------------|-----------|-----------------------------------------------------------------------------------------|
| Your Number Today is No. 2003 Please Sign and Deposit in Box Provided. NAME _____ ADDRESS _____ | Tear Here | Unclaimed Awards \$ BANK Weekly DAY \$ 2003 Added To Next Award For our customers |
| We Give a Weekly Award of \$5.00 Cash | | |
| (Merchant's advertisement) | | |
| Awards Drawn Weekly by a Customer at 6 P. M. Thursday | | |
| Should your number be drawn, you must present this card in person not later than 12 noon on Friday. | | |

The above-described "Bank Day" card is distributed by respondents through dealer customers to persons making purchases from such dealer customers and the stub, as shown above, is deposited in a con-

Complaint

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tainer provided for that purpose and drawings are held and awards made weekly. The person to whom such award is made is determined by selecting at random one of the stubs from the container above referred to. The person to whom the weekly award is made is thus determined wholly by lot or chance.

Other "Bank Day" trade cards manufactured and distributed by respondents provide for daily, semiweekly, biweekly, and monthly awards and have awards in varying amounts.

Respondents furnish their dealer customers with various display posters and circulars and with advertisements to be used and which are used by said dealer customers in distributing and using said cards.

PAR. 3. The dealers to whom respondents sell assortments of said sales-promotion cards, distribute the same to their customers and prospective customers and honor the awards as shown under the seal or as described on the bank-day cards. The respondents in their literature and by their representatives suggest various methods for the use of said cards by their dealer customers, all of which methods involve a lottery, game of chance, or gift enterprise.

PAR. 4. There are in competition with respondents various manufacturers and distributors of sales-promotion cards, premium cards, price-concession cards, coupons, and trading stamps, which, when used by dealers, do not involve a lottery scheme, game of chance, or gift enterprise. Many persons, firms, and corporations who make and sell various cards or devices for promoting or increasing sales of dealers are unwilling to offer for sale or sell cards or devices so designed and arranged as above alleged or otherwise designed and arranged as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

PAR. 5. The consuming public is induced to deal with or purchase merchandise from dealers using respondents' cards in preference to dealers using the devices of respondents' competitors because of the lottery scheme, game of chance, or gift enterprise connected with respondents' said cards. By reason thereof dealers are induced to purchase respondents' said cards in preference to devices of respondents' competitors and trade is thus unfairly diverted to respondents from their said competitors.

PAR. 6. The use by respondents of said methods in designing and arranging their said cards and distributing the same for redistribution to the public is a practice of the sort which is contrary to the established public policy of the Government of the United States and is in violation of criminal laws. The use by respondents of said method has a tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has a tendency and

Findings

capacity to exclude from the sale-promotion card trade competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or equivalent or similar methods involving the same or equivalent or similar elements of chance, lottery scheme, or gift enterprise.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 19, 1938, issued, and on May 20, 1938, served its complaint in this proceeding upon respondents charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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 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 North Western Printing House, Inc., is a corporation organized and operating under the laws of the State of Illinois and is doing business in its own name and also under the trade name, Federal Trade Builders. Respondent Louis Rovner is the president of corporate respondent and Morris Leavitt is the vice president and secretary of said corporation. Edwin J. Pearson is the general manager of the corporate respondent. The individual respondents direct and control the sales policies and business activities of the corporate respondent and all of the respondents act together and in cooperation in doing the acts and things hereinafter alleged. Respondents have their principal office and place of business

located at 631 West Jackson Boulevard, Chicago, Ill. Respondents are now, and for some time last past have been, engaged in the manufacture of sales-promotion cards and in the sale and distribution thereof to dealers located at points in the various States of the United States and in the District of Columbia. Respondents cause, and have caused, their said products, when sold, to be transported from their principal place of business in the city of Chicago, State of Illinois, to purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia, at their respective places of business. There is now, and has been for some time last past, a course of trade by said respondents in such sales-promotion cards in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are in competition with other corporations and with individuals and partnerships engaged in the manufacture of sales-promotion cards, trade cards, discount cards, premium cards, coupons, and trading stamps and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise, when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondents manufacture and distribute several groups of sales-promotion cards but they all involve a lottery scheme or gift enterprise and vary only in detail. Two of such groups are herein described for the purpose of showing arrangements, design and principle involved.

(a) One group has on the front of such cards the following:

| | | | | | | | | | | | | | | | | | | | |
|----|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|----|
| 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 |
| 15 | | | | | | | | | | | | | | | | | | | 5 |
| 15 | | | | | | | | | | | | | | | | | | | 5 |
| 15 | | | | | | | | | | | | | | | | | | | 10 |
| 15 | | | | | | | | | | | | | | | | | | | 10 |
| 15 | | | | | | | | | | | | | | | | | | | 10 |
| 15 | | | | | | | | | | | | | | | | | | | 10 |
| 15 | | | | | | | | | | | | | | | | | | | 10 |

THIS CARD A SURE WINNER

(Read Rules on Other Side)

15 15 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10

Under the "SEAL" is the following;

"Good for 20¢ in Trade."

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The seal referred to on said card has a dotted line near the margin thereof with the words "Cut Here" to indicate where it may be opened, but until the said seal is opened the legend thereunder is effectively concealed from the holder of said card. The said legends under the seal vary in amount from 20 cents to \$5. The amount which the holder of said card will receive in trade is thus determined wholly by lot or chance.

On the reverse side or back of the said sales-promotion card is the following language:

When this card is fully punched, present same to us intact. We will then open the LUCKY SEAL. You will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THE LUCKY SEAL, CARD BECOMES VOID.

(Merchant's advertisement)

Other cards in this group manufactured and distributed by the respondent provide for recording the sale of \$10 worth of merchandise by the numbers arranged around the border of the card and provide for the winning of amounts up to \$10 by the legends under the seal. Other cards in the same group are prepared primarily for automobile gasoline filling and service stations and provide for recording the purchase of 100 gallons of gasoline and 10 quarts of oil by the numbers arranged around the border of the card and provide for the winning of from 1 to 25 quarts of oil by the legends under the seal.

(b) Sales-promotion cards in another group have printed on the front thereof the following:

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------------------------------------------------------------------------------------------------|-------------------------|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|---------|------|--------|-----|---------|-------------------|--|--|--|--|--|---------------------------------------------------------------------|--|--|--|--|--|----------------------------------------------------------|--|--|--|--|--|-----------------------------------------------------------------------------------------------------|--|--|--|--|--|
| <p>Your Number Today is No. 2003 Please sign and Deposit in Box Provided.</p> | <p>NAME ADDRESS</p> | <p>Tear Here</p> | <table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">Unclaimed Awards Added To Next Award</td> <td style="width: 10%; text-align: center;">\$</td> <td style="width: 30%; text-align: center;">BANK</td> <td style="width: 10%; text-align: center;">Weekly</td> <td style="width: 10%; text-align: center;">DAY</td> <td style="width: 10%; text-align: center;">\$ 2003</td> </tr> <tr> <td colspan="6" style="text-align: center;">For our customers</td> </tr> <tr> <td colspan="6" style="text-align: center;">We Give a Weekly Award of \$5.00 Cash (Merchant's advertisement)</td> </tr> <tr> <td colspan="6" style="text-align: center;">Awards Drawn Weekly by a Customer at 6 P. M. Thursday</td> </tr> <tr> <td colspan="6" style="text-align: center;">Should your number be drawn, you must present this card in person not later than 12 noon on Friday.</td> </tr> </table> | Unclaimed Awards Added To Next Award | \$ | BANK | Weekly | DAY | \$ 2003 | For our customers | | | | | | We Give a Weekly Award of \$5.00 Cash (Merchant's advertisement) | | | | | | Awards Drawn Weekly by a Customer at 6 P. M. Thursday | | | | | | Should your number be drawn, you must present this card in person not later than 12 noon on Friday. | | | | | |
| Unclaimed Awards Added To Next Award | \$ | BANK | Weekly | DAY | \$ 2003 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| For our customers | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| We Give a Weekly Award of \$5.00 Cash (Merchant's advertisement) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Awards Drawn Weekly by a Customer at 6 P. M. Thursday | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Should your number be drawn, you must present this card in person not later than 12 noon on Friday. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

The above-described "Bank Day" card is distributed by respondents through dealer customers to persons making purchases from such dealer customers and the stub, as shown above, is deposited in a container provided for that purpose and drawings are held and awards

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made weekly. The person to whom such award is made is determined by selecting at random one of the stubs from the container above referred to. The person to whom the weekly award is made is thus determined wholly by lot or chance.

Other "Bank Day" trade cards manufactured and distributed by respondents provide for daily, semiweekly, biweekly, and monthly awards and have awards in varying amounts.

Respondents furnish their dealer customers with various display posters and circulars and with advertisements to be used and which are used by said dealer customers in distributing and using said cards.

PAR. 3. The dealers to whom respondents sell assortments of said sales-promotion cards, distribute the same to their customers and prospective customers and honor the awards as shown under the seal or as described on the bank-day cards. The respondents in their literature and by their representatives suggest various methods for the use of said cards by their dealer customers, all of which methods involve a lottery, game of chance, or gift enterprise.

PAR. 4. There are in competition with respondents various manufacturers and distributors of sales-promotion cards, premium cards, price-concession cards, coupons, and trading stamps, which, when used by dealers, do not involve a lottery scheme, game of chance, or gift enterprise. Many persons, firms, and corporations who make and sell various cards or devices for promoting or increasing sales of dealers are unwilling to offer for sale or sell cards or devices so designed and arranged as above found or otherwise designed and arranged as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

PAR. 5. The consuming public is induced to deal with or purchase merchandise from dealers using respondents' cards in preference to dealers using the devices of respondents' competitors because of the lottery scheme, game of chance, or gift enterprise connected with respondents' said cards. By reason thereof dealers are induced to purchase respondents' said cards in preference to devices of respondents' competitors and substantial trade is thus unfairly diverted to respondents from their said competitors.

PAR. 6. The use by respondents of said methods in designing and arranging their said cards and distributing the same for redistribution to the public is a practice of the sort which is contrary to the established public policy of the Government of the United States and is in violation of criminal laws. The use by respondents of said

method has a tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude from the sale-promotion card 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, lottery scheme, or gift enterprise.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, 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 the Federal Trade Commission Act.

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 or respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent North Western Printing House, Inc., a corporation, its officers, and Louis Rovner, Morris Leavitt, and Edwin J. Pearson, individually, and respondents' respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of sales-promotion cards, or any other sales-promotion schemes or any other merchandise, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing sales-promotion cards or any other device so designed that their use by the retail dealers constitute, or may constitute, the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of retail dealers or others, sales-promotion cards or sales-booster plans, or schemes or any other devices which are used or which may be used without alteration or rearrangement thereof to conduct a lottery, game of chance, or gift enterprise when distributed to the consuming public.

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3. Furnishing or supplying to dealers display posters or circulars or other advertising literature bearing legends or statements informing the public as to the manner in which said sales-promotion cards or other lottery devices are to be or may be distributed and used.

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

Syllabus

IN THE MATTER OF

PUBLIX SALES CORPORATION

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

Docket 2561. Complaint, Sept. 27, 1935—Decision, Feb. 23, 1939

Where a corporation engaged as wholesale mail order house in sale and distribution of merchandise consisting of (1) worn, second-hand, used, and damaged clothing and shoes which it purchased at Government salvage sales and from clothing peddlers, from factories, and from large mail order houses which had had the particular merchandise returned to them for adjustment after use, and (2) unused merchandise consisting of factory rejects and stocks of bankrupt dealers bought by it, and in selling, as thus engaged, such merchandise to members of the purchasing public in various States and in the District of Columbia, in substantial competition with others similarly engaged in sale and distribution of worn, second-hand, used, and damaged clothing and shoes, and including many who do not in any manner misrepresent quality, condition and state of repair of their merchandise and do not make any other false statements in connection with sale and distribution thereof; in advertising with respect to its said goods and business status and practices in newspapers and other publications circulating among the various States and in said District, and in bulletins and catalogs distributed from its place of business to prospective purchasers in various States and in District aforesaid—

- (a) Represented that the merchandise thus offered had been purchased by it at auction sales, and represented that it was the largest wholesale distributor of rummage sale merchandise, and that its reputation as the largest cash buyer gave it a choice of the world's best bargains, and that through its large, competent staff of trained buyers it could supply merchandise whose value could not be beaten or equalled, facts being it bought very little of its merchandise at auction sales, but bought largest portion thereof from auctioneer purchasers at such sales, and was neither largest distributor of rummage sale merchandise nor largest cash buyer thereof, and did not have large, competent staff of trained buyers;
- (b) Represented that its merchandise had been factory dry-cleaned and re-blocked, repaired and pressed and was of high grade materials, attractive styles and new patterns, and represented excellent and tremendous values, and that when received by the purchaser it would be of good quality, recent style and cut, serviceable, etc., and saleable for immediate wear, and represented certain merchandise as all wool, and held out certain amounts as representing those for which various items of merchandise originally sold, facts being merchandise variously referred to and represented as aforesaid was not dry-cleaned and reblocked by factory which made same, and was not, as case might be, cleaned, repaired or pressed, or of high grade materials, or excellent values, and new patterns, but, in case of many items, was dirty, ripped, torn, and worn out, of inferior quality and materials, and in such condition as not to be usable for wear, merchandise represented as of latest style was of a style from 10 to 15 years old,

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goods represented as all wool were made of cotton, and amounts held out, as aforesaid, as representing those for which certain items originally sold were in fact greatly in excess of the true amounts for which items did in fact actually sell; and

- (c) Represented that it allotted exclusive territory to purchasers or customers, through such statements as "Do not hesitate, reserve your territory immediately with your first order—Act now before some other wide-awake hustler gets exclusive rights in your district," and that purchasers or customers avoided competition in resale of such merchandise, and it worked with its customers and helped them in every way, and that persons purchasing such merchandise from it for resale would make big profits or tremendous profits, or 100 percent profit on such resale, facts being it did not sell merchandise to any dealer or dealers exclusively in any territory or locality, nor grant exclusive territory to any dealer or dealers, its purchasers did not avoid competition in resale of its merchandise by reason of purchase from it, nor did it work with its customers and help them personally in every way, but handled orders received by it in a routine manner, and those purchasing from it did not, as represented, make 100 percent profits in resale of its goods, in which, under normal conditions and circumstances, it was impossible to make such profits in ordinary course of business in such resale;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that its merchandise and business status and practices were as represented, and with effect of causing substantial portion of purchasing public, because of such erroneous and mistaken belief, to buy substantial quantities thereof, and of thereby diverting unfairly trade to it from its competitors in commerce who truthfully advertise the quality, condition, and state of repair of their merchandise and their business status and practices:

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

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

Mr. John N. Wheelock for the Commission.

Karlin & Cohen, 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 Public Sales 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:

Complaint

PARAGRAPH 1. Respondent Publix Sales Corporation is a corporation, incorporated on or about June 14, 1930, under the laws of the State of Illinois, with an authorized capital of \$20,000, and having an usual place of business in Chicago, Ill., at all times since on or about the date of its incorporation.

PAR. 2. During all the times above mentioned, B. M. Belon (former name, Belonsky) is and has been the president of the respondent corporation and B. N. Vollen its secretary and treasurer.

PAR. 3. During all the times since on or about the date of its incorporation, the respondent is and has been engaged, as a wholesale dealer, substantially entirely as a mail order house in the business of the sale of merchandise consisting of worn, second-hand, used, and damaged clothing and shoes, that respondent purchased from peddlers and junk dealers, and new clothing such as stocks of bankrupt dealers, job lots, and factory rejects.

The respondent during the times above mentioned has sold and still sells such merchandise to retail dealers, purchasers thereof, located throughout the various States of the United States for resale by them to members of the public for use or wear. The respondent has caused the merchandise when sold by it to be transported from Illinois, or from the State of origin of the shipment, to the purchasers located in other States.

PAR. 4. Prior to and during all the times above mentioned, other individuals, firms, and corporations, hereinafter referred to as sellers, located in the various States of the United States, have been engaged in the sale of clothing and shoes at wholesale to retail dealers, purchasers thereof, located throughout the various States of the United States, other than the State of the seller, for resale by them to members of the public for use or wear. The sellers, respectively, have caused the said clothing and shoes, when so sold by them, to be transported from the State of the seller, or the state of origin of the shipment, to the purchasers located in States other than the State of origin of the shipment.

PAR. 5. During all the times above mentioned and referred to, the respondent is and has been in substantial competition in interstate commerce with the other individuals, firms, and corporations, referred to as sellers in paragraph four hereof, in the sale of the merchandise referred to in paragraph 3 hereof.

PAR. 6. The respondent during all the times above mentioned has caused advertisements of its said merchandise to be published in newspapers and magazines which are and have been circulated throughout the trade and public in the various States and in cata-

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logues, form letters, and descriptive circulars which the respondent has caused to be distributed among the retail dealers and prospective retail dealers throughout the various States of the United States.

In its advertisements the respondent has caused statements and representations to appear regarding the nature, character, and quality and prices of the articles of merchandise sold by it. Among many other such statements, the respondent has stated and represented in its advertisements to the effect that all of its merchandise was carefully selected and of good class, that it was slightly used merchandise; or, that it was slightly used, factory cleaned, repaired, and pressed and nearly new; that its several items of merchandise were made of high-grade materials, or the finest materials, and represented the last word in materials, workmanship, and value.

PAR. 7. Among many other similar statements and representations made by the respondent in advertisements, during the times above mentioned, were statements and representations made for the purpose of inducing individuals and firms to engage in the retail sale of its merchandise, including those mentioned and referred to above in paragraph 6, to the effect as follows:

Start bargain store business. Tremendous profits. New and used clothing. Bankrupt and auction sale merchandise. Experience unnecessary. Everything supplied by Publix, 568 Roosevelt Street, Chicago.

and statements and representations that the respondent was the largest wholesale distributor of rummage sale merchandise; that respondent's reputation as the largest cash buyers gives respondent the choice of the world's best bargains and through respondent's competent staff of trained buyers it could supply merchandise whose values could not be beaten or even equalled.

In its advertisements respondent stated:

Do not hesitate, reserve your territory immediately with your first order
* * * Act now before some other wide-awake hustler gets exclusive rights in your district.

By selling bankrupt stock, new and used goods, auction sale mdse. and close-outs you avoid competition and make big profits.

and,

A wonderful assortment of high saleable merchandise with which you take no chance.

All merchandise is carefully selected and of good class.

and

When a merchant needs cash and is obliged to sacrifice his stock or when manufacturer or wholesale house is going out of business, our buyers are on the spot with the cash and obtain wonderful values at practically our own price.

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PAR. 8. The statements and representations mentioned and referred to above in paragraphs 6 and 7 hereof and many other statements of like tenor and effect made by the respondent in its advertisements were false in various particulars, among others, in that very little of the merchandise referred to, offered for sale, and sold by the respondent was new clothing or shoes or merchandise purchased at auction sales of bankrupt merchants; and in that respondent was not the largest nor even a large wholesale distributor of rummage sale merchandise and was not the largest nor even a large cash buyer of merchandise; in that the respondent's merchandise was not merchandise carefully selected and of good class; in that very little of respondent's merchandise was new clothing, but on the contrary its merchandise was mostly worn out, used, and sometimes filthy, when offered for sale and sold by respondent as set forth in paragraph 3 hereof.

And further, the merchandise referred to by the respondent as factory cleaned, repaired, and pressed implied to purchasers and prospective purchasers that the merchandise so described consisted of factory rejects that had been cleaned, repaired, and pressed in the factory that manufactured it when such was not the fact, and when on the contrary in many instances the clothing referred to was badly out of repair, was not cleaned and was in an unsalable and unusable condition. The representations by respondent to purchasers and prospective purchasers of its merchandise to reserve their territory and to get exclusive rights in their respective districts were false and misleading in that the respondent did not sell to any dealer or dealers exclusively in any territory or locality.

PAR. 9. The statements and representations mentioned and referred to in paragraphs 6, 7, and 8 hereof made by the respondent in its advertisements to dealers and to prospective dealers were false statements of material facts and known to the respondent to be false when made and they had the capacity and tendency to deceive and mislead and were intended by the respondent to deceive and mislead members of the public, dealers, and prospective dealers in such merchandise, most of whom were of limited means and resided in places far distant from respondent's place of business, and such dealers and prospective dealers were deceived and misled thereby into purchasing respondent's merchandise instead of merchandise sold by respondent's competitors. In consequence thereof when the dealers and prospective dealers bought the respondent's merchandise they paid exorbitant prices for it and were not able thereafter to resell it or offer it for sale because of its worn out and otherwise unsalable and often filthy condition. As a further result, trade in clothing

and shoes was diverted from competitors to the respondent by means of its practices and misrepresentations mentioned and referred to above.

PAR. 10. The above acts and things done and caused to be done by the respondent were and are each and all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 27th day of September 1935, issued and served its complaint in this proceeding upon respondent, Publix Sales Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John N. Wheelock, attorney for the Commission, and in opposition to the allegations of the complaint by Joseph J. Karlin, attorney for the respondent, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, and answer thereto, testimony, and other evidence, briefs in support of the complaint and opposition thereto, oral arguments not having been requested; 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, Publix Sales Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and having its office and principal place of business in the city of Chicago, State of Illinois. Respondent was incorporated in the year 1930.

PAR. 2. The respondent is now and has been from the date of its incorporation engaged in business as a wholesale mail order house

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in the sale and distribution of merchandise consisting of worn, second-hand, used, and damaged clothing and shoes. Respondent purchases such merchandise at Government salvage sales and from clothing peddlers. Respondent also purchases such merchandise from factories and large mail order houses, which merchandise has been returned to such factories and mail order houses for adjustment after having been used. Respondent purchases unused merchandise such as factory rejects and stocks of bankrupt dealers. Respondent sells such merchandise to members of the purchasing public situated in various States of the United States and in the District of Columbia and causes the said merchandise, when sold by it, to be transported from its aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States, other than the State of Illinois, and in the District of Columbia. Respondent maintains, and has at all times mentioned herein maintained, a course of trade in commerce in said merchandise among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia, with other corporations and with partnerships, firms, and individuals selling and distributing worn, second-hand, used, and damaged clothing and shoes. Among such competitors in said commerce are many who do not, in any manner, misrepresent the quality, condition, and state of repair of their merchandise and who do not make any other false statements in connection with the sale and distribution of their merchandise.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its merchandise, the respondent has caused advertisements containing representations and claims with respect to said merchandise and the business status and practices of respondent to be disseminated in newspapers and other publications, having a circulation among and between the various States of the United States and in the District of Columbia, and in bulletins and catalogs distributed from respondent's aforesaid place of business to prospective purchasers of such merchandise, situated in various States of the United States and in the District of Columbia. The following statements and representations are typical of those made in the aforesaid advertisements:

These hats have been factory dry-cleaned and reblocked.

We are ready and willing to work with you, to help you personally in every way, to lead you step by step to success because upon your success depends ours.

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Start bargain store business—tremendous profits. New and used clothing. Bankrupt and auction sale merchandise. Experience unnecessary. Everything supplied by Publix—568 Roosevelt Road, Chicago.

Do not hesitate, reserve your territory immediately with your first order—Act now before some other wide-awake hustler gets exclusive rights in your district.

By selling bankrupt stock, new and used goods, auction sale merchandise and close-outs, you avoid competition and make big profits.

When a merchant needs cash and is obliged to sacrifice his stock, or when manufacturer or wholesale house is going out of business, our buyers are on the spot with the cash and obtain wonderful values at practically our own price.

The respondent causes other statements to be disseminated as aforesaid, containing representations that respondent is the largest wholesale distributor of rummage sale merchandise, that respondent's reputation as the largest cash buyer gives respondent a choice of the world's best bargains and that through respondent's large competent staff of trained buyers it can supply merchandise whose value can not be beaten or equalled.

PAR. 5. In truth and fact respondent buys very little of the merchandise which it advertises as new merchandise at auction sales but buys the largest portion of such merchandise from auctioneer purchasers at auction sales. Respondent is not the largest distributor of rummage sales merchandise and is not the largest cash buyer of merchandise. The merchandise referred to by respondent in the aforesaid advertisement as being factory dry-cleaned and reblocked is not dry cleaned and reblocked by the factory which manufactures such merchandise. Respondent does not sell merchandise to any dealer or dealers exclusively in any territory or locality and the respondent does not grant the privilege to any dealer or dealers to reserve an exclusive territory in the sale of such merchandise. Respondent does not have a large competent staff of trained buyers.

Purchasers of respondent's merchandise do not avoid competition in the resale of such merchandise by reason of the fact that they purchase such merchandise from the respondent. Respondent does not work with its customers and help them personally in every way but the respondent handles the orders received by it in a routine manner.

PAR. 6. In the aforesaid catalogs and bulletins purporting to describe the merchandise which respondent distributes to prospective purchasers of such merchandise situated in various States of the United States and in the District of Columbia, respondent represents, among other things, that such merchandise: Is cleaned, repaired, and

pressed; is of high grade materials, attractive styles, and new patterns; and constitutes excellent and tremendous values. Respondent makes other statements similar thereto in such advertisements, which statements serve as representations that such merchandise, when received by the purchaser thereof from the respondent, will be of good quality, of recent style and cut, serviceable, and that such merchandise will be cleaned, repaired and pressed so as to be saleable for immediate wear. In truth and in fact, various items of such merchandise, which the respondent sells and distributes to the purchasers thereof, situated in various States of the United States and the District of Columbia, are not cleaned, repaired, or pressed. Various items of such merchandise, so sold and delivered, are not of high-grade materials and are not excellent values and of new patterns. In fact, many of such items of such merchandise are dirty, ripped, torn, and worn out, are of inferior quality and material and are in such condition that they are not usable for wear. Merchandise which the respondent represents as being all wool is, in fact, made of cotton. Merchandise which the respondent represents as being of the latest style is, in fact, of a style from 10 to 15 years old.

PAR. 7. Respondent represents in the aforesaid advertisements that various items of such merchandise originally sold for the amounts which are stated in such advertisements. In truth and in fact, the amounts stated in such advertisements are greatly in excess of the amounts for which such merchandise was originally sold. Respondent represents in such advertisements that purchasers of its merchandise can make 100 percent profit in the resale of such merchandise. In truth and in fact, it is impossible for such purchasers to make such profits in the resale of such merchandise in the ordinary course of business under normal conditions and circumstances.

PAR. 8. The use by respondent of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to such merchandise has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous mistake and belief that such false statements, representations, and advertisements are true and that respondent's merchandise and business status and practices is as represented and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's merchandise. As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertised the quality, condition and state of repair of their merchandise and their business status and practices.

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CONCLUSION

The aforesaid acts and practices of the respondent, as herein alleged, 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, oral arguments 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Publix Sales Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly:

1. That merchandise which was not purchased by respondent at auction sales was purchased by respondent at auction sales.
2. That respondent is the largest distributor of rummage sale merchandise, that respondent is the largest cash buyer of merchandise, or that respondent has a large staff of trained buyers of merchandise, when such is not the fact.
3. That merchandise is factory dry cleaned and reblocked, unless such merchandise is dry cleaned and reblocked by the factory which manufactured such merchandise.
4. That respondent sells merchandise exclusively to any purchaser or purchasers in any territory or locality, when such is not the fact.
5. That purchasers of respondent's merchandise avoid competition in the resale of such merchandise.
6. That respondent works with its customers and helps them in every way, when such is not the fact.
7. That merchandise which is not cleaned, repaired, or pressed, of high-grade materials or of good quality, of newest pattern or of latest style, is cleaned, repaired and pressed, of high-grade

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materials and of good quality and of newest pattern and of latest style.

8. That merchandise which is not composed wholly of wool is all wool, or is wool.

9. That merchandise which was not originally sold for a certain amount or amounts was sold for such amount or amounts.

10. That persons purchasing such merchandise from the respondent for resale will make 100 percent profit or any other profit in the resale of such merchandise, unless such purchasers consistently make such profits in the resale of such merchandise in the ordinary course of business under normal conditions and circumstances.

This order shall not be construed as approving the use of the unqualified term "wool" to designate, describe, or refer to any wool which is not virgin wool.

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
**JOHN J. KANE, TRADING AS LA PEP HEALTH
 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 2681. Complaint, Jan. 7, 1936—Decision, Feb. 23, 1939

Where an individual engaged in manufacture of a preparation composed of the juices of a variety of fruits, together with sassafras root, nettle leaves, dog grass, and stick licorice, and in sale and distribution thereof to purchasers in other States, in competition with others engaged in sale and distribution of like and similar products in commerce among the various States and in the District of Columbia; in advertising his said product through circulars, folders, pamphlets and radio broadcasts circulated generally throughout the United States, and in labels—

- (a) Represented that said preparation was a competent remedy in the treatment of skin eruptions, sluggish blood, constipation, fatigue, gall bladder trouble, heart trouble, rheumatism, or other similar ailments, facts being it was not such a remedy;
- (b) Represented that said preparation was not a medicine or a drug, and that it cleansed the body of toxic germs and was a body disinfectant, facts being it was a medicine or drug and would not accomplish results above set forth, and was not such a disinfectant; and
- (c) Represented that said preparation would rejuvenate a person or guide him to health, or keep him young and healthy, or cause him to eat and sleep, and that it would cause wrinkles to disappear and cleanse and clarify the skin, facts being such various representations were false;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and with result, as a direct consequence of such mistaken and erroneous belief induced by aforesaid advertising and representations, that a number of the purchasing public bought substantial quantity of said product and trade was unfairly diverted from others likewise engaged in sale and shipment of preparations of medicinal character, and also of a beverage character, who truthfully advertise their products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. James I. Rooney for the Commission.

Mr. Samuel E. Kratzok, 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

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Federal Trade Commission, having reason to believe that John J. Kane, an individual, trading as the La Pep Health Beverage Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, John J. Kane, is an individual doing business under the trade name of La Pep Health Beverage Company, having his principal office and place of business located in the city of Philadelphia, in the State of Pennsylvania. Respondent, for more than 1 year last past has been and still is engaged in the manufacture of a beverage known as "La Pep," made of a mixture of fruit juices, herbs, and lactic acid, and in offering said product for sale, and selling the same, in commerce between the State of Pennsylvania and the several States of the United States and in the District of Columbia. When said product is sold, respondent transports or causes the same to be transported from his place of business in the State of Pennsylvania to the purchasers thereof located in States of the United States other than the State of Pennsylvania and in the District of Columbia. There has been for more than 1 year last past and still is a constant current of trade and commerce in said product so manufactured by respondent, between and among the various States of the United States and in the District of Columbia. Respondent is now and for more than 1 year last past has been in substantial competition with other individuals, partnerships, firms, and corporations engaged in the manufacture of beverages and similar products and in the sale thereof between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, the respondent, in soliciting the sale of and selling "La Pep" and for the purpose of creating a demand upon the part of the consuming public for said product, now causes and for more than 1 year last past has caused advertisements to be issued, published and circulated to and among the general public of the United States in various periodicals and publications and in other forms of printed matter, and by radio broadcasting, and in other ways. In said ways and by said means respondent makes and has made to the general public many unfair, false, and misleading statements with reference to the alleged therapeutic value of said product and its effect upon the users thereof, a portion of which are as follows:

Nature's gift to mankind, because La Pep is indeed an invigorator * * * no need to suffer with skin eruptions, sluggish blood, constipation, fatigue, or other inexcusable ailments.

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La Pep guides you to radiant, buoyant health, * * * La Pep is not a medicine nor a drug, but a healthful refreshing drink—a combination of fresh fruit juices, herbs, and lactic acid which in itself is a “body disinfectant.” Don’t merely exist, but really live and keep one hundred per cent physically fit by drinking La Pep.

La Pep cleanses the body of * * * toxic germs, tones the system and promotes regularity.

A lady said it had not only rejuvenated her, but wrinkles on her face and neck had disappeared, that her skin was clean and clear, and that she eats and sleeps well.

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 La Pep is a competent remedy in the treatment of skin eruptions, sluggish blood, constipation, fatigue, or other similar ailments, or for gall bladder troubles, heart trouble, or rheumatism.

(b) That La Pep is not a medicine or a drug.

(c) That La Pep cleanses the body of toxic germs.

(d) That La Pep will:

1. Guide one to a radiant, buoyant health.
2. “Rejuvenate” a person.
3. Cause wrinkles on the face and neck to disappear.
4. Cleanse and clarify the skin.
5. Cause one to eat and sleep well.
6. Keep one young and healthy.

(e) That La Pep is a body disinfectant.

Whereas in truth and in fact “La Pep” is not a competent remedy in the treatment of skin eruptions, sluggish blood, constipation, fatigue, or other similar ailments, or for gall bladder troubles, heart trouble, or rheumatism; is a medicine or drug; does not cleanse the body of toxic germs; will not guide one to a radiant, buoyant health; will not rejuvenate a person; will not cause wrinkles on the face and neck to disappear; will not cleanse and clarify the skin; will not cause one to eat and sleep well or keep one young and healthy; and is not a body disinfectant.

PAR. 4. There are among the competitors of the respondent in interstate commerce and have been for more than one year last past, manufacturers of beverages and similar products who truthfully advertise and otherwise represent the ingredients and therapeutic value of their products. There are also among such competitors of the respondent, and have been for more than one year last past, manufacturers of beverages and similar products who do not adver-

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tise and otherwise represent that such products have ingredients or therapeutic value which they do not have.

PAR. 5. The above alleged acts and practices of respondent have the capacity to mislead and deceive purchasers and prospective purchasers into the beliefs described in paragraph 3 hereof and to purchase respondent's product in such beliefs. Thereby trade is diverted by respondent from respondent's competitors in interstate commerce and as a consequence thereof substantial injury is done by respondent to substantial competition in interstate commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, under date of January 7, 1936, issued and served its complaint in this proceeding upon the respondent, John J. Kane, trading as the La Pep Health Beverage Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After issuance of said complaint, the respondent, having entered his appearance by his attorney, Samuel E. Kratzok, Esq., 1907 North American Building, Philadelphia, Pa., under date of April 1, 1936, filed his answer to said complaint in which he denies all of the material allegations contained in said complaint. Thereafter hearings were had and evidence was thereupon introduced in support of the allegations of the complaint and on behalf of the respondent before John J. Keenan, a trial examiner of the Federal Trade Commission, theretofore duly appointed. The testimony and other evidence was duly recorded and filed in the office of the Commission. A brief was filed upon behalf of the Commission in support of the allegations of the complaint. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint and the answer and evidence adduced at said hearing, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, John J. Kane, is an individual trading and doing business under the trade name and style of the La Pep Health Beverage Co., with his office and principal place of business located at 2765 Kensington Avenue, Philadelphia, Pa. Respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, selling, and distributing a preparation known as La Pep. This preparation is composed of the juices of grapes, cherries, pineapples, apples, peaches, apricots, raspberries, huckleberries, wortleberries, and pomegranates, to which are added the following aromatics: sassafras root, nettle leaves, dog grass, and stick licorice, the latter are termed herbs by respondent. La Pep is sold and shipped by respondent to purchasers in States other than the State of Pennsylvania in which the respondent's place of business is located and from which said shipments are made. The respondent has been for more than a year last past and is presently engaged in the sale and shipment of his product in commerce between and among various States of the United States and the District of Columbia. In the course and conduct of his business, respondent has been, and is presently, in competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of like or similar product 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 his said business, respondent, in the sale of his preparation and for the purpose of inducing the public to purchase the said preparation, has, by means of various advertising circulars, folders, labels, pamphlets, and radio broadcasts, circulated generally throughout the United States, made statements and representations concerning the character and nature of said preparation and concerning the results obtained from its use. Among the said representations made by the respondent are the following:

Nature's gift to mankind, because La Pep is indeed an invigorator * * * no need to suffer with skin eruptions, sluggish blood, constipation, fatigue, or other inexcusable ailments.

La Pep guides you to radiant, buoyant health * * * La Pep is not a medicine nor a drug, but a healthful refreshing drink—a combination of fresh fruit juices, herbs, and lactic acid which in itself is a "body disinfectant." Don't merely exist, but really live and keep one hundred per cent physically fit by drinking La Pep.

La Pep cleanses the body of * * * toxic germs, tones the system, and promotes regularity.

A lady said it had not only rejuvenated her, but wrinkles on her face and neck had disappeared, that her skin was clean and clear, and that she eats and sleeps well.

PAR. 3. The said statements, together with similar statements and representations, serve as representation to members of the purchasing public as properly descriptive of respondent's product and of its effectiveness in use. The use of such statements mislead members of the purchasing public into the erroneous and mistaken belief that respondent's product is a competent remedy for skin eruptions, sluggish blood, constipation, fatigue, or other similar ailments; also gall bladder trouble, heart trouble, and rheumatism; that La Pep is not a medicine nor a drug; that La Pep cleanses the body of toxic germs; that La Pep will guide one to radiant, buoyant health; rejuvenate a person, cause wrinkles around the face and neck to disappear; cleanse and clarify the skin; cause one to eat and sleep well; keep one young and healthy; that La Pep is a body disinfectant; and that respondent's preparation will succeed where others fail. The aforesaid statements and representations are false, misleading, and untrue. The product "La Pep," is not a competent remedy in the treatment of skin eruptions, sluggish blood, constipation, fatigue or other similar ailments, or for gall bladder trouble, heart trouble, or rheumatism; it is a medicine or drug; does not cleanse the body of toxic germs; will not guide one to radiant buoyant health; will not rejuvenate a person; will not cause wrinkles on the face or neck to disappear; will not cleanse and clarify the skin; will not cause one to eat and sleep well or keep one young and healthy; and is not a body disinfectant.

PAR. 4. Each and all of the false, misleading, and untrue representations made by respondent in offering for sale and selling his product were, and are, calculated to and do, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous belief, induced by the advertising and representations of respondent, as aforesaid, a number of the purchasing public have purchased a substantial quantity of said product, with the result that trade has been unfairly diverted from other individuals, corporations, firms, and partnerships likewise engaged in the sale and shipment of preparations of a medicinal character and also of a beverage character who truthfully advertise their products.

CONCLUSION

The aforesaid acts, representations, and practices of the respondent John J. Kane, trading as La Pep Health Beverage Co., have been and are, 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 the Federal Trade Commission Act.

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 J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, John J. Kane, trading as La Pep Health Beverage Co., or under any other trade name, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of a medicinal preparation now known as "La Pep," or any other preparation possessing substantially similar ingredients or substantially similar therapeutic value, whether sold under that name or under any other name in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by inference:

1. That said preparation is a competent remedy in the treatment of skin eruptions, sluggish blood, constipation, fatigue, gall bladder trouble, heart trouble, rheumatism, or other similar ailments.

2. That said preparation is not a medicine nor a drug.

3. That said preparation cleanses the body of toxic germs, or is a body disinfectant.

4. That said preparation will rejuvenate a person, or guide a person to health, or keep a person young and healthy, or cause a person to eat and sleep well.

5. That said preparation will cause wrinkles to disappear or have any effect on wrinkles, or will cleanse or clarify the skin or have any effect thereon.

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

LOUIS COHEN, ALSO KNOWN AS LOUIS KAHN, TRADING
AS NATIONAL GUARD EQUIPMENT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3588. Complaint, Sept. 15, 1938—Decision, Feb. 23, 1939*

Where an individual engaged in sale and distribution of general merchandise, which included articles similar in make and design to those which the United States Government requires personnel of its National Guard and other military units to wear, and, as thus engaged, in selling its goods to purchasers in other States and in the District of Columbia, in substantial competition with those engaged in similar sale and distribution of merchandise, and including those engaged in sale and distribution of merchandise similar in character and design to that sold by said individual who do not, in their trade or corporate names or in their advertising or in any manner, import or imply any connection or association with any military organization of the United States Government when they are not in fact so connected or associated;

Operated under trade name "National Guard Equipment Company," and made use of said name in his catalogs, order blanks, and other printed advertising matter circulated among prospective customers, notwithstanding fact none of his stock of merchandise was purchased from the United States War Department and no substantial part thereof was made for said Department for use by the National Guard, but great majority of his merchandise consisted of usual stock found generally in general merchandise establishments and was purchased from usual marts of trade and not from said Department, and small amount of Army goods in said stock, if any, was bought from jobbers, wholesalers, and others who buy at Army departmental refuse and reject goods sales, and he was in no way connected with said Department and had no affiliation, association, agreement, or connection therewith or with National Guard division thereof;

With result that purchasers and prospective purchasers were led to believe that his stock was made for or purchased from the War Department, and of causing members of purchasing public to believe that he was connected therewith for the merchandising of equipment made for or purchased from the National Guard division thereof, and that he operated and maintained an establishment connected with said Department for the merchandising of official National Guard equipment, and with tendency and capacity to mislead and deceive substantial portion of such public into erroneous and mistaken belief that his merchandise was made for or purchased from the War Department and that he was connected or associated therewith or with the National Guard as aforesaid for the merchandising of equipment made for or purchased from it, and with result, as a consequence of such

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mistaken and erroneous belief induced by his said representations, that number of the purchasing public bought substantial quantity of his said merchandise:

Held, That such acts and practices were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Mr. David Justin, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Louis Cohen, also known as Louis Kahn, an individual trading as National Guard Equipment Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Louis Cohen, also known as Louis Kahn, is an individual trading as National Guard Equipment Co., and has his principal office and place of business at 155 East Thirty-Fourth Street, in the city of New York and State of New York. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of general merchandise into and through the various States of the United States and in the District of Columbia. Respondent causes said merchandise, when sold, to be transported from his place of business in New York, N. Y., to purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia. Respondent, at all times herein mentioned, has maintained a constant current of trade in said merchandise in said commerce.

PAR. 2. In the course and conduct of his business respondent is in substantial competition with other individuals and with firms, co-partnerships, and corporations engaged in the sale and distribution of similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. At all times herein named respondent has operated under the trade name National Guard Equipment Co. Said name is used in catalogs, order blanks, and other printed matter circulated among prospective purchasers. By the use of said trade name purchasers and prospective purchasers are led to believe that the stock of mer-

chandise offered for sale to the purchasing public by said respondent was made for or purchased from the United States Department of War. The use by the respondent of the words "National Guard Equipment Company" in the manner herein described has the tendency and capacity to, and does, cause members of the purchasing public to believe that the respondent is, in some manner, connected with the United States Department of War for the merchandising of equipment manufactured for or purchased from the National Guard Division of such Department.

In truth and in fact none of the stock of merchandise of said respondent is or was purchased from the United States Department of War, nor is any substantial part of said stock of merchandise made for the United States Department of War for use by the National Guard. The small amount of Army goods in said stock of merchandise, if any, is bought from jobbers, wholesalers, and others who buy at Army departmental refuse and reject goods sales. The great majority of respondent's stock of merchandise consists of the usual stock found generally in general mercantile establishments and is purchased in the usual marts of the trade and not from the United States Department of War. Respondent is in no way connected with the United States Department of War, and has no affiliation, association, agreement, or any connection with such Department or the National Guard Division of such Department.

PAR. 4. Among the articles of merchandise offered for sale and sold by respondent in interstate commerce, as aforesaid, are those articles similar in make and design to those required by the United States Government to be worn by the personnel of its National Guard and other military units.

PAR. 5. There are among the competitors of the respondent described in paragraph 2 hereof individuals, firms, copartnerships, and corporations engaged in the sale and distribution in said commerce of general merchandise similar in character and design to that merchandise vended by respondent, who do not in their trade or corporate names, in their advertising or in any manner, import or imply a connection or association with any military organization of the United States Government, when they are not in fact so connected or associated.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 15, 1938, issued, and on September 17, 1938, served, its complaint in this proceeding upon respondent, Louis Cohen, also known as Louis Kahn, an individual trading as National Guard Equipment Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission under date of December 8, 1938. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the 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, Louis Cohen, also known as Louis Kahn, is an individual trading and doing business under the name and style of National Guard Equipment Co., with its principal office and place of business at 155 East Thirty-fourth Street in the city of New York, and State of New York. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of general merchandise into and through various States of the United States and in the District of Columbia. Respondent causes said merchandise, when sold, to be transported from his place of business in New York, N. Y., to purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia. Respondent, at all times herein mentioned, has maintained a course of trade in said merchandise in said commerce.

PAR. 2. In the course and conduct of his aforesaid business, respondent is in substantial competition with other individuals and with firms, copartnerships, and corporations also engaged in the sale and distribution of some of the merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. For more than 1 year last past the respondent has operated under the trade name National Guard Equipment Co. Said trade name is used in respondent's catalogs, order blanks, and other printed advertising matter circulated among prospective customers. By the use of said trade name containing the term "National Guard," purchasers and prospective purchasers are led to believe the stock of merchandise offered for sale to the purchasing public by said respondent was made for or purchased from the United States War Department. The use by the respondent of the trade name containing the term "National Guard," in the manner herein described, has the tendency and capacity, and does, cause members of the purchasing public to believe that the respondent is connected with the United States War Department for the merchandising of equipment manufactured for or purchased from the National Guard Division of the War Department, and that the respondent operates and maintains an establishment connected with the United States War Department for the merchandising of official National Guard equipment.

In truth and in fact none of the stock of merchandise of said respondent was purchased from the United States War Department and no substantial part of said stock of merchandise was made for the United States War Department for use by the National Guard. The great majority of respondent's stock of merchandise consists of the usual stock found generally in general merchantile establishments and is purchased from the usual marts of trade and not from the United States War Department. A small amount of Army goods in said stock of merchandise, if any, is bought from jobbers, wholesalers, and others who buy at Army departmental refuse and reject goods sales. Respondent is in no way connected with the United States War Department and has no affiliation, association, agreement, or any connection with the War Department or the National Guard Division of the War Department.

PAR. 4. Among the articles of merchandise offered for sale and sold by respondent in commerce among and between the various States of the United States are certain articles similar in make and design to those which the United States Government requires the personnel of its National Guard and other military units to wear.

PAR. 5. There are among the competitors of the respondent herein described certain individuals, firms, copartnerships, and corporations engaged in the sale and distribution in commerce among and between the various States of the United States of merchandise similar in character and design to that sold by the respondent, who do not in their trade or corporate names, or in their advertising, or in any manner, import or imply any connection or association with any

military organization of the United States Government when they are not in fact so connected or associated.

PAR. 6. The representations made by the respondent through use of the term "National Guard" in his trade name 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 and mistaken belief that the respondent's merchandise was made for or purchased from the United States War Department and that the respondent is connected with or associated with the United States War Department or the National Guard for the merchandising of equipment manufactured for or purchased from the National Guard. As a consequence of such mistaken and erroneous beliefs, induced by the respondent's representations herein described, a number of the purchasing public have purchased a substantial quantity of said merchandise.

CONCLUSION

The aforesaid acts and practices of the respondent, Louis Cohen, also known as Louis Kahn, an individual trading under the style and name of National Guard Equipment Co., have been, and are, to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Louis Cohen, also known as Louis Kahn, an individual, trading as National Guard Equipment Co., his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of general merchandise, wearing apparel, and military equipment, uniforms and supplies in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing through the use of the term "National Guard" in his trade name, or through any other means or device, or in any manner

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that respondent's business is a branch of, or affiliated with, the United States War Department or National Guard or in any way connected or associated therewith or that respondent's merchandise was made for, or purchased from, the United States War Department or National Guard, provided that any merchandise actually purchased at War Department surplus, refuse or reject sales may be so represented.

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
CHARLES H. BACON COMPANY AND SCOTT-BARTELS
COMPANY, 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 2087. Complaint, Feb. 21, 1935²—Decision, Feb. 24, 1939

Where a corporation engaged in manufacture and sale of hosiery, and a second company engaged as exclusive selling agent thereof in soliciting and procuring orders for such hosiery and, as thus engaged, in substantial competition in commerce among the various States and in the District of Columbia with others engaged in sale and distribution of hosiery, including many who do not represent, brand, label, advertise, or describe their said product falsely or deceptively, and do not represent that it contains more silk than is in fact present—

Made use of words "PURE THREAD SILK" in labels, brands, or stamps on their said product, together with such words as "Reinforced with Rayon" or "Reinforced with Artificial Silk" or "Twisted with Rayon," and thereby and otherwise caused said hosiery to be represented, advertised, described, sold, and distributed in the trade and to the consuming public in various States and in said District as containing genuine and pure silk as the principal or major constituent therein, and in a proportion or quantity larger than that of rayon, facts being the tops, heels, soles, and toes of such hosiery, with appearance and feel of silk, were composed wholly of cotton, and other parts thereof were composed of approximately 93 percent rayon, with which was mixed from 3 to 7 percent silk, amounting to 2 percent of the hose by weight;

With the result that they thereby placed in the hands of dealers means or instrument of deception and fraud whereby such dealers were enabled, aided, and assisted in misleading and deceiving members of purchasing public as to contents of said hosiery and quality, value, grade, and substance thereof, and with effect of misleading and deceiving members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and that such product contained pure or genuine silk in a larger proportion than was in fact present therein, and in a larger proportion than rayon content thereof, and of causing members of such public, because of such erroneous and mistaken belief, to purchase quantities thereof, and of thereby diverting unfairly trade to them from their competitors in commerce who truthfully advertise and represent their respective hosiery and materials contained therein; to the injury of competition in commerce:

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

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

Mr. James M. Hammond for the Commission.

Frantz, McConnell & Seymour, of Knoxville, Tenn., for respondents.

¹ Count II of complaint, alleging violation of National Industrial Recovery Act, dismissed.

² Amended and supplemental.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Charles H. Bacon Co., a corporation, and Scott-Bartels Co., 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, in violation of said act and in violation of the act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to said Commission that a proceeding by it in respect thereof would be to the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

Count 1

PARAGRAPH 1. Respondent Charles H. Bacon Co. is a corporation organized and existing under the laws of the State of Delaware, having its principal office and place of business at Lenoir City in the State of Tennessee, and operating hosiery mills or manufacturing plants located in the State of Tennessee at Lenoir City, Morristown, Greenville, and Loudon. Respondent Scott-Bartels Co., Inc., is a corporation organized and existing under the laws of the State of Delaware, having its office and principal place of business in the city and State of New York. Respondent Charles H. Bacon Co. is, and at all times hereinafter mentioned has been engaged in the business of manufacturing hosiery for men, women, and children and in selling and distributing said products from its mills and places of business in the State of Tennessee to consumers and to wholesale and retail dealers in the several States and Territories of the United States and in the District of Columbia. Respondent Scott-Bartels Co., Inc., is and at all times hereinafter mentioned has been the selling agent of respondent Charles H. Bacon Co., and is and has been engaged in the business of soliciting and procuring purchase orders for said hosiery from, and in promoting and effectuating the sale and distribution of said merchandise in interstate commerce to, wholesale and retail dealers and other purchasers throughout the United States.

PAR. 2. Throughout the course and conduct of their business respondents have been and still are offering for sale, selling, and distributing the said hosiery, manufactured by respondent Charles H. Bacon Co., to their customers and to purchasers generally in direct active competition with many persons, firms, and other corporations also engaged in the business of selling and distributing hosiery for men, women, and children in commerce in, between, and among the

several States and territories of the United States and the District of Columbia; and in such sale and distribution respondents have been and are engaged in commerce as "commerce" is defined in said act of Congress, and have caused and continue to cause said hosiery manufactured by respondent Charles H. Bacon Co., as and when sold by them, to be shipped, transported, and delivered in commerce from shipping points in the State of Tennessee and elsewhere into or through States other than the State or States in which such respective shipments originated, and into or through the Territories and the District of Columbia, to the respective purchasers of such hosiery in such other States, the Territories and in said District.

PAR. 3. In the course and conduct of their said business and during a period of more than 3 years last past, respondents have caused and continued to cause their said hosiery to be stamped, branded, and labeled with, and to be marketed, sold, and distributed under, certain brands, labels, or stamps relating to the silk content of said hosiery. Five representative specimens of said labels, brands, or stamps so used by respondents read as follows:

PURE THREAD SILK

Reinforced With Rayon
Made in U. S. A.

PURE THREAD SILK

Reinforced with Rayon

PURE THREAD SILK

Reinforced With Rayon
240 Needle

PURE THREAD SILK

Reinforced with Artificial Silk

X68

PURE THREAD SILK

Twisted With Rayon
240 Needle
"Split-Foot" Half Hose

RAYON AND PURE THREAD SILK

| | | |
|---------|-----------|---------|
| Extra | Durene | Extra |
| Wear | Lic. 491 | Wear |
| Toe | Sole-Heel | Heel |
| Snubber | Top-Toe | Snubber |

PAR. 4. Said labels, stamps, and brands are and have been used by respondents upon and in connection with said hosiery with the purpose and intention of having such merchandise displayed, offered for sale, sold, and marketed and distributed in the hosiery trade and to the consuming public under said brands, stamps, and labels. Pursuant to respondents' said purpose and intention and by reason of said use of such labels, brands, and stamps, the said hosiery is and has been displayed, offered for sale, sold, and distributed under the same by respondents' dealer-purchasers and by dealers generally in the regular course of trade to the consuming public.

PAR. 5. By means of such stamps, brands, and labels and by other forms of representations respondents cause and have caused said hosiery to be represented, advertised, and described directly and indirectly and to be marketed in the trade and to the consuming public as hosiery containing genuine and pure silk as one of the principal or major constituents of said hosiery and as being present in an appreciable, substantial, and effective quantity or proportion and as containing pure or genuine silk in a proportion or quantity as large as, or larger than, the proportion or quantity of rayon or so-called artificial silk which is present.

PAR. 6. Respondents' said hosiery, branded, stamped, labeled, and represented as aforesaid, is composed largely of cotton and rayon, or so-called artificial silk, which are the principal or major constituents of said hose and are present in the following approximate proportions by weight of the hose, to wit: Cotton 73 percent, rayon or so-called artificial silk 25 percent. The tops, heels, soles, and toes of such hose are composed wholly of cotton, and the other parts of said hose are composed largely and principally of rayon or so-called artificial silk with which is mixed such silk content as may be present in said hosiery.

PAR. 7. Such hose is not composed of nor does it contain pure silk, silk, or genuine silk, as a principal or major constituent or part; and such silk, genuine silk, or pure silk as is or may be present in said hose is less than 5 percent of the hose by weight, to wit: 2 percent of the hose by weight, and is of such small quantity or proportion as to be inappreciable, ineffective, or insubstantial. The said hose and the bulk or body thereof give and have the appearance of silk.

PAR. 8. The aforesaid labels, brands, stamps, and representations and each of them, as used by respondent as hereinbefore set forth are false, misleading, and deceptive; and they and each of them have and had the capacity, tendency, and effect (a) of misleading and deceiving the purchasing and consuming public into the erroneous

belief that said hosiery contains pure or genuine silk in larger proportion than is in fact present, and that such hosiery is composed of or contains pure or genuine silk in the quantity or proportion which is as large as the proportion of rayon in said hosiery and is sufficiently large in quantity or proportion so as to be substantial, appreciable, and effective, and that pure or genuine silk constitutes one of the principal or major proportions or contents of said hose; (b) of causing purchasers to purchase said hosiery and to do so in or because of such erroneous beliefs; and (c) of causing dealers to resell, and of aiding and assisting dealers in reselling, said hosiery to other dealers and to the consuming public under such false, misleading and deceptive stamps, brands, labels, and representations.

PAR. 9. In using the labels, brands, and stamps referred to in paragraph 3 hereof in the sale and distribution of said hosiery to dealers, respondents thereby have placed and are continuing to place in the hands of dealers, a means and instrument of deception and fraud whereby such dealers are enabled, aided, and assisted (a) to mislead and deceive purchasers as to contents of said hose and the quality, value, grade, and substance thereof, and (b) to induce and cause the consuming and purchasing public to purchase said hosiery in or because of the erroneous belief or inference that the said brands, labels, and stamps thereon are true in fact, and that the said hosiery contains pure silk or genuine silk in a proportion greater than is in fact present in such hosiery or in a proportion which is as large as the proportion of rayon which is in fact present in such hose.

PAR. 10. Among the competitors of respondents are manufacturers, dealers, and distributors of hosiery for men, women, and children who sell and distribute such hose to the purchasing and consuming public throughout the United States in competition with respondents' said hose and who do not, in connection therewith or otherwise, represent, brand, label, advertise, or describe their hosiery falsely or deceptively or as containing more silk than is in fact present in their said merchandise.

PAR. 11. The use by respondents of the false, misleading, and deceptive acts and representations hereinbefore set forth constitutes practices or methods of competition which are unfair and which tend to and do (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondents' competitors, (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the hosiery business; and they and each of them constitute unfair methods of competition in commerce within the intent and meaning and in violation of Sec-

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tion 5 of aforesaid Act of 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. The allegations and averments of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of count 1 hereinabove set forth are adopted and incorporated herein by reference as allegations and averments of count 2 and are hereby charged and alleged as part of count 2 as fully and as completely as though the several allegations and averments of said paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of count 1 were here repeated verbatim.

PAR. 2. Pursuant to and to effectuate the provisions of title I of the National Industrial Recovery Act approved June 16, 1933, a Code of Fair Competition for the Hosiery Industry has been formulated and thereafter accepted, adopted, approved, and issued by the President of the United States by Executive order signed and issued August 26, 1933. In and under said code it is provided that upon such acceptance by the President the provisions of said code shall be the standard of fair competition for the said hosiery industry. It is further provided in and by said code, among other things, as follows:

Article VIII—Fair Trade Practice

To assure fair competition in the Industry and proper practices in the merchandising of hosiery, the following fair trade practice provisions are made a part of the Code and binding on all hosiery manufacturers:

* * * * *

11. *Misbranding and improper marking.*—To sell hosiery marked or brauded falsely with the effect of misleading or deceiving purchasers or the ultimate consumer with respect to price, quantity, quality, gauge, grade, substance, or value of the merchandise is unfair trade practice.

12. *Misrepresentation of materials.*—(a) If any definite section or sections of the hose be made of a material entirely different from that of the bulk or body of the stocking, when such material gives the appearance of silk, the hose must be stamped with the names of both materials.

(b) No material or content shall be stamped on any hose unless it represents at least five per cent (5%) of the hose by weight. When two or more contents exist, if any content is stamped on the hose, all contents constituting five per cent (5%) or more of the weight of the hose shall be stamped and in the order of major content.

The said code and the said provisions thereof have gone into effect on the second Monday following August 26, 1933, the date of said Executive order and of the approval of such code by the President; and at all times since said second Monday the said code, including

the aforesaid provisions thereof, have been and they still are in full force and effect. The respondents are and have been members of said hosiery industry and are and have been subject to said code and said provisions thereof at all times since said code has gone into effect as aforesaid.

PAR. 3. In the aforesaid sale and distribution of said hosiery under the stamps, brands, and labels hereinabove described and referred to and at all times since the aforesaid effective date of said code, respondents have sold and distributed and continue to sell and distribute, in and affecting interstate commerce throughout the United States, said hosiery while marked or branded falsely with the effect of misleading or deceiving purchasers or the ultimate consumer with respect to quality, grade, substance, or value of said hosiery, which acts and practices of respondent constitute and have constituted unfair trade practices and are and have been in violation of aforesaid standard of fair competition and of the provisions of said code, to wit: Section or paragraph numbered 11 of article VIII of said code (hereinabove quoted).

PAR. 4. In marking, labeling, and stamping their said hosiery and in marketing the same in and affecting interstate commerce throughout the United States as, and under the conditions and circumstances, hereinabove alleged, respondents have violated and continue to violate said standard of fair competition and the provisions of said code, to wit: Paragraphs marked (a) and (b) of section or paragraph numbered 12 of article VIII of said code (hereinabove quoted) in that the said hose as and when sold and distributed by respondents as aforesaid contained the name of a material or content stamped upon such hose which material or content represents less than 5 percent of the hose by weight; and further in that two or more contents exist in said hose and said content is and has been stamped upon said hose, but all contents constituting 5 percent or more of the weight of the hose is not and has not been stamped upon such hose in the order of major content, which acts and practices constitute unfair trade practices.

PAR. 5. The above alleged acts and practices of the respondents, in the stamping, branding, and labeling of their hose and in the sale and distribution thereof in and affecting interstate commerce throughout the United States as hereinabove alleged, are and have been methods of competition in and affecting interstate commerce which are unfair, injurious, and detrimental to competitors and the public and are and have been unfair methods of competition under, and are and have been in violation of, said National Industrial Recovery Act

and the Federal Trade Commission Act as amended, to wit: 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 the Federal Trade Commission Act, the Federal Trade Commission on the 21st day of February 1935, issued and subsequently served its amended and supplemental complaint in this proceeding upon said respondents, Charles H. Bacon Co. and Scott-Bartels Co., Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 24th day of August 1935, the respondents, by their counsel, Frantz, McConnell, and Seymour, 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 by their counsel, Frantz, McConnell, and Seymour, 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 amended and supplemental 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 amended and supplemental complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, 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, Charles H. Bacon Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal office and place of business at Lenoir City in the State of Tennessee and operating hosiery mills or manufacturing plants at Lenoir City and Loudon in the State of Tennessee.

The respondent, Scott-Bartels Co., Inc., was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its office and principal place of business in the city of New York, State of New York. Respondent, Scott-Bartels Co., Inc., since the filing of the amended and supplemental complaint in this proceeding, has, by amendment to its charter, changed its corporate name to Bacon-Scott Co., Inc. The Scott-Bartels Co., Inc., and the Bacon-Scott Co., Inc., are one and the same corporation except for this change in name.

PAR. 2. Respondent, Charles H. Bacon Co. is, and at all times mentioned herein has been, engaged in the business of manufacturing, selling, and distributing hosiery. Said respondent sells said hosiery to consumers and to wholesale and retail dealers situated in various States of the United States and in the District of Columbia and causes the said hosiery, when sold by it, to be transported from its said mills in the State of Tennessee to the purchasers thereof at their respective points of location in various States of the United States other than the State of Tennessee and in the District of Columbia.

Respondent, Scott-Bartels Co., Inc., now the Bacon-Scott Co., Inc., is, and at all times mentioned herein has been, the exclusive selling agent of respondent, Charles H. Bacon Co., and is now, and at all times mentioned herein has been, engaged in the business of soliciting and procuring orders for said hosiery and in promoting and effectuating the sale and distribution of said hosiery to consumers and wholesale and retail dealers situated in various States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said hosiery among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondents are engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals selling and distributing hosiery. Among such competitors in said commerce are many who do not represent, brand, label, advertise, or describe their hosiery falsely or deceptively and who do not represent that their hosiery contains more silk than is in fact present in such hosiery.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their hosiery, respondents have caused their hosiery to be stamped, branded, and labeled with, and to be sold and distributed in commerce between and among the vari-

Findings

ous States of the United States and in the District of Columbia bearing certain brands, labels or stamps purporting to relate to and be descriptive of the silk content of said hosiery. Among and typical of the labels, brands, or stamps, so used and disseminated, by respondents are the following:

PURE THREAD SILK
Reinforced With Rayon
Made in U. S. A.

PURE THREAD SILK
Reinforced With Rayon

PURE THREAD SILK
Reinforced With Rayon
240 Needle

PURE THREAD SILK
Reinforced With Artificial Silk

X68
PURE THREAD SILK
Twisted with Rayon
240 Needle
"Split-Foot" Half Hose

PAR. 5. Said labels, stamps, and brands are, and have been, used by respondents upon and in connection with said hosiery for the purpose and intention of having such hosiery displayed, offered for sale, sold, marketed, and distributed in the hosiery trade and to the consuming public under said brands, stamps, and labels. Pursuant to respondents said purpose and intention and by reason of said use of such labels, brands, and stamps the said hosiery is, and has been displayed, offered for sale, sold, and distributed among and between the various States of the United States and in the District of Columbia to the consuming public by respondents' dealer purchasers and by dealers generally in the regular course of trade.

PAR. 6. By means of such stamps, brands, and labels and by other forms of representations, respondents cause and have caused said hosiery to be represented, advertised, described, sold, and distributed in the trade and to the consuming public situated in various States of

the United States and the District of Columbia as containing genuine and pure silk as the principal or major constituent therein and as containing pure or genuine silk in a proportion or quantity larger than the proportion or quantity of rayon present in such hosiery.

PAR. 7. Respondents' said hosiery branded, stamped, labeled, and represented as aforesaid has the appearance and feel of silk but is composed largely of cotton and rayon which are the principal or major constituents of said hosiery. The materials present in said hosiery are in the following approximate proportions by weight, to wit: Cotton, 73 percent; rayon, 25 percent; and silk, 2 percent. The tops, heels, soles, and toes of such hosiery are composed wholly of cotton and the other parts of such hosiery are composed of approximately 93 percent rayon with which is mixed from 3 to 7 percent silk.

PAR. 8. The hosiery of respondents, sold and distributed as aforesaid, is not composed of nor does it contain pure silk or genuine silk as the principal or major constituent. Such silk as is or may be present in said hosiery is less than 5 percent of the hose by weight, to wit: Two percent of the hose by weight.

PAR. 9. Through the use of the aforesaid labels, brands, and stamps, and the sale and distribution of said hosiery to dealers, respondents have thereby placed and are continuing to place in the hands of dealers a means or instrument of deception and fraud whereby such dealers are enabled, aided, and assisted in misleading and deceiving members of the purchasing public as to the contents of said hosiery and the quality, value, grade, and substance thereof.

PAR. 10. The use by the respondents of the foregoing false and misleading statements and representations on said labels, brands, and stamps, disseminated as aforesaid, with respect to said hosiery, has had, and now has, the capacity and tendency to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations are true and that said hosiery contains pure or genuine silk in a larger proportion than is in fact present in such hosiery and that such hosiery is composed of or contains pure or genuine silk in a quantity or proportion larger than the proportion of rayon contained in said hosiery and causes members of the purchasing public, because of said erroneous and mistaken belief, to purchase quantities of respondents' said hosiery.

As a result, trade has been diverted unfairly to the respondents from their competitors in said commerce who truthfully advertise and represent their respective hosiery and the materials contained in such hosiery. In consequence thereof, injury has been, and is now being,

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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 respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST ¹

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, the answer of the respondents, and a stipulation as to the facts entered into between the respondents herein 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 the Federal Trade Commission Act.

It is ordered, That the respondents, Charles H. Bacon Co. and Bacon-Scott Co., Inc., formerly Scott-Bartels Co., Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of hosiery in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner whatsoever that the hosiery manufactured or sold by them, or any of them, contains "silk" or "pure thread silk," the product of the cocoon of the silkworm, in greater quantity, percentage or degree than is actually the case.

2. Advertising, offering for sale, or selling, hosiery composed in whole or in part of rayon without clearly disclosing the fact that such hosiery is composed of rayon, and when such hosiery is composed in part of rayon and in part of other fibers or materials, such fibers or

¹ Count II of complaint, alleging violation of National Industrial Recovery Act, dismissed by following order of Commission, as of June 13, 1935:

This matter having been considered by the Commission upon its own motion in view of the decision of the Supreme Court of the United States rendered May 27, 1935, in the case of *Schechter Poultry Corporation, et al. v. United States* [295 U. S. 495]; and the Commission being advised in the premises.

It is now ordered, That the charges in the complaint in this proceeding of violation of the National Industrial Recovery Act and of the Code of Fair Competition for the Hosiery Industry be, and the same are hereby dismissed.

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materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent, provided that if any particular fiber in said hosiery is not present in a substantial amount by weight, the percentage in which such fiber is present shall then be specifically disclosed.

3. Using the words "silk" or "pure thread silk," or words of similar import and meaning, to describe, designate, or refer to hosiery which is not composed wholly of silk, the product of the cocoon of the silkworm; except that in the case of hosiery composed in part of silk and in part of materials other than silk, such words may be used as descriptive of the silk content if there are used in immediate connection and conjunction with the word "silk," in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof in the order of its predominance by weight, beginning with the largest single constituent, and provided that if any particular fiber in said hosiery is not present in a substantial amount by weight, the percentage in which such fiber is present shall then be specifically disclosed.

4. Using the term "pure thread silk reinforced with rayon" to describe, designate, or refer to any hosiery other than that in which the chief constituent is pure thread silk, the product of the cocoon of the silkworm, combined solely with rayon.

This order shall not be construed as approving the use of the unqualified words "silk" or "pure thread silk" to designate, describe, or refer to weighted silk.

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

Syllabus

IN THE MATTER OF

THE SPONGE INSTITUTE, ITS OFFICERS AND MEMBERS,
AND FLORIDA SPONGE PACKERS ASSOCIATION, ITS
OFFICERS AND MEMBERS

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

Docket 3025. Complaint, Dec. 29, 1936—Decision, Feb. 24, 1939

Where two trade organizations and the respective officers and members thereof, variously engaged in sale and distribution of sponges, namely—

I. An "institute" of wholesale sponge distributors; officers of said Institute; and members thereof, who—

(1) Were engaged in selling at wholesale and retail, to wholesale and retail dealers, sponges which they purchased in substantial amount from packers located mostly in Florida, and including packer members of the packer association below set forth;

(2) Were, but for matters and things below set out, in competition with one another in price and otherwise in the course and conduct of their respective businesses, and were in competition with others likewise engaged in purchase of sponges from packers thereof and in resale of such products in territory served by such Institute members; and

(3) With, their Institute, defined as the only legitimate and legal channel of distribution from packer to wholesale distributor, to wholesaler, to retailer, and designated as bona fide sponge houses business concerns who constituted legitimate packers and wholesalers in such channels, and, as irregular and illegitimate, other channels of trade, and as illegitimate any dealer acquiring sponges through such so-called illegitimate channels; and

II. An association of sponge packers, with principal places of business at Tarpon Springs, Fla., and through which, or sponge exchange there located, 72 percent in quantity and 60 percent in value of the total United States catch of sponges was sold in 1 year, with course of trade in such Florida sponges, under normal conditions, from producer or fisherman through said exchange to packer, to wholesale distributor, to wholesalers and retailers; certain officers of said association; and members thereof, who—

(1) But for the matters and things below set out, were in competition with each other in price and otherwise in sale and distribution of sponges to wholesale dealers and distributors in territory served by such packer members, and were in such competition with others engaged in such sale and distribution; and

(2) Solicited and sold, along with other packers, and prior to certain time, sponges to wholesale distributors, and direct to wholesalers and retailers throughout the United States, including such sales by such members of sponges direct to such wholesalers and retailers as also purchased such products from wholesale distributors—

Entered into an agreement, combination, and conspiracy with intent to hinder and suppress competition in interstate sale and distribution of sponges, and designed and intended to create monopoly in themselves in sale thereof to wholesalers and retailers throughout the United States; initiated by and originally based on conversations between respective presidents and letter by president of such Institute suggesting the coming to some understanding between the two groups as to commerce in sponges, and advice by president of said Association to packers that, if they would not solicit trade from northern houses, members of such Institute would divide their purchases with member packers and absorb most of packer output and thus enable packers to raise their price to trade to the enhancement of their profits; and on many letters and bulletins written and sent out by president of said Institute, and by such Institute, after said period, in furtherance of design expressed in above conversation and directed to the establishment and carrying out of such a business arrangement or division as above indicated; and

Where packer members aforesaid, in pursuance and furtherance of such intent and design on the part of all—

- (a) Entered into written agreement in accordance with which they were not to circularize any trade outside of the bona fide sponge houses regularly established as such, and to confine their sales to such sponge, and sponge and chamois, houses, and not to sell otherwise except to northern buyers personally calling upon such packers in Florida or in event of unsolicited orders being mailed, in which event their prices were to be at least 20 percent higher than those to sponge houses aforesaid, and expressed their willingness to discuss further any propositions, suggestions, or ideas for the furthering of such understanding and cooperation; and

Where said Institute and the wholesale distributor members thereof, as the case might be, in pursuance of such agreement, letters, and bulletins—

- (b) Furnished to said packer members aforesaid, list of "Bona fide Sponge Houses" to whom they should confine their sales, and furnished such list to such members as revised from time to time;
- (c) Furnished the wholesale distributor members with list of packers who were cooperating in plan to restrict sales as aforesaid, and caused such members to confine their purchases to cooperating packers;
- (d) Concertedly confined their purchases to cooperating packers as aforesaid, and removed from their list name of any packer discovered as making sale contrary to such agreement and understanding, and blacklisted same and refused thereafter, concertedly, to make any further purchases therefrom; and

Where packer members aforesaid, in pursuance of said agreement, letters and bulletins—

- (e) Did not circularize any trade outside of bona fide sponge houses regularly established as such, as declared by said Institute, and did confine sale of sponges to such so-called bona fide houses, and make price difference, as aforesaid, to other houses not thus designated by Institute, and did not sell to such others, even at 20 per cent increase, excepting only when order was sent to packer members unsolicited or placed by personal call;

With the result that the capacity, tendency and effect of such agreement, combination, conspiracy, and undertaking, and acts and practices performed thereunder, was—

Complaint

(1) To monopolize in said members of such Institute and so-called bona fide sponge houses, distributors, business of dealing in and distributing sponges produced in Florida, and to tend to monopolize in such packer members business of dealing in and distributing such sponges;

(2) To unreasonably lessen, restrain, stifle, hamper, and suppress competition in such sponges and deprive wholesale dealers, distributors, and retailers, and purchasing public generally, of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unrestricted or free and fair competition in trade in sponge industry, and otherwise operate as a restraint upon and detriment to freedom of fair and legitimate competition; and

(3) Prejudice and injure public and producers of sponges, dealers, distributors, and others who do not conform to or cooperate in their aforesaid program:

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. Robert S. Hall* and *Mr. John L. Hornor*, trial examiners. *Mr. Astor Hogg*, *Mr. Karl Stecher*, and *Mr. Earl J. Kolb* for the Commission.

Hill & Treadway, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that The Sponge Institute, its officers, and members as hereinafter set out, and Florida Sponge Packers Association, a corporation and its officers and members, as hereinafter set out, 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 Sponge Institute (hereinafter referred to as the Institute), is a voluntary, unincorporated association of individuals, partnerships, and corporations, with its principal place of business located at Washington, D. C. Its members are engaged in selling, at wholesale and retail, sponges to wholesale and retail dealers located at points in various States of the United States, said members being banded together in said Institute for the purpose of promoting and protecting their common interests and business affairs.

The respondents, Theodore Schroeder, of 500 North Commercial Street, St. Louis, Mo.; Dan Malloy, of 253 North Fourth Street, Philadelphia, Pa.; David Block, of 36 Walker Street, New York

City; and Dr. Lewis Radcliffe, 5600 Thirty-second Street NW., Washington, D. C., are respectively president, vice-president, treasurer, and secretary of said Institute, and are in charge of, and conduct, its activities and affairs.

The members of The Sponge Institute, all of whom are named as respondents, are engaged in selling sponges, and are as follows:

Schroeder & Tremayne, Inc., a Missouri corporation, with its principal place of business located at 500 North Commercial Street, St. Louis, Mo.

S. M. Arnold Co., Inc., a Missouri corporation, with its principal place of business located at 2900 Olive Street, St. Louis, Mo.

H. L. Ettman Sponge Co., a Missouri corporation, with its principal place of business located at 1908 Olive Street, St. Louis, Mo.

Addison Sponge Co., Inc., an Ohio corporation, with its principal place of business located at 341 West Fourth Street, Cincinnati, Ohio.

S. Vollman Co., an Illinois corporation, with its principal place of business located at 424 South Dearborn Street, Chicago, Ill.

Hugo Rosenfelt, doing business under the trade name of Nassau Sponge Co., with his principal place of business located at 124 West Kinzie Street, Chicago, Ill.

Greek-American Sponge Co., an Illinois corporation, with its principal place of business located at 158 North Franklin Street, Chicago, Ill.

American Sponge & Chamois Co., Inc., a New York corporation, with its principal place of business located at 47 Ann Street, New York City.

Albert Bloch & Sons, Inc., a New York corporation, with its principal place of business located at 36 Walker Street, in the city of New York.

Robert L. Senenberg and Perry Senenberg partners, trading under the firm name and style of Florida Sponge & Chamois Co., with its principal place of business located at 42 Cliff Street, in the city of New York.

Gulf & West Indies Co., Inc., a New York corporation, with its principal place of business located at 23 Murray Street, New York City.

King & Malcolm Co., a New York corporation, with its principal place of business located at 242 Water Street, New York City.

Dan Malloy, an individual trading as Dan Malloy Co., with his principal place of business located at 253 Fourth Street, Philadelphia, Pa.

Frank M. Miglis, trading under the firm name and style of Frank M. Miglis Co., with his principal place of business located at 320 Pearl Street, New York City.

The respondent, Florida Sponge Packers Association (hereinafter referred to as the Association) is a corporation, organized and existing under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Tarpon Springs, Fla. It is a membership corporation, and was organized for the purpose of promoting and protecting the common interest and business affairs of its members. Respondents, John Diamandis, N. G. Arfaras, and D. A. Alissandratos, all of Tarpon Springs, Fla., are respectively, president, treasurer, and secretary of said corporation, and are in charge of, and conduct its activities and affairs.

The membership of the Association (hereinafter referred to as packer members) is as follows:

John Diamandis and Peter J. Cardulis, partners, trading as Diamandis & Cardulis, with their principal place of business located at Tarpon Springs, Fla.

D. A. Alissandratos and Nick Bessis, partners, trading as Commercial Sponge Co., with their principal place of business located at Tarpon Springs, Fla.

C. G. Andriotes, trading as C. G. Andriotes & Co., with his principal place of business located at Tarpon Springs, Fla.

George S. Smitzes, James Smitzes, Louis Smitzes, and Nick Drivas, partners, trading as Smitzes & Drivas, with their principal place of business located at Tarpon Springs, Fla.

Sponge Producers Corporation, a corporation organized, existing, and doing business under the laws of the State of Florida, with its office and principal place of business located at Tarpon Springs, Fla.

Diamandis Diamandis & Christos Psilakas, partners, trading as Florida Industrial Sponge Co., with their principal place of business located at Tarpon Springs, Fla.

Respondent George Mavros, trading as National Sponge Co., with his principal place of business located at Tarpon Springs, Fla., and respondent Sponge Fishing Company, Inc., a corporation organized and existing under the laws of the State of Florida, with its principal place of business located at Tarpon Springs, Fla., while not members of the Association, cooperated with the members thereof, and with the members of the Institute, as hereinafter set out.

PAR. 2. Said respondent members of the Institute purchase the sponges in which they deal directly and immediately from packers located, for the most part, in the State of Florida. The respondents, Commercial Sponge Co., Diamandis & Cardulis, C. G. Andriotes & Co., Smitzes & Drivas, Sponge Producers Corporation, Florida Industrial Sponge Co., National Sponge Co., and Sponge Fishing Co., are packer members from whom the respondent members of the Institute purchase sponges. Said respondent packer members, after making the

sales to the respondent members of the Institute, who are known to the trade as wholesale distributors, cause said products to be transported in commerce from their respective places of business in the State of Florida to the purchasers thereof, located at points in the various States of the United States other than the State of Florida, and in so doing there is a constant current of trade and commerce between the said respondent packer members and the respondent members of the Institute.

Upon reselling said sponges in the course of their aforesaid respective businesses, the respondent members of the Institute cause said products to be transported from their respective places of business to wholesale and retail dealers of sponges at their respective points of location in the various States of the United States, other than the State or States in which such shipments originate. In such business, there is a constant current of trade and commerce between said respondent members of the Institute and the wholesale and retail dealers throughout the various States of the United States.

In the course and conduct of their respective businesses, respondent packer members, as herein set-out, but for the matters and things hereinafter alleged and set-out, would be naturally and normally in competition with each other, in price and otherwise, and they are in competition with other individuals, partnerships, and corporations also engaged in the sale and distribution of sponges to wholesale dealers and distributors in the territory served by said respondent packer members.

In the course and conduct of their respective businesses, respondent members of the Institute, but for the matters and things hereinafter alleged and set-out, would be naturally and normally in competition with each other, in price and otherwise, and they are in competition with other individuals, partnerships, and corporations, also engaged in the purchase of sponges from the packers thereof, and the resale thereof, in the territory served by said respondent members of the Institute.

Respondent Institute and its respondent members define the only legitimate and regular channel of distribution to be the packer, then the wholesale distributor (among whom are said members of the Institute), then the wholesaler and the retailer; and from time to time designate the business concerns who constitute the legitimate packers and wholesale distributors in this channel as "bona fide sponge houses." Channels of distribution originating with the packer of sponges, and which do not flow through the distributor, but go direct to the consumer or to the wholesaler or retailer, are designated by them as irregular and illegitimate channels of trade,

and any dealers acquiring sponges through such so-called illegitimate channels are, by the respondent Institute and its respondent members, designated illegitimate dealers.

PAR. 3. The respondent members of the Institute constitute a large and important part of the wholesale distributors of sponges in the United States; and such members constitute a group so influential in the trade as to be able substantially to control and influence the flow of trade and commerce in sponges from the packers of sponges in the State of Florida to and throughout the several States of the United States.

PAR. 4. Prior to April 1, 1935, the respondent packer members and other packers solicited and sold sponges direct to wholesalers and retailers throughout the United States, as well as to distributors. It was a common thing for the respondent packer members to sell sponges direct to wholesalers and retailers, which wholesalers and retailers also purchased sponges from wholesale distributors. All of the said respondents hereinbefore named and described, and each of them, on or about September 1, 1935, entered into an agreement, combination, and conspiracy and intended to hinder and suppress competition in the interstate sale and distribution of sponges, and also to create a monopoly in themselves in the sale of sponges to wholesalers and retailers throughout the United States. Pursuant to said agreement, combination, and conspiracy, said respondents have, respectively and cooperatively performed, and are now performing the following acts and practices, to wit:

1. The respondent packer members entered into an agreement and understanding with the Institute and its members, that said respondent packer members would not circularize any trade outside of the bona fide sponge houses regularly established as such, as declared by the Institute, and that said packer members would confine their sales of sponges to such so-called "bona fide sponge houses," or would make a price difference of 20 percent to other houses not designated by the Institute as "bona fide sponge houses," and would sell to such others (even at the 20 percent increase) only if the order was sent to said packer members unsolicited, or placed by personal call.

2. Adopted and used other cooperative practices and means in furtherance of said plans.

Pursuant to the aforesaid agreement and understanding, the respondent members of the Institute furnished the respondent packer members who had entered into such agreement, as hereinabove set forth, with a list of "bona fide sponge houses," with the direction to the respondent packer members that such list contained the "bona fide sponge houses" to whom they should confine their sales. In

pursuance of said agreement, combination, and conspiracy, the respondent packer members cooperatively adhered to the plan, and by concert of action, failed and refused to sell sponges to any dealer unless such dealer was on the list furnished by the Institute as a "bona fide sponge house." Said list has been revised from time to time, and respondent packer members are furnished with each revised list of the so-called "bona fide sponge houses." Pursuant to the aforesaid combination, agreement, and understanding, the respondent Institute furnished its members with a list of the packers who were cooperating in the plan to restrict sales, and caused said respondent members of the Institute to, and said members did, by concert of action, confine their purchases to the said packers who were cooperating in said plan; and whenever the Institute discovered that any packer had made a sale contrary to the agreement and understanding, the name of such packer was taken off their list, and such packer violating the agreement was blacklisted, and thereafter the respondent members of the Institute, by concerted action failed and refused to make any further purchases from such packer.

PAR. 5. The capacity, tendency, and effect of said agreement, combination, conspiracy, and undertaking, and the acts and practices performed thereunder by said respondents, as hereinbefore set forth, has been, and now is:

(a) To monopolize in said respondent members of the Institute and so-called "bona fide sponge houses," distributors, the business of dealing in and distributing sponges produced in Florida, and to tend to monopolize in respondent packer members, the business of dealing in and distributing sponges produced in Florida.

(b) To unreasonably lessen, restrain, stifle, hamper, and suppress competition in said sponges, and to deprive wholesale dealers, distributors, and retail dealers, and the purchasing public generally, of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unrestricted or free and fair competition in trade in the sponge industry; and otherwise to operate as a restraint upon and a detriment to the freedom of fair and legitimate competition.

(c) To prejudice and injure the public and producers of sponges, dealers, distributors, and others who do not conform to, or cooperate in, the program of respondents.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued and served its complaint upon respondents, The Sponge Institute, and its officers and members as herein set out, and Florida Sponge Packers Association, a corporation, and its officers and members as herein set out, charging respondents with the use of unfair methods of competition in interstate commerce, as commerce is defined in said act. After the issuance of said complaint, and respondents' answers thereto made, testimony and other evidence in support of the allegations of said complaint were introduced by Astor Hogg and Karl Stecher, 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 of William L. Hill for the respondents, and said testimony and other evidence 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, answers of respondents, the testimony, and other evidence and brief of counsel for the Commission in support of the complaint; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Sponge Institute, is a voluntary, unincorporated association of individuals, partnerships, and corporations, with its principal place of business located at Washington, D. C. Its members are engaged in selling, at wholesale and retail, sponges to wholesale and retail dealers located at points in various States of the United States, said members being banded together in said Institute for the purpose of promoting and protecting their common interests and business affairs. The respondents, Theodore Schroeder, of 500 North Commercial Street, St. Louis, Mo.; Dan Malloy, of 253 North Fourth Street, Philadelphia, Pa.; David Block, of 36 Walker Street, New York City; and Dr. Lewis Radcliffe, 5600 Thirty-second Street NW., Washington, D. C., are respectively president, vice president, treasurer, and secretary of said Institute, and are in charge of, and conduct, its activities and affairs.

The members of The Sponge Institute are as follows:

Schroeder & Tremayne, Inc., a Missouri corporation, with its principal place of business located at 500 North Commercial Street, St. Louis, Mo.

S. M. Arnold Co., Inc., a Missouri corporation, with its principal place of business located at 2900 Olive Street, St. Louis, Mo.

H. L. Ettman Sponge Co., a Missouri corporation, with its principal place of business located at 1908 Olive Street, St. Louis, Mo.

Addison Sponge Co., Inc., an Ohio Corporation, with its principal place of business located at 341 West Fourth Street, Cincinnati, Ohio.

S. Vollman Co., an Illinois corporation, with its principal place of business located at 424 South Dearborn Street, Chicago, Ill.

Hugo Rosenfelt, doing business under the trade name of Nassau Sponge Co., with his principal place of business located at 124 West Kinzie Street, Chicago, Ill.

Greek-American Sponge Co., an Illinois corporation, with its principal place of business located at 158 North Franklin Street, Chicago, Ill.

American Sponge & Chamois Co., Inc., a New York corporation, with its principal place of business located at 47 Ann Street, New York City.

Albert Bloch & Sons, Inc., a New York corporation, with its principal place of business located at 36 Walker Street, in the city of New York.

Robert L. Senenberg and Perry Senenberg, partners, trading under the firm name and style of Florida Sponge & Chamois Co., with its principal place of business located at 42 Cliff Street, in the city of New York.

Gulf & West Indies Co., Inc., a New York corporation, with its principal place of business located at 23 Murray Street, New York City.

King & Malcolm Co., a New York corporation, with its principal place of business located at 242 Water Street, New York City.

Dan Malloy, an individual trading as Dan Malloy Co., with his principal place of business located at 253 Fourth Street, Philadelphia, Pa.

Frank M. Miglis, trading under the firm name and style of Frank M. Miglis Co., with his principal place of business located at 320 Pearl Street, New York City.

The respondent, Florida Sponge Packers Association, is a corporation, organized and existing under and by virtue of the laws of the State of Florida, with its principal office and place of business located at Tarpon Springs, Fla. It is a membership corporation, and was organized for the purpose of promoting and protecting the common interest and business affairs of its members. Respondents, John Diamandis, N. G. Arfaras, and D. A. Alissandratos, all of

Tarpon Springs, Fla., are, respectively, president, treasurer, and secretary of said corporation, and are in charge of and conduct its activities and affairs.

The membership of the Association is as follows:

John Diamandis and Peter J. Cardulis, partners, trading as Diamandis & Cardulis, with their principal place of business located at Tarpon Springs, Fla.

D. A. Alissandratos and Nick Bessis, partners, trading as Commercial Sponge Co., with their principal place of business located at Tarpon Springs, Fla.

C. G. Andriotes, trading as C. G. Andriotes & Co., with his principal place of business located at Tarpon Springs, Fla.

George S. Smitzes, James Smitzes, Louis Smitzes, and Nick Drivas, partners, trading as Smitzes & Drivas, with their principal place of business located at Tarpon Springs, Fla.

Sponge Producers Corporation, a corporation organized, existing, and doing business under the laws of the State of Florida, with its office and principal place of business located at Tarpon Springs, Fla.

Diamandis Diamandis & Christos Psilakas, partners, trading as Florida Industrial Sponge Co., with their principal place of business located at Tarpon Springs, Fla.

Respondent George Mavros, trading as National Sponge Co., with his principal place of business located at Tarpon Springs, Fla., and respondent Sponge Fishing Co., Inc., a corporation, organized and existing under the laws of the State of Florida, while not members of the Association, cooperated with the members thereof, and with the members of the Institute, as hereinafter set-out.

PAR. 2. The respondent members of the Institute purchase a substantial amount of sponges in which they deal directly and immediately from packers located, for the most part, in the State of Florida. The respondents, Commercial Sponge Co., Diamandis & Cardulis, C. G. Andriotes & Co., Smitzes & Drivas, Sponge Producers Corporation, Florida Industrial Sponge Co., and National Sponge Co. are packer members from whom the respondent members of the Institute purchase sponges. Said respondent packer members, after making the sales to the respondent members of the Institute, who are known to the trade as wholesale distributors, cause said products to be transported in commerce from their respective places of business in the State of Florida to the purchasers thereof, located at points in the various States of the United States other than the State of Florida, and in so doing there is a constant current of trade and commerce between the said respondent packer members and the

respondent members of the Institute. Upon reselling said sponges in the course of their aforesaid respective businesses, the respondent members of the Institute cause said products to be transported from their respective places of business to wholesale and retail dealers of sponges at their respective points of location in the various States of the United States, other than the State or States in which such shipments originate. In such business, there is a constant current of trade and commerce between said respondent members of the Institute and the wholesale and retail dealers throughout the various States of the United States.

PAR. 3. In the course and conduct of their respective businesses, respondent packer members, as herein set-out, but for the matters and things hereinafter alleged and set-out, would be naturally and normally in competition with each other, in price and otherwise, and they are in competition with other individuals, partnerships, and corporations also engaged in the sale and distribution of sponges to wholesale dealers and distributors in the territory served by said respondent packer members. In the course and conduct of their respective businesses, respondent members of the Institute, but for the matters and things hereinafter alleged and set-out, would be naturally and normally in competition with each other, in price and otherwise, and they are in competition with other individuals, partnerships, and corporations, also engaged in the purchase of sponges from the packers thereof, and the resale thereof, in the territory served by said respondent members of the Institute. Respondent Institute and its respondent members define the only legitimate and regular channel of distribution to be the packer, then the wholesale distributor (among whom are said members of the Institute), then the wholesaler and the retailer; and from time to time designate the business concerns who constitute the legitimate packers and wholesale distributors in this channel as "bona fide sponge houses." Channels of distribution originating with the packer of sponges, and which do not flow through the distributor, but go direct to the consumer or to the wholesaler or retailer, are designated by them as irregular and illegitimate channels of trade, and any dealers acquiring sponges through such so-called illegitimate channels are, by the respondent Institute and its respondent members, designated illegitimate dealers.

PAR. 4. The respondent members of the Institute constitute a large and important part of the wholesale distributors of sponges in the United States; and such members constitute a group so influential in the trade as to be able substantially to control and influence the

flow of trade and commerce in sponges from the packers of sponges in the State of Florida to and throughout the several States of the United States.

PAR. 5. Tarpon Springs, Fla., is the center of the sponge fishing industry in the United States. Approximately 80 percent of the total catch is landed at Tarpon Springs—of the total United States catch during 6 years ending 1932, 72 percent in quantity and 60 percent in value was sold through the Tarpon Springs Sponge Exchange. The course of trade in Florida sponges under normal conditions is from the producer or fishermen through the Tarpon Springs Sponge Exchange to the packers, and from the packers to the wholesale distributors, who in turn sell them to wholesalers and retailers. In the negotiations between respondents, The Sponge Institute and members, and Florida Sponge Packers Association and members, these terms are used in describing certain members of the industry: "Wholesale Distributor," "Northern House," "Bona fide Sponge House," and "Legitimate Sponge House." All refer to dealers and houses which handle sponges exclusively and have large sponge departments—retailers and janitor supply houses without large sponge departments are not included in such terms.

PAR. 6. Prior to April 1, 1935, the respondent packer members and other packers solicited and sold sponges direct to wholesalers and retailers throughout the United States, as well as to distributors. It was a common thing for the respondent packer members to sell sponges direct to wholesalers and retailers, which wholesalers and retailers also purchased sponges from wholesale distributors. All of the said respondents hereinbefore named and described, and each of them, on or about September 1, 1935, entered into an agreement, combination, and conspiracy and intended to hinder and suppress competition in the interstate sale and distribution of sponges, and also designed and intended to create a monopoly in themselves in the sale of sponges to wholesalers and retailers throughout the United States. The origin of such conspiracy began by talks between Theodore Schroeder, president of respondent The Sponge Institute, and John Diamandis, president of respondent Florida Sponge Packers Association, and a letter of the president of the Institute dated April 10, 1935, suggesting the two groups of sponge dealers come to some understanding between themselves as to the commerce of sponges. The packers were advised by respondent Diamandis that if they would not solicit trade except from the northern houses, the respondent members of the Institute would divide their purchases with the respondent packers, and this division of purchases would absorb most of the output of the

packers and thereby the packers would be able to raise the price of sponges to the trade and therefore greater profits would be realized by the packers. The respondent The Sponge Institute and its members caused the president, Theodore Schroeder, to write many letters and the respondent Institute issued many bulletins after April 10, 1935, in furtherance of the design expressed in the talks set-out herein. Examples of such communications are shown by excerpts from one as follows:

Co-operation—That's the remedy. Collective bargaining seems to be the order of the day. Let's try a little of this between ourselves. Supposing our group says to your group, stay away from our trade up here and we'll sell your output, all of it. You sell only to Sponge Institute members or others who may be real bona fide sponge houses and no one else. You in turn say to us, all right, but you must then really take our output and take reasonable care of us. That ought to be a fair enough basis for a deal, shouldn't it? Your group down there has its interests, that is, the production and packing of Florida Sponges, and of course, the selling of them. To enlist our combined efforts and really get behind Florida sponges we ask only that you work with us on a reasonable basis and above all cut out calling on our people, spoiling it all for us and just knocking out profits for everybody, especially yourselves down there. Sounds reasonable, does it not?

Can we begin negotiations? How about it? We have had 3 or 4 years of warfare, recriminations and arguments on these points back and forth. What do you say we try and settle all this? If this appeals to you I am sure that our officers up here will be glad to meet yours either down there, up here or half way between, wherever you say, and we can probably then really do something. This now is merely a plan of my own individually. I have not taken it up with our other officers but am sending them a copy of this letter. We up here have been elected to office presumably to do something for the industry up this way. I am sure you have the same ambitions down there. Can we get together? May I hear from you?

In furtherance of such intent and design on the part of all the respondents herein named, the respondent packers signed a written agreement in a meeting of such respondents assembled in Tarpon Springs, Fla., on August 8, 1935, and also at such time expressed "deep appreciation" of the designs expressed in the foregoing mentioned communication on the part of Institute respondents. The written agreement is as follows:

1. We will not circularize any trade outside of the bona fide sponge houses who are regularly established as such, and that we will confine our sales to such sponge and sponge and chamois houses.

2. The only exception to this is when northern buyers other than sponge houses visiting in Florida personally call on us and buy right here, or where unsolicited orders are mailed us. In such cases, we may sell them but at prices at least 20 percent higher than we will to the sponge houses.

3. We are ready and willing at any time to discuss further, any right proposition, suggestions, or idea for the furthering of this understanding and cooperation.

With the full belief that this, our movement will find the necessary reciprocity and action from the northern sponge houses, we remain

Commercial Sponge Co.
National Sponge Co.
Diamandis & Cardullias
C. G. Andriotos & Co.
Smitzes & Drivas Co.
Sponge Producers Corporation.
Industrial Florida Sponge Co.

PAR. 7. Pursuant to said agreement, letters, and bulletins, establishing combination and conspiracy, said respondents have, respectively and cooperatively, performed, and are now performing the following acts and practices, to wit:

The respondent members of the Institute furnished the respondent packer members who had entered into such agreement, as hereinabove set forth, with a list of "bona fide sponge houses" to whom they should confine their sales. In pursuance of said agreement, letters, and bulletins, establishing combination and conspiracy, the respondent packer members cooperatively adhered to the plan, and by concert of action, failed and refused to sell sponges to any dealer unless such dealer was on the list furnished by the Institute as a "bona fide sponge house." Said list has been revised from time to time, and respondent packer members are furnished with each revised list of the so-called "bona fide sponge houses." Pursuant to the aforesaid combination, agreement, and understanding, the respondent Institute furnished its members with a list of the packers who were cooperating in the plan to restrict sales, and caused said respondent members of the Institute to, and said members did, by concert of action, confine their purchases to the said packers who were cooperating in said plan; and whenever the Institute discovered that any packer had made a sale contrary to the agreement and understanding, the name of such packer was taken off their list, and such packer violating the agreement was blacklisted, and thereafter the respondent members of the Institute, by concerted action, failed and refused to make any further purchases from such packer.

The respondent packer members did not circularize any trade outside of the bona fide sponge houses regularly established as such, as declared by the Institute, respondent, and such packer members respondents did confine their sales of sponges to such so-called "bona fide houses" and did make a price difference of 20 percent to other houses not designated by the Institute respondent as "bona fide" houses,

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and did not sell to such others (even at the 20 percent increase) only when the order was sent to said packer members unsolicited or so placed by personal call.

PAR. 8. The capacity, tendency, and effect of said agreement, combination, conspiracy, and undertaking, and the acts and practices performed thereunder by said respondents, as hereinbefore set forth, has been, and now is:

(a) To monopolize in said respondent members of the Institute and so-called "bona fide sponge houses," distributors, the business of dealing in and distributing sponges produced in Florida, and to tend to monopolize in and distributing sponges produced in Florida, and to tend to monopolize in respondent packer members, the business of dealing in and distributing sponges produced in Florida.

(b) To unreasonably lessen, restrain, stifle, hamper, and suppress competition in said sponges, and to deprive wholesale dealers, distributors, and retail dealers, and the purchasing public generally, of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unrestricted or free and fair competition in trade in the sponge industry; and otherwise to operate as a restraint upon and a detriment to the freedom of fair and legitimate competition.

(c) To prejudice and injure the public and producers of sponges, dealers, distributors, and others who do not conform to, or cooperate in, the program of respondents.

CONCLUSION

The aforesaid acts and practices of respondents, corporations, and individuals named above, 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 and constitute violations of Section 5 of the Federal Trade Commission Act.

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 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 filed herein by counsel for the Commission, and the Commis-

sion having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, The Sponge Institute, The Florida Sponge Packers Association, Theodore Schroeder, Dan Malloy, David Block, and Dr. Lewis Radcliffe, individually and as officers of The Sponge Institute, Schroeder & Tremayne, Inc., a Missouri corporation, S. M. Arnold Co., Inc., a Missouri corporation, H. L. Ettman Sponge Co., a Missouri corporation, Addison Sponge Co., Inc., an Ohio corporation, S. Vollman Co., an Illinois corporation, Hugo Rosenfelt, trading as Nassau Sponge Co., Greek-American Sponge Co., an Illinois corporation, American Sponge and Chamois Co., Inc., a corporation, Albert Bloch & Sons, Inc., a New York corporation, Robert L. Senenberg and Perry Senenberg, copartners, trading as Florida Sponge & Chamois Co., Gulf & West Indies Co., Inc., a corporation, King & Malcolm Co., a New York corporation, Dan Malloy, trading as Dan Malloy Co., Frank M. Miglis, trading as Frank M. Miglis Co., John Diamandis and Peter J. Cardulis, copartners, trading as Diamandis & Cardulis, D. A. Alissandratos and Nick Bessis, copartners, trading as Commercial Sponge Co., C. G. Andriotes, trading as C. G. Andriotes & Co., George S. Smitzes, James Smitzes, Louis Smitzes, and Nick Drivas, copartners, trading as Smitzes & Drivas, Sponge Producers Corporation, a corporation, Diamandis Diamandis and Christos Psilakas, copartners, trading as Florida Industrial Sponge Co., George Mavros, trading as National Sponge Co., N. G. Arfaras and Sponge Fishing Co., Inc., a Florida corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of sponges in commerce as defined by the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing or carrying out any understanding, agreement, combination, or conspiracy, either individually or as members of an association, with the Florida Sponge Packers Association or The Sponge Institute, or any of their individual members, or with any other person, firm, or corporation, which is designed to or has a tendency

(a) To fix prices so as to lower the price of sponges in favor of members of The Sponge Institute as against nonmembers, or to lower the price in favor of certain wholesale distributors as against other purchasers of sponges, or to fix the prices at which sponges are bought and sold.

(b) To limit sales of sponges to any select individuals or group of individuals or to members of The Sponge Institute or distributors approved by it or its members.

(c) To limit purchases of sponges to any select individuals or group of individuals or to members of the Florida Sponge Packers Association or sponge packers approved by it or its members.

(d) To monopolize in any select group of wholesale distributors, sponge packers, association members, or dealers the business of dealing in and distributing sponges produced in Florida.

2. From publishing or circulating lists of or exchanging information regarding

(a) Sponge packers who fail to deal exclusively with members of The Sponge Institute or wholesale distributors selected by it or its members.

(b) Wholesale distributors who have agreed to purchase only from members of the Florida Sponge Packers Association, or sponge packers approved by The Sponge Institute, or the Florida Sponge Packers Association or their members.

3. The use of any cooperative or concerted action by respondents acting individually or through and by means of associations, their members, representatives, officers, and agents, to promote, establish, or carry out any understanding, agreement, or combination for the purpose and with the effect of unlawfully restricting, restraining, monopolizing, suppressing, and eliminating competition in the sale and distribution of sponges.

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

PHILIP H. KOOLISH, JR., INDIVIDUALLY AND TRADING
AS PACIFIC COAST SPECIALTY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3246. Complaint, Oct. 20, 1937—Decision, Feb. 24, 1939*

Where an individual engaged in sale and distribution of clocks, cameras, and electric shavers; in soliciting sale of and in selling and distributing his said merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes by which said merchandise was to be distributed to members of consuming public by lot or chance, and which involved distribution of descriptive literature, order blanks, and circular letters and instructions and push cards for distribution of said products under plan, in accordance with which customer paid for chance varying amount, dependent upon number pushed by chance, and received article being thus disposed of or nothing other than chance, in accordance with success or failure in selecting from list of feminine names, name, or names, as case might be, corresponding to name or names concealed under card's master seal or under card's two master seals, as case might be, and

Supplied thereby to and placed in the hands of others, means of conducting lotteries in sale of his merchandise in accordance with such plans under which said merchandise was distributed to the purchasing public, and amount which customer paid for chance was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure his said merchandise at prices much less than normal retail prices thereof, contrary to an established public policy of the United States Government and in violation of the laws of several States, and in competition with those engaged in the sale and distribution of like or similar articles of merchandise who do not sell the same by use of games of chance, gift enterprises, or lottery schemes;

With result that many purchasers of his said merchandise were attracted by element of chance involved in his said sales method and were thereby induced to purchase such products in preference to same or similar merchandise offered and sold by competitors who do not use such or similar methods, and public purchased, by reason of such preference, substantial volume of his said goods, and trade was unfairly diverted to him from his competitors aforesaid:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

Complaint

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COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Philip H. Koolish, Jr., individually and trading as Pacific Coast Specialty Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style of Pacific Coast Specialty Company with his principal office and place of business located at 1232 Westchester Place in the city of Los Angeles, State of California. He is now, and for several months last past has been, engaged in the sale and distribution of various articles of merchandise, including, among others, clocks, cameras, and razors, to purchasers thereof located at points in the various States of the United States. Respondent causes and has caused such merchandise when sold to be transported from his principal place of business in the city of Los Angeles to purchasers thereof in the State of California and in other States of the United States at their respective places of location. There is now, and has been for several months 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 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, 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 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, in connection with the sale and delivery to the purchasing public, was and is substantially as follows: The push cards 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 num-

bers 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 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. Other push cards furnished and distributed by respondent for use in the sale and distribution of his merchandise involve the same principle but vary in detail.

PAR. 3. Respondent forwards his push cards, together with various descriptive literature and with instructions as to how to operate said push cards 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. 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 or distribution thereof 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 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 the Federal Trade Commission Act, the Federal Trade Commission on October 20, 1937, issued and served its complaint in this proceeding upon the respondent, Philip H. Koolish, Jr., individually, and trading as Pacific Coast Specialty Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by Henry C. Lank and D. C. Daniel for the Commission, and in opposition to the allegations of said complaint by John A. Nash, attorney for the respondent, before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent not having filed brief or requested oral argument), and the Commission having duly considered the matter, and being now advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Philip H. Koolish, Jr., is an individual, doing business under the trade name of the Pacific Coast Specialty Co., with his principal office and place of business located in

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the city of Los Angeles, State of California. Respondent is now and for some time last past has been engaged in the business of selling and distributing clocks, cameras, and electric shavers. During the time above-mentioned respondent has caused said merchandise when sold to be transported from his place of business in the State of California to purchasers thereof located in various points in States of the United States other than the State from which said shipments were made.

Respondent has been at all times mentioned herein, and now is, in substantial competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among various States of the United States.

PAR. 2. In so carrying on his said business as described in paragraph 1 hereof, respondent in soliciting the sale of, and in selling and distributing his merchandise, furnishes, and 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 was to be distributed to members of the consuming public wholly by lot or chance. The methods used by respondent to sell his merchandise were as follows: Respondent distributes and has distributed to the purchasing public devices commonly known as push cards. Printed and set out on said push cards were detailed instructions for the operation thereof and accompanying said push cards were certain descriptive literature, order blanks and circular letters. The said order blanks and circular letters contained additional instructions explaining in detail the manner in which said push cards were to be used in the sale and distribution of said merchandise. Each of the push cards has printed thereon a number of feminine names, together with blank spaces, opposite an alphabetical list of the names, for writing in the names of the customers who purchased chances on the push cards. Each push card has a corresponding number of perforated disks marked "push," and immediately above each disk was printed one of the feminine names printed elsewhere on the card. Concealed within each disk was a number which was disclosed when the disk was pushed or separated from the card. Each card had either one or two master seals, concealed within each of which was one of the feminine names. When all the names had been selected by the customers, and the master seal removed, the person who had selected the name corresponding to the name concealed within the master seal received the article of merchandise specified, without further charge. The customer paid in cents the number indicated when the disk was removed or pushed from the card. The customer who pushed or removed the disks on said cards which revealed numbers higher than 29 cents, paid only 29 cents.

Customers who selected names which did not correspond with the name revealed by removal of the master seal received nothing for their money but the privilege of making a selection, or pushing the disk from said card. In this manner the respondent has sold and distributed a substantial number of his said articles of merchandise to members of the general public.

The Commission finds that respondent's merchandise was distributed to the purchasing public wholly by lot or chance, and the amount which the customer paid for a chance was determined wholly by lot or chance.

PAR. 3. The Commission finds that the persons to whom respondent furnished his said push cards used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent has thus supplied to, and placed in the hands of others, the means of conducting lotteries in the sale of his merchandise in accordance with his sales plan hereinabove described. The Commission further finds that the sale of respondent's merchandise to the purchasing public as hereinabove described involved a game of chance, or the sale of a chance to procure respondent's merchandise at prices much less than the normal retail prices thereof, and that the use of said lottery method in the sale and distribution of merchandise is a practice of the sort which is contrary to the established public policy of the Government of the United States.

PAR. 4. There are among the competitors of respondent, individuals, firms, partnerships, and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States who do not sell their merchandise by the use of games of chance, gift enterprises, or lottery schemes. Many purchasers of respondent's merchandise were attracted by the element of chance involved in respondent's sales method, and were thereby induced to purchase respondent's merchandise in preference to the same or similar merchandise offered for sale, and sold by respondent's competitors, who did not, and who do not use the same or similar methods. Because of the said preference the public has purchased a substantial volume of respondent's merchandise, with the result that trade has been unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove found 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 the Federal Trade Commission Act.

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 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, brief filed by attorneys for the Commission (respondent having filed no brief nor 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Philip H. Koolish, Jr., individually and trading as Pacific Coast Specialty Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of clocks, cameras, and electric shavers, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards or other lottery device, for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents or to distributors or members of the public push or pull cards, punchboards or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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
ALBERT E. BERGER TRADING AS RUN-PROOF
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 3366. Complaint, Mar. 30, 1938—Decision, Feb. 24, 1939

Where an individual engaged in advertising, selling, and distributing a preparation for treatment of silk and rayon hosiery and lingerie, under trade name "Run-Proof," to dealers and purchasers in other States and in the District of Columbia, in competition with others engaged in similar sale and distribution of similar preparations or other products intended and used for same purposes and uses, and including those who do not in any way misrepresent the character and nature of their respective businesses or nature and character of their respective products, and do not make use of such misleading representations as below set forth—

- (a) Represented, through use of words "Run-Proof," "Run-Proof Laboratories, Inc.," "Run-Proof Laboratories, Manufacturers of Run-Proof," that said product, when applied to silk and rayon apparel, would render the same proof against runs, rips, snags, breaks, and ladders, facts being it would not accomplish such results; with tendency and capacity to mislead, deceive, and influence a substantial portion of purchasing public into erroneous belief that it would render apparel aforesaid proof against runs, etc.; and
- (b) Represented, through use of corporate name "Run-Proof Laboratories, Inc.," "Manufacturers," and "Run-Proof Laboratories, Manufacturers of Run-Proof," that he made said preparation, or owned, operated, or controlled a laboratory in which such product was analyzed and tested, facts being he neither owned nor operated plant, factory or laboratory in which same was made, and did not directly or indirectly control such plant, factory, or laboratory, but filled orders from purchasers with quantities of preparation made in a plant, factory or laboratory which he did not own, operate, or control; with tendency and capacity to mislead and deceive substantial portion of purchasing public into the belief that he was the manufacturer thereof and maintained a laboratory and employed the same in connection with such manufacture;

With effect of misleading and deceiving members of the purchasing public into the erroneous and mistaken belief that said representations were true, and into purchase of substantial quantities of said product on account of such erroneous and mistaken beliefs thus induced, and of thereby unfairly diverting trade to him from competitors who do not, in sale and distribution of their respective products, make use of same or similar misrepresentations; to the injury of competition in commerce:

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. Robert S. Hall*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. John N. Wheelock* for the Commission.

Mr. William Jaffe, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Albert E. Berger, individually, and trading as Run-Proof Laboratories, Inc., hereinafter referred to as respondent, has violated the provisions of the 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, Albert E. Berger, is an individual operating and doing business under the trade name, Run-Proof Laboratories, Inc., with his principal office and place of business located at 134 North LaSalle Street, Chicago, Ill.

PAR. 2. Respondent, Albert E. Berger, operating under the trade name Run-Proof Laboratories, Inc., has been for more than 1 year last past, and is now, engaged in the business of advertising, selling, and distributing a preparation for the treatment of silk and rayon hosiery and lingerie which he advertises under the trade name "Run-Proof." Said respondent now causes, and for more than 1 year last past has caused, his said preparation to be sold through advertisements and causes same, when sold, to be transported from his principal place of business in Chicago, Ill., to dealers and purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia.

There is now, and has been for more than 1 year last past, a course of trade in said product so sold, distributed, and transported by respondent in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his said business respondent is now, and has been during all the time hereinabove stated, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the business of selling and distributing similar preparations or other products intended and used for the same purposes and uses for which respondent's said preparation is sold 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 the business set out and described in paragraphs 1 and 2 hereof, respondent, for the purpose of inducing the purchase of the said product offered for sale and sold by him, has published and circulated misleading and deceptive statements to purchasers and prospective customers throughout the United States, by mail, newspaper advertisements, advertising folders, pamphlets, circulars, letters, and other literature and on wrappers

in which the said product "Run-Proof" is packed when displayed and offered for sale to ultimate users. In all of said advertisements respondent represents that the preparation designated as "Run-Proof" makes hosiery run-proof and makes hosiery "proof against snags and runs." In describing his business status, respondent has caused the names and designations, "manufacturers" and "laboratories," to be prominently and conspicuously displayed together with other representations. Among such statements and representations, the following are typical examples:

Run-Proof Laboratories, Inc., manufacturers of run-proof.

Amazing invention makes hosiery "Run-Proof."

Run-Proof—resist runs—rips—snags—breaks in silk or rayon hosiery or lingerie.

Makes Silk and Rayon Hosiery and Lingerie proof against heart-breaking runs and "ladders".

The aforesaid statements and representations, together with other representations not herein set out in full, serve as representations on the part of respondent that he is the manufacturer of said product; that respondent owns and operates a laboratory where said product is tested and analyzed and its value, functions, purposes, and uses are determined; and that the said preparation "Run-Proof" is proof against, and will prevent, runs and snags in silk and rayon hosiery, lingerie, and like products.

PAR. 4. In truth and in fact respondent's aforesaid preparation "Run-Proof" is not proof against, and will not prevent runs and snags in silk and rayon hosiery and lingerie. Respondent does not own or operate a laboratory. Respondent is not a manufacturer and does not manufacture said product "Run-Proof."

PAR. 5. The aforesaid false and misleading representations by respondent have had, and do have, the capacity and tendency to induce members of the the purchasing public, relying upon respondent's said representations, to purchase respondent's said product "Run-Proof" under the mistaken and erroneous beliefs that said preparation is proof against, and will prevent, runs and snags in silk and rayon hosiery, lingerie, and like products; that respondent owns and operates a laboratory where said product is analyzed and tested; and that respondent is the manufacturer of said product. Thereby, trade has been unfairly diverted from competitors of respondent engaged in the selling of preparations similar to those sold by respondent, or other products designed for similar usage, who do not misrepresent their status or the qualities, functions and uses of their 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. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued and served its complaint upon respondent Albert E. Berger, individually and trading as Run-Proof Laboratories, Inc., charging respondent with the use of unfair methods of competition in interstate commerce in violation of section 5 of said act. After the issuance of said complaint, to which respondent made no answer, testimony and other evidence in support of the allegations of said complaint were introduced by John Wheelock, an 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 William Jaffee for the respondent, and said testimony and other evidence 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 testimony and other evidence and brief of counsel for the Commission in support of the complaint; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Albert E. Berger, is an individual operating and doing business under the trade name, Run-Proof Laboratories, Inc., with his principal office and place of business located at 134 North LaSalle Street, Chicago, Ill. Respondent, since January 21, 1937, has been operating under such trade name, Run-Proof Laboratories, Inc., and is now engaged in the business of advertising, selling and distributing a preparation for the treatment of silk and rayon hosiery and lingerie which he advertises under the trade name "Run-Proof." Said respondent now causes, and for more than 1 year last past has caused, his said preparation to be sold through advertisements, as stated in paragraph 3 hereof, and causes same, when sold, to be transported from his principal place of business in Chicago,

Ill., to dealers and purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia. There is now, and has been for more than 1 year last past a course of trade in said product so sold, distributed, and transported 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 his said business respondent is now, and has been during all the time hereinabove stated, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the business of selling and distributing similar preparations or other products intended and used for the same purposes and uses for which respondent's said preparation is sold 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 described in paragraph 1 hereof, respondent, for the purpose of inducing the purchase of the said product offered for sale and sold by him has published and circulated, by means of inscriptions on the container or package in which the said preparation "Run-Proof" was and is contained, in commerce as aforesaid, and also on invoices which the respondent sent to purchasers of the preparation situated in various States of the United States and in the District of Columbia, the following representations and statements with reference to the manufacture and quality of the product:

Run-Proof Laboratories, Inc.
Manufacturers
Run-Proof
Run-Proof Laboratories, Manufacturers of Run-Proof

PAR. 4. The respondent does not and never has manufactured the preparation he designates as "Run-Proof," sold and distributed in commerce as aforesaid. The respondent does not own and never has owned or operated directly the plant, factory, or laboratory in which such preparation was and is manufactured; neither has he directly or indirectly controlled such plant, factory or laboratory. Respondent, in the course of his business, fills orders from purchasers thereof with quantities of the preparation which is manufactured in a plant, factory, or laboratory which he did not and does not own, operate, or control.

PAR. 5. The product sold and distributed by respondent was originally sold in commerce by Run-Proof Laboratories, Inc., which was a corporation located in Chicago, Ill. This corporation became bankrupt, and the assets thereof were disposed of by sale in the course of the bankruptcy proceedings incident to its dissolution on January

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21, 1937. As a purchaser at such sale, the respondent, Albert E. Berger, acquired the office equipment and quantities of the preparation and the legal right to use of the trade name "Run-Proof" used by the corporation, and also the legal right to the use of the corporate name "Run-Proof Laboratories." Respondent, after and since January 21, 1937, continued the use of the trade name, as herein set out, in describing and advertising the product as herein stated. The corporation was engaged for many years prior to 1937 in selling such preparation in commerce.

PAR. 6. The preparation designated "Run-Proof" when applied to silk, rayon hosiery, and lingerie will not render such apparel to be proof against runs, rips, or snags. The preparation is designed and intended to render such effect, and the use of the words "Run-Proof" in branding and labeling the preparation has the tendency and capacity to mislead, deceive, and influence a substantial portion of the purchasing public to erroneously believe the preparation will render the apparel aforesaid proof against runs, rips and snags by the application thereof to such apparel.

PAR. 7. The use of the words "Run-Proof Laboratories, Inc.," "Manufacturers," and "Run-Proof Laboratories, Manufacturers of Run-Proof" in respondent's branding and labeling of the preparation has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that the respondent is the manufacturer of the preparation and maintains a laboratory, or laboratories, and employs such laboratory or laboratories in connection with the manufacture of the preparation.

PAR. 8. There are among the respondent's competitors in commerce as set out in paragraph 2 herein, those who do not in any way misrepresent the character and nature of their respective businesses and who do not misrepresent in any way the nature and character of their respective products and do not make use of the misleading representations herein set out or others similar thereto.

PAR. 9. The aforesaid false and misleading statements and representations used by the respondent, in offering for sale and selling his product as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true, and into the purchase of substantial quantities of respondent's product on account of said erroneous and mistaken beliefs induced as aforesaid. 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

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thereof, injury has been, and is now being, done by respondent to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent, Albert E. Berger, an individual, 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 violations of section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, no answer having been filed by the respondent, testimony and other evidence taken before R. S. Hall, an examiner for the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Albert E. Berger, his representatives, agents, and employees, directly in connection with the offering for sale, sale, and distribution of the preparation now known as, and sold under the name, "Run-Proof," for the treatment of silk and rayon hosiery and lingerie, or any other product of substantially the same ingredients, or possessing the same properties, whether sold under that name or any other name in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing through the use of the words "Run-Proof," "Run-Proof Laboratories, Inc.," "Run-Proof Laboratories, Inc., Manufacturers of Run-Proof," or any other word or words of similar import or meaning, or in any other manner, that the product "Run-Proof" when applied to silk and rayon apparel will render such apparel proof against runs, rips, snags, breaks, and ladders.

2. Representing through the use of the corporate or trade name "Run-Proof Laboratories, Inc.," or any other words of similar import or meaning, or in any other manner, that respondent owns, operates, or controls a laboratory where the product "Run-Proof" is analyzed and tested, unless and until the respondent actually owns and oper-

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ates, or directly and absolutely controls, a laboratory wherein such product is analyzed and tested.

3. Representing through the use of the words "Manufacturer" or "Manufacturers of Run-Proof" that respondent owns, operates or controls a factory, and makes the product "Run-Proof," unless and until the respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein such product is manufactured.

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

ISRAEL RASKIN TRADING AS L. & M. MERCANTILE COMPANY, AND GEORGE R. CRAGGETT TRADING AS MISSOURI VALLEY PAINT MANUFACTURING COMPANY

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

Docket 8614. Complaint, Sept. 30, 1938—Decision, Feb. 24, 1939

Where an individual engaged in manufacture and sale of paint, and second individual engaged in sale and distribution of such product of former, and in selling, as thus engaged, their said products to purchasers in other States and in the District of Columbia, in competition with others engaged in sale and distribution of such products in commerce among the various States and in said District, and acting together in the acts and practices below set forth, and at the instance one of the other—

- (a) Designated and labeled as "Certified Double Body Guaranteed Ready Mixed Paint—White," certain white product thus made and dealt in by them, and set forth on label on front of container thereof that it "Contains White Lead, Zinc Oxide, and Linseed Oil";
- (b) Set forth, also, on label placed on such container, analysis purporting to show composition of said product, and setting forth as composition thereof, among other ingredients, "White Lead, Zinc, and Calcied Lithopone" as 47.17 percent, "Carbonate of Calcium" as 17.86 percent, "Oxide of Silicon" as 5.78 percent, "Linseed and Weatherproofing Oils" as 21.77 percent, and "Solution Oil of Pine" as 1.17 percent;

Facts being said product, thus described and labeled, contained so little white lead, zinc, and linseed oil that it had little or no value for use as paint, and did not contain ingredients set out in proportions stated in such purported analysis, but had white lead, zinc, and calcied lithopone content of approximately 10 percent less than stated, with white lead and zinc content so small as to have no value, contained about 14 percent more carbonate of calcium than there set forth, and 22 percent more silicon content, and water in large quantities, presence of which was concealed through use of term "Solution Oil of Pine," and no tung oil, contrary to impression implicit in use of words "Weatherproofing Oils";

With effect of misleading and deceiving purchasing public, through their said false, misleading, and deceptive acts and practices in labeling and representing and describing their said product, as above set out, as being a certified double body guaranteed ready mixed white paint containing white lead, zinc, and linseed oil in substantial quantities, into the erroneous and mistaken belief that said representations were true, and of causing substantial number of such public, because of said erroneous and mistaken belief, to buy their said product in preference to products of competitors who truthfully label and represent the same and the manufacture thereof; and

- (c) Represented name of manufacture of said paint on front label aforesaid as being "The National Paint Co., Chicago, Ill., Tulsa, Okla.," notwithstanding

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ing fact there was no such company maintaining offices at said addresses, and said products, sold under said name, were not manufactured by such a company, but were made by individual aforesaid and sold and distributed by him and said other individual as above set out; with effect of misleading prospective purchasers into erroneous belief that such paint product was made by company known as "The National Paint Company," and which maintained places of business in Chicago and Tulsa;

With result that their said acts and practices, as above set forth, unfairly diverted to themselves trade in said commerce from many competitors who sell and distribute in said commerce ready-mixed white paint similar in general appearance to their above-described product, but which are in fact ready-mixed white paints of good quality, composed largely of and containing substantial quantities of, white lead, zinc, and linseed oil, and who in no wise misrepresent the character of their said products or their ingredients or the manufacturers thereof; to their injury and to that of the public:

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

Mr. James L. Fort for the Commission.

Watson, Ess, Groner, Barnett & Whittaker, of Kansas City, Mo., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Israel Raskin, individually and trading as L. & M. Mercantile Co., and George R. Craggett, trading as Missouri Valley Paint Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of the 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 Israel Raskin is an individual trading as L. & M. Mercantile Co. and having his office and principal place of business located at 3313 Brooklyn Avenue, in the city of Kansas City, State of Missouri. Respondent George R. Craggett is an individual trading as Missouri Valley Paint Manufacturing Co. and having his office and principal place of business at 22-24 West Third Street, in the city of Kansas City, State of Missouri.

PAR. 2. Respondent George R. Craggett is now, and for some time last past has been, engaged in the manufacture of paints and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondent Israel Raskin is now, and for some time last past has been, engaged in the sale and distribution of the paint products

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manufactured by respondent George R. Craggett in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause, and have caused, said products, when sold, to be transported from their respective places of business as aforesaid to the purchasers thereof located at various points in the several States of the United States, other than the State of Missouri, and in the District of Columbia. There is now, and has been for some time last past, a course of trade by said respondents in such products 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 their businesses as aforesaid respondents are, and have been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of paint products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Among the paint products manufactured by the respondent George R. Craggett and sold and distributed by him and the respondent Israel Raskin in said commerce is a white paint product, which the respondent George R. Craggett, under the direction of, and in cooperation and concert with, the respondent Israel Raskin, manufactures, and designates and labels "Certified Double Body Guaranteed Ready Mixed Paint—White," with a statement on the label on the front of the container for said product stating that it "Contains White Lead, Zinc Oxide, and Linseed Oil." The name of the manufacturer of said paint, on said front label, is represented as being the "National Paint Co., Chicago, Ill., Tulsa, Okla." Respondents also place on the container for said paint a label purporting to show the composition of the paint therein contained, which is as follows:

COMPOSITION

| | <i>Percent</i> |
|-----------------------------------------------|----------------|
| White Lead, Zinc, and Calcited Lithopone..... | 47.17 |
| Carbonate of Calcium..... | 17.86 |
| Oxide of Silicon..... | 5.78 |
| Linseed and Weatherproofing Oils..... | 21.77 |
| White Blended Varnish Oil..... | 2.49 |
| Volatile Mineral Solvents..... | 3.76 |
| Solution Oil of Pine..... | 1.17 |
| | 100.00 |

The respondent George R. Craggett causes said paint, so labeled, upon the order and direction of the respondent Israel Raskin, to be shipped and delivered from his said place of business in the State of Missouri to the purchasers thereof located in the several States of

the United States other than the State of Missouri and in the District of Columbia. Certain of said paint, so labeled, is delivered by the respondent George R. Craggett to the respondent Israel Raskin, who then transports said paint from his place of business in the State of Missouri into the several States of the United States, other than the State of Missouri, where he offers said paint for sale to farmers and others, either at private sale or at so-called farmers' auctions.

PAR. 5. Said product, when marketed by respondents, is similar in appearance, color, and packing to white paint of good quality, but in truth and in fact said product contains so little white lead, zinc, and linseed oil that it has little or no value for use as paint. The statement as to the composition of the paint, as made by respondents, is false and misleading in that it does not contain the ingredients set out therein in the proportions stated. The white lead, zinc, and calcited lithopone content is approximately 37.2 percent, rather than 47.17 percent as stated, and the white lead and zinc content contained therein is so small in amount that it has no value. The product sold by respondents contains 13.9 percent more carbonate of calcium than is represented on the label. The oxide of silicon content is 22.4 percent greater than stated on the label. The use of the term "Solution of Oil of Pine" avoids disclosing the presence of water, which respondents' product contains in large percentage. The use of the words "Weatherproofing Oils" on the label has a tendency to, and does, convey the impression that tung oil is present, when in truth and in fact no such oil is a part of the product.

PAR. 6. The use of the name "National Paint Co." and the addresses "Chicago, Ill." and "Tulsa, Okla." has a tendency to, and does, mislead prospective purchasers into the erroneous belief that such paint product is manufactured by a company known as the National Paint Co. which maintains places of business in Chicago, Ill. and Tulsa, Okla., when in truth and in fact there is no "National Paint Co." maintaining offices at said addresses, and said products sold under said name are not manufactured by the "National Paint Co." but are manufactured by the respondent George R. Craggett and are sold and distributed by said respondent and respondent Israel Raskin, as hereinabove alleged.

PAR. 7. Respondents' acts and practices in labeling, and representing and describing, their said product, as hereinabove set forth, as being a certified double body guaranteed ready mixed white paint containing white lead, zinc, and linseed oil in substantial quantities are false, misleading, and deceptive, and have a capacity and tendency to, and do, mislead and deceive the purchasing public into the erroneous and mistaken belief that said representations are true, and cause

a substantial number of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said product in preference to the products of their competitors who truthfully label and represent their said products and the manufacture thereof.

PAR. 8. There are among the competitors of respondents, mentioned in paragraph 3 hereof, many who sell and distribute in competition with respondents in said commerce ready mixed white paints similar in general appearance to respondents' above described product, but which are in fact ready mixed white paints of good quality composed largely of, and containing substantial quantities of, white lead, zinc, and linseed oil, and which competitors in nowise misrepresent the character of said products or their ingredients or the manufacturers thereof.

Respondents' acts and practices, as hereinabove set forth, have a capacity and tendency to, and do, unfairly divert to said respondents from said competitors trade in said commerce, to the injury of said competitors and to the injury of the public.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 30, 1938, issued, and on October 3, 1938, served, its complaint in this proceeding upon respondents Israel Raskin, and George R. Craggett charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers the Commission, by order entered herein, granted respondents' motion for permission to withdraw their said answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to the said facts, 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 the said complaint and the substitute answers 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 Israel Raskin, is an individual trading as L. & M. Mercantile Co. and his office and principal place of business is located at 3313 Brooklyn Avenue in the city of Kansas City, State of Missouri.

Respondent George R. Craggett is an individual trading as Missouri Valley Paint Manufacturing Co. and his office and principal place of business is located at 22-24 West Third Street in the city of Kansas City, State of Missouri.

PAR. 2. Respondent George R. Craggett is now, and for some time last past has been, engaged in the manufacture of paints and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondent Israel Raskin is now, and for some time last past has been, engaged in the sale and distribution of the paint products manufactured by respondent George R. Craggett in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause, and have caused, said products, when sold, to be transported from their respective places of business as aforesaid to the purchasers thereof located at various points in the several States of the United States, other than the State of Missouri, and in the District of Columbia. There is now, and has been for some time last past, a course of trade by said respondents in such products 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 their businesses as aforesaid respondents are, and have been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of paint products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Among the paint products manufactured by the respondent George R. Craggett and sold and distributed by him and the respondent Israel Raskin in said commerce is a white paint product, which the respondent George R. Craggett, under the direction of, and in cooperation and concert with, the respondent Israel Raskin, manufactures, and designates and labels "Certified Double Body Guaranteed Ready Mixed Paint—White," with the statement on the label on the front of the container for said product stating that it "Contains White Lead, Zinc Oxide, and Linseed Oil." The name of the manufacturer of said paint on said front label is represented as being "The National Paint Co., Chicago, Ill., Tulsa, Okla." Respondents also place on the container for said paint a label purport-

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ing to show the composition of the paint therein contained, which is as follows:

COMPOSITION

| | <i>Percent</i> |
|-----------------------------------------------|----------------|
| White Lead, Zinc, and Calcited Lithopone..... | 47.17 |
| Carbonate of Calcium..... | 17.86 |
| Oxide of Silicon..... | 5.78 |
| Linseed and Weatherproofing Oils..... | 21.77 |
| White Blended Varnish Oil..... | 2.49 |
| Volatile Mineral Solvents..... | 3.76 |
| Solution Oil of Pine..... | 1.17 |
| | 100.00 |

The respondent George R. Craggett causes said paint, so labeled, upon the order and direction of the respondent Israel Raskin, to be shipped and delivered from his said place of business in the State of Missouri to the purchasers thereof located in the several States of the United States other than the State of Missouri and in the District of Columbia. Certain of said paint, so labeled, is delivered by the respondent George R. Craggett to the respondent Israel Raskin, who then transports said paint from his place of business in the State of Missouri into the several States of the United States, other than the State of Missouri, where he offers said paint for sale to farmers and others, either at private sale or at so-called farmers' auctions.

PAR. 5. Said product, when marketed by respondents, is similar in appearance, color, and packing to white paint of good quality, but in truth and in fact said product contains so little white lead, zinc and linseed oil that it has little or no value for use as paint. The statement as to the composition of the paint, as made by respondents, is false and misleading in that it does not contain the ingredients set out therein in the proportions stated. The white lead, zinc, and calcited lithopone content is approximately 37.2 percent, rather than 47.17 percent as stated, and the white lead and zinc content therein is so small in amount that it has no value. The product sold by respondents contains 13.9 percent more carbonate of calcium than is represented on the label. The oxide of silicon content is 22.4 percent greater than stated on the label.

The use of the term "Solution of Oil of Pine" avoids disclosing the presence of water, which respondents' product contains in large percentage. The use of the words "Weatherproofing Oils" on the label has a tendency to, and does, convey the impression that tung oil is present, when in truth and in fact no such oil is a part of the product.

PAR. 6. The use of the name "National Paint Co." and the addresses "Chicago, Ill." and "Tulsa, Okla." has a tendency to and does mislead prospective purchasers into the erroneous belief that such paint product is manufactured by a company known as the National Paint Co. which maintains places of business in Chicago, Ill., and Tulsa, Okla., when in truth and in fact there is no "National Paint Company" maintaining offices at said addresses, and said products sold under said name are not manufactured by "National Paint Co." but are manufactured by the respondent George R. Craggett and are sold and distributed by said respondent and respondent Israel Raskin, as hereinabove alleged.

PAR. 7. Respondents' acts and practices in labeling and representing and describing their said product, as hereinabove set forth, as being a certified double body guaranteed ready mixed white paint containing white lead, zinc, and linseed oil in substantial quantities are false, misleading, and deceptive, and have a capacity and tendency to, and do, mislead and deceive the purchasing public into the erroneous and mistaken belief that said representations are true, and cause a substantial number of the purchasing public because of said erroneous and mistaken belief to purchase respondents' said product in preference to the products of their competitors who truthfully label and represent their said products and the manufacture thereof.

PAR. 8. There are among the competitors of respondents, mentioned in paragraph 3 hereof, many who sell and distribute in competition with respondents in said commerce ready mixed white paint similar in general appearance to respondents' above-described product but which are in fact ready mixed white paints of good quality composed largely of, and containing substantial quantities of, white lead, zinc, and linseed oil, and which competitors in no wise misrepresent the character of said products or their ingredients or the manufacturers thereof.

Respondents' acts and practices, as hereinabove set forth, have a capacity and tendency to, and do, unfairly divert to said respondents from said competitors trade in said commerce to the injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of respondents as herein found, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Israel Raskin and George B. Craggett, individually, and trading as L. & M. Mercantile Co. and Missouri Valley Paint Manufacturing Co., respectively, or under any other name or names, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of paint products, or other like articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Labeling or selling as paint any product which does not contain the necessary ingredients in quantities sufficient to give it the quality, character, or value of paint.

2. Using the words "lead" or "zinc," or any other words of similar import, to designate, describe, or refer to any paint product or any pigment content thereof when such paint products do not contain sufficient quantities of such lead, zinc, or other ingredient to give such paint products the quality, character or value implied by the use of such words.

3. Using any analysis on labels, in advertising or in any other way which does not truthfully and accurately state the ingredients contained in said products and the proportion in which each appears.

4. Representing on labels or in advertising in any other way, expressly or by implication, that their paint products are composed of white lead, zinc oxide, and linseed oil, unless and until the pigment content of such paint products, exclusive of necessary coloring matter, is composed wholly of white lead and zinc oxide, and the nonvolatile liquid content, exclusive of necessary driers, is composed wholly of linseed oil.

5. Representing, by labels on cans containing paint products, or in any other way, expressly or by implication, that their paint products contain white lead, zinc oxide, or linseed oil in certain proportions or percentage unless the paint products so represented contain white lead, zinc oxide, and linseed oil in the proportion or percentage represented.

6. Representing, through the use of the term "Weatherproofing Oils," or any other term of similar import or meaning, or through any other means or device, that their paint products contain tung oil or other weatherproofing oils unless such products do actually contain tung oil or such other oils in sufficient quantities to give such products the quality, character, or value implied by the use of such term.

7. Representing that their paint products are manufactured at a place other than the actual place of manufacture or that they are manufactured by or for any person, corporation or partnership other than that person, corporation, or partnership by whom or for which said paint products are actually manufactured.

It is further ordered, That the respondents, Israel Raskin, and George R. Craggett, 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
INSTRUCTION SERVICE, INC., AND CHARLES J. OZMENT
TRADING AS INSTRUCTION SERVICE AND PERFECT
PENMANSHIP INSTITUTE

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

Docket 3628. Complaint, Oct. 8, 1938—Decision, Feb. 24, 1939

Where a corporation, and an individual who was president thereof and managed, controlled, and directed its policies and operations, engaged in sale and distribution of courses of study and instruction to prepare students for examinations for various civil service positions with the United States Government, and as thus engaged, in sending their courses of instruction, pamphlets, study, and question sheets, and other printed matter, written material, and equipment to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in similar sale and distribution of similar correspondence courses of study and instruction, and including many who do not in any manner misrepresent their courses of instruction and do not make any false representations in connection with sale or distribution thereof; in advertising their courses in newspapers, magazines, and other publications circulating among the various States and in said District, and in pamphlets, circulars and other printed matter circulated to members of the purchasing public as aforesaid—

- (a) Represented that men and women were constantly needed for Government positions, and that such positions were immediately available, and that anyone with only a common school education might obtain well-paying Government position, and that large numbers of prison guards, watchmen, and men for similar Government positions were needed, with no special qualifications necessary and that railway mail clerks were allowed to travel and receive allowances for expenses immediately upon appointment and were paid while off duty, facts being that men and women are not thus constantly needed, nor are such positions immediately available, many positions, in addition to high school education, require special training and experience, and there are relatively few positions available at salaries stated by them to those having only common school education, actual probable earnings available to those who may succeed in being employed after having successfully taken examination, were in many instances less than amount stated by them or available only after many years of service, no examinations were contemplated within reasonable time for prison guards, watchmen, and similar positions, in which, in addition to exacting qualifications, war veterans were given preference, and railway mail clerks were not sent out to travel immediately after being employed, but were required to serve long period of time at terminals or other stations before being allowed to travel, at least 50 percent of them received no expense allowances by reason of such circumstances or employment on short runs, and such clerks did not receive compensation when not working and were required to average 8 hours work a day for 306 days a year;

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- (b) Represented that civil service examinations were held frequently or almost every week throughout the United States, and that thousands of civil service positions would be available to applicants, and that appointments were made within a few days after taking examination and that applicant's grade alone determined time of appointment, facts being majority of appointments, as thus referred to, were made from civil service registers containing names of eligible persons who had theretofore taken examinations, but many of whom had been on the register for a long period, and other vacancies were filled by transfers or promotions, and, while examinations were held throughout the United States, large number thereof were open only to residents of certain cities, districts, or States, and many others required special physical qualifications and mental training, appointments were generally made no earlier than 3 months after taking of examination, and often much later, and conditions other than grade of applicant determined time of appointment;
- (c) Represented that said individual was connected with the Civil Service Commission or was or had been recently employed by the Government, through such statements, on their letterheads used in connection with sale and distribution of their said courses of study and instruction, and in connection with name of said individual, as "Civil Service Expert," "In Postal Service 5 Years. U. S. Civil Service Office About 3 Years Giving Instructions for U. S. Gov't Examinations for 29 Years," and that said individual, thus referred to and characterized, was in charge of instruction service, facts being said individual had not been for many years employed in any capacity whatsoever by the Government, and had no connection whatever with said Commission;

With capacity and tendency to cause members of the purchasing public to have the erroneous and mistaken belief that they were in a position to give employment to persons answering their advertisements, and that thousands of Government positions requiring only a common school education were immediately available at high salaries; and

- (d) Furnished to applicants and prospective students so-called gift certificates which recited, in effect, that if such applicant or prospective student would subscribe to said courses of study within date stated on such certificate, course of penmanship would be furnished free of charge, facts being said course, conducted by said individual, did not constitute special offer or gift, but was continually and regularly offered to all applicants and prospective students and price thereof was included in that of the respective course or courses of study selected by such applicant or student;

With effect of misleading and deceiving substantial portion of purchasing public, through such false, misleading, and deceptive statements, representations and advertisements used, and disseminated as aforesaid, into the erroneous and mistaken belief that such statements, etc., were true, and of causing substantial portion of purchasing public, because of such erroneous and mistaken belief, to buy their said courses of study and instruction, and of thereby diverting trade unfairly to them from their competitors in commerce who truthfully advertise and represent their respective courses of study and instruction; to the injury of competition in commerce:

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

Mr. William L. Pencke for the Commission.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Instruction Service, Inc., a corporation, and Charles J. Ozment, individually, and trading as Instruction Service and Perfect Penmanship Institute, hereinafter referred to as respondents, have violated the provisions of 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 Instruction Service, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri.

Respondent Charles J. Ozment is president of said corporation, managing, controlling, and directing its policies and operations. He also does business under the firm names and styles of Instruction Service and Perfect Penmanship Institute. The office and principal place of business of said respondents is in the Arcade Building, city of St. Louis and State of Missouri. Prior to the incorporation of said Instruction Service, Inc., in January 1937, respondent Charles J. Ozment for many years operated the business hereinafter described individually under the firm name and style of Ozment's Instruction Bureau.

PAR. 2. Said respondents are now, and since on or about January 1, 1937, have been, engaged in the sale and distribution of courses of study and instruction to prepare students thereof for examinations for various civil service positions under the United States Government. Respondent Charles J. Ozment is now, and for many years last past has been, engaged in the sale and distribution of a course of instruction in penmanship. All of said courses are pursued by correspondence. Respondents, in the course and conduct of their business, cause said courses of instruction and the pamphlets, study and question sheets, and other printed matter and writing material and equipment to be transported from their said place of business in St. Louis, Mo., to, into and through States of the United States other than Missouri to the various purchasers thereof located in such other States and in the District of Columbia.

PAR 3. There is now, and has been at all times herein mentioned, a course of trade in said several courses of study and instruction so sold and distributed by said respondents 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 their business as aforesaid, respondents are now, and during all of the time mentioned herein have been, in substantial competition with other corporation and with individuals, partnerships, and firms engaged in the sale and distribution of similar correspondence courses of study and instruction 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 their said business and for the purpose of inducing the purchase of their said courses, respondents, by means of newspaper and magazine advertisements, pamphlets, circulars, and other printed matter circulated among the general public throughout the United States, make many representations concerning their said business and their said courses of study and instruction. Among and typical of said representations, so circulated, are the following:

Increase Your Income. Wanted Immediately—Men, women, age 18-50 qualify for government positions, start \$105-\$175 month. Thousands appointed yearly. Common education sufficient. Valuable information free. Write Instruction Service, 140-B, St. Louis, Mo., today.

It is rumored that sometime in the near future a large number of Government Positions, which are not under the classified civil service, will be classified and placed in the regular civil service and made subject to competitive civil service examinations, bringing thousands of additional positions into the classified service.

Government Watchmen and U. S. Prison Guard. Watchmen are employed in practically all Government Buildings throughout the United States and a large number are needed.

RAILWAY MAIL CLERK. * * * It is a very attractive position, regular entrance salary per month \$158, maximum is \$2450 per year, and hotel expense allowance when away from home more than ten hours. Entrance pay at rate of \$1850 yearly for time employed. On duty a few hours per day, then go to your hotel and catch your train the next day—employed four, or perhaps six days, then off duty a few days. The subjects of examination include Mail tests, i. e., sorting, routing and following instructions, and General Tests. Appointment may be made to Terminal Service to start. Those desiring stationary employment may get this. * * *

* * * it appears very clear to me that within a very reasonable time there will be almost A MILLION CIVIL SERVICE POSITIONS, and the annual turnover or number of vacancies per year should be very large. Not only this, but it is my firm belief that as general business grows better and amount of Federal revenues increase, that working hours will be shortened in Government Positions, working conditions improved, vacations lengthened, and SALARIES INCREASED BEYOND THE FONDEST DREAMS OF THOSE NOW HOLDING GOVERNMENT POSITIONS.

During 1930, '31, '32, and '33, thousands of Government vacancies occurred, and, on account of the depression, a large number of these vacancies have not been filled. Now as general business returns back toward normal, it stands to reason that many of these old vacancies will have to be filled.

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Question. How soon after passing examination will I get my position? Ans. It depends upon your grade. Some are often appointed within a few days, while those who make low grades wait longer. Take our course and make a high grade.

Question. When will examination be held? Ans. Examinations of various kinds are being held at different places almost every week. When new eligibles are needed, examinations are called, and you should be ready for them.

On respondents' letterheads, used in connection with the sale and distribution of said courses of study and instruction, appears the following:

C. J. Ozment
Civil Service Expert

In Postal Service
5 Years
U. S. Civil Service Office
About 3 Years Giving
Instructions for U. S.
Gov't Examinations for
29 Years

INSTRUCTION SERVICE

C. J. OZMENT—In Charge
Arcade Building,
St. Louis, Mo.

PAR. 6. The aforesaid statements and representations appearing in respondents' newspaper and magazine advertising, and in circulars, pamphlets, and correspondence with subscribers and prospective subscribers to their said courses of instruction are false, misleading, deceptive, and grossly exaggerated in that:

Men and women are not constantly needed for Government positions immediately available. There are many positions which, in addition to high school education, require special training and experience, and there are relatively few positions available at the salaries stated in respondents' literature to persons who have only a common school education. Railway mail clerks are not sent out to travel immediately after being employed, but have to serve a long period of time at terminals or other stations before being allowed to travel. They do not receive expense allowances as represented by respondents, nor do they receive compensation when they are not working. There are no examinations being contemplated within any reasonable time for prison guards, watchmen, and similar positions, and in addition to exacting qualifications, war veterans are given preference for such positions. While there may be thousands of appointments every year the majority of them are made from civil service registers containing the names of eligible persons who have theretofore taken the examinations and many of whom have been on the register for a long time. Other vacancies are filled by transfers or promotions. While it is true

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that examinations are being held throughout the United States, respondents fail to state that a large number of such examinations are open only to residents of certain cities, districts, or States, and that many others require special physical qualifications and mental training. Respondent Ozment is not now, and has not been for many years, employed in any capacity whatsoever by the United States Government and has no connection whatever with the Civil Service Commission. Said alleged free offer of a course in penmanship is a regular offer made to all applicants and prospective students of respondents, and said course is not free, but the price thereof is in fact included in the cost of the respective course of study for a civil service position for which the applicant or prospective student may subscribe.

PAR. 7. In truth and in fact, all of said representations are either false, misleading, or grossly exaggerated and not warranted by the facts for the following reasons:

(a) While thousands of persons may be appointed to Government positions yearly, they are in nearly all instances taken from the current register and are not appointed immediately after having taken examinations; the statement that men and women are wanted immediately to qualify for Government positions leads applicants into the erroneous belief that positions are available and that they may be employed immediately after having taken an examination. The actual or probable earnings available to those who may succeed in being employed by the Government after having successfully taken the civil service examination are, in many instances, less than the amounts stated by respondents, or are available only after many years of service with the Government.

(b) While a large number of Government positions may be classified and placed in the regular civil service in the near future and thus bring thousands of additional positions into the classified service, the employees now holding such positions would be blanketed into the civil service, with the result that there will not be thousands of additional positions.

(c) Examinations for guards were held in 1932 and the last examination for junior custodial officers was given in 1928. It has not been determined when another examination for guards or watchmen will be held. Moreover, the physical and mental qualifications for prison guards are very rigid and, as a general rule, war veterans are preferred for such positions. Respondents, in many instances, accept subscribers or students to their said courses of training without investigating whether such subscribers or students are fitted physically, mentally, or otherwise for appointment to certain of the positions for which they are being trained.

(d) Railway mail clerks are required to serve 4 or 5 years in a terminal station before being allowed to travel and no allowances for meals or hotels are granted during that time; at least 50 percent of all railway mail clerks receive no expense allowances for the reason that they are employed on short runs or at terminals. Railway mail clerks are required to average 8 hours work a day for 306 days a year and at least a third of the entire force of said clerks are employed at terminals or in offices for 8 hours a day with no periods of time off.

(e) The representation that "within a very reasonable time there will be almost a million civil service positions" when read in conjunction with other representations is calculated to convey the impression to the minds of ignorant persons and those eager for employment that there are many vacancies to be filled. While there may be improvements from time to time, it is not likely that vacations will be lengthened and salaries increased beyond the fondest dreams of Government employees.

(f) Although many vacancies may have occurred in classified civil service during the depression years because of a general policy of all Government agencies to economize, a substantial number of such vacancies have been filled; and the implication that a large number of vacancies have to be filled now, is not justified by the facts.

(g) The phraseology implies that appointments to positions are always made within a few days or soon thereafter and that the applicant's grade alone determines the time of appointment, when in fact appointments are generally made no earlier than 3 months after the taking of the examinations and often much later; and conditions other than the grade of the applicant determine the time of appointment.

(h) While large numbers of local examinations are held in various sections of the country, many of said examinations are not of a general nature but are confined only to residents of certain cities, districts, or States.

(i) The statement as to respondent Ozment's former employment with the Government together with the representation that he is "giving instructions for U. S. Gov't Examinations for 29 Years" and is a civil service expert, creates the impression and implies that said respondent is at present employed in some capacity by the United States Civil Service Commission.

(j) The many misstatements of fact, half truths, and exaggerations which appear throughout the pamphlets, circulars, letters, and other advertising matter of respondents all combine to create in the minds of the ignorant and unwary the impression that respondents are in a position to give employment to persons answering their advertise-

ments; and that thousands of Government positions requiring only a common school education are immediately available at high salaries.

PAR. 8. In the course and conduct of their business as aforesaid, respondents, as an inducement to subscribe to said courses of study, furnish to applicants and prospective students so-called gift certificates, which recite in effect that if such applicant or prospective student will subscribe to said courses of study within the date stated on said certificate a course of penmanship valued at five dollars will be furnished free of charge to said applicant or prospective student. In truth and in fact, said offer is false and misleading in that said course of penmanship does not constitute a special offer nor a gift, but is continuously and regularly offered to all applicants and prospective students and the price of said course is in fact included in the price of the respective course or courses of study selected by the applicant or prospective student.

PAR. 9. The statements and representations so made by respondents in the manner and by the means hereinabove alleged, have the tendency and capacity to, and do, mislead and deceive purchasers and prospective purchasers of said courses of study and training into the erroneous and mistaken belief that such representations are true, and to induce them to act on such belief and to purchase and pay for respondents' courses of study and instruction. Thereby trade is diverted unfairly to respondents from respondents' competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 10. Among the competitors of the respondents described in paragraph 4 hereof are many who do not in any manner use misrepresentations in connection with the sale and distribution of their said correspondence courses of instruction.

PAR. 11. The above alleged acts and practices of respondents are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 8th day of October 1938, issued, and on the 12th day of October 1938, served, its complaint in this proceeding upon respondents, Instruction Service, Inc., a corporation, and Charles J. Ozment, individually and trading as Instruction Service and Perfect Penmanship Institute, charging them with

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the use of unfair methods of competition and unfair and deceptive acts and practices 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 answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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, Instruction Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri.

Respondent, Charles J. Ozment, is the president of said corporation and manages, controls, and directs the policies and operations of said corporation with respect to the acts and practices hereinafter set forth. Respondent Ozment also does business under the names and styles of Instruction Service and Perfect Penmanship Institute.

The office and principal place of business of said respondents is in the Arcade Building, city of St. Louis, State of Missouri. Prior to the incorporation in January 1937 of said respondent Instruction Service, Inc., respondent Ozment for many years operated the business hereinafter described, individually, under the firm name and style of Ozment's Instruction Bureau.

PAR. 2. The respondents are now, and since on or about January 1, 1937, have been, engaged in the sale and distribution of courses of study and instruction to prepare students thereof for examinations for various civil service positions in the United States Government. Respondent Ozment is now, and for many years last past has been, engaged in the sale and distribution of a course of instruction in penmanship. All of said courses are pursued by correspondence. In the course and conduct of their business, as aforesaid, the respondents cause said courses of instruction and the pamphlets, study and question sheets and other printed matter, writing material, and equipment, when sold by them, to be transported from their aforesaid place of business in the State of Missouri to the purchasers thereof at their

respective points of location in various States of the United States other than the State of Missouri and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said courses of study and instruction 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 business, as aforesaid, the respondents are now, and during all the times mentioned herein have been, in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of similar correspondence courses of study and instruction. Among such competitors in said commerce are many who do not in any manner misrepresent their correspondence courses of study and instruction and who do not make any false representations in connection with the sale and distribution of their respective correspondence courses of study and instruction.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said courses, the respondents have caused statements and representations to be published in newspapers, magazines, and other publications having a circulation among and between the various States of the United States and in the District of Columbia, and in pamphlets, circulars and other printed matter circulated to members of the purchasing public situated in various States of the United States and in the District of Columbia. Among and typical of the statements and representations so used and disseminated as aforesaid are the following:

Increase Your Income. Wanted Immediately—Men, women, age 18-50 qualify for government positions, start \$105-\$175 month. Thousands appointed yearly. Common education sufficient. Valuable information free. Write Instruction Service, 140-B, St. Louis, Mo., today.

It is rumored that sometime in the near future a large number of Government Positions, which are not under the classified Civil Service, will be classified and placed in the regular Civil Service and made subject to competitive Civil Service examinations—bringing thousands of additional positions into the classified service.

Government Watchmen and U. S. Prison Guard. Watchmen are employed in practically all Government Buildings throughout the United States and a large number are needed.

RAILWAY MAIL CLERK. * * * It is a very attractive position, regular entrance salary per month \$158, maximum is \$2450 per year, and hotel expense allowance when away from home more than ten hours. Entrance pay at rate of \$1850 yearly for time employed. On duty a few hours per day, then go to your hotel and catch your train the next day—employed four, or perhaps six

days, then off duty a few days. The subjects of examination include Mail Tests, i. e., sorting, routing and following instructions, and General Tests. Appointment may be made to Terminal Service to start. Those desiring stationary employment may get this. * * *

* * * It appears very clear to me that within a very reasonable time there will be almost A MILLION CIVIL SERVICE POSITIONS, and the annual turnover or number of vacancies per year should be very large. Not only this, but it is my firm belief that as general business grows better and amount of Federal revenues increase, that working hours will be shortened in Government Positions, working conditions improved, vacations lengthened, and SALARIES INCREASED BEYOND THE FONDEST DREAMS OF THOSE NOW HOLDING GOVERNMENT POSITIONS.

During 1930, '31, '32, and '33, thousands of Government vacancies occurred, and, on account of the depression, a large number of these vacancies have not been filled. Now as general business returns back toward normal, it stands to reason that many of these old vacancies will have to be filled.

Question. How soon after passing examinations will I get my position?
 Ans. It depends upon your grade. Some are often appointed within a few days, while those who make low grades wait longer. Take our course and make a high grade.

Question. When will examination be held? Ans. Examinations of various kinds are being held at different places almost every week. When new eligibles are needed, examinations are called, and you should be ready for them.

On respondents' letterheads, used in connection with the sale and distribution of said courses of study and instructions, appears the following:

C. J. Ozment
 Civil Service Expert

In Postal Service
 5 Years
 U. S. Civil Service Office
 About 3 Years Giving In-
 structions for U. S. Gov't
 Examinations for 29 Years

INSTRUCTION SERVICE

C. J. Ozment . . . In Charge
 Arcade Building,
 St. Louis, Mo.

PAR. 5. The aforesaid statements and representations, used and disseminated by the respondents as aforesaid, are false, misleading, deceptive, and grossly exaggerated.

In truth and in fact, men and women are not constantly needed for Government positions, and such positions are not immediately available. There are many positions which, in addition to high school education, require special training and experience, and there are relatively few positions available at the salaries stated in respondents' literature to persons who have only a common school education. The actual probable earnings available to those who may succeed in be-

ing employed by the Government after having successfully taken the civil service examination are in many instances less than the amounts stated by respondents or are available only after many years of service with the Government. Railway mail clerks are not sent out to travel immediately after being employed, but are required to serve a long period of time at terminals or other stations before being allowed to travel. At least 50 percent of such clerks receive no expense allowances for the reason that they are employed on short runs or at terminals. Such clerks do not receive compensation when they are not working and they are required to average eight hours work a day for 306 days a year.

There are no examinations being contemplated within a reasonable time for prison guards, watchmen, and similar positions and, in addition to exacting qualifications, war veterans are given preference for such positions. There may be thousands of appointments each year in the civil service, but the majority of such appointments are made from civil service registers containing the names of eligible persons who have theretofore taken the examinations, and many of whom have been on the register for a long period of time. Other vacancies are filled by transfers or promotions. Examinations for the civil service are being held throughout the United States, but respondents fail to state that a large number of such examinations are open only to residents of certain cities, districts, or States, and that many other of such examinations require special physical qualifications and mental training.

The respondents represent, in the advertisements disseminated as aforesaid, that appointments to positions in the civil service are always made within a few days after the taking of the examination by the applicant or soon thereafter, and that the applicant's grade alone determines the time of appointment. In truth and in fact, appointments are generally made no earlier than 3 months after the taking of examinations and often much later, and conditions other than the grade of the applicant determine the time of the appointment.

The statement used and disseminated by the respondents as aforesaid relative to respondent Ozment's former employment by the Government, together with the representation that he has been "giving instructions for U. S. Gov't. Examinations for 29 years" and is a civil service expert, has the tendency and capacity to cause members of the purchasing public to have the erroneous and mistaken belief that said respondent is at present employed in some capacity by the United States Civil Service Commission. In truth and in fact, respondent Ozment is not now and has not been for many years em-

ployed in any capacity whatsoever by the United States Government and has no connection whatever with the Civil Service Commission.

The statements and representations, disseminated by the respondents as aforesaid, have the capacity and tendency to cause members of the purchasing public to have the erroneous and mistaken belief that respondents are in a position to give employment to persons answering their advertisements and that thousands of Government positions requiring only a common school education are immediately available at high salaries.

PAR. 6. In the course and conduct of their business, as aforesaid, respondents, as an inducement to subscribe to said courses of study, furnish to applicants and prospective students so-called gift certificates, which recite in effect that if such applicant or prospective student will subscribe to said courses of study within the date stated on said certificate a course of penmanship valued at five dollars will be furnished free of charge to said applicant or prospective student. In truth and in fact, said offer is false and misleading in that said course of penmanship does not constitute a special offer nor a gift, but is continuously and regularly offered to all applicants and prospective students and the price of said course is in fact included in the price of the respective course or courses of study selected by the applicant or prospective student.

PAR. 7. The use by the respondents of the foregoing false, misleading, and deceptive statements, representations, and advertisements used and disseminated as aforesaid with respect to said courses of study and instruction has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false, misleading, and deceptive statements, representations, and advertisements are true, and causes a substantial portion of the purchasing public because of said erroneous and mistaken belief to purchase respondents' courses of study and instruction. As a result trade has been diverted unfairly to the respondents from their competitors in said commerce who truthfully advertise and represent their respective courses of study and instruction. In consequence thereof, injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition

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in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Instruction Service, Inc., a corporation, and its officers, and Charles J. Ozment, individually and trading as Instruction Service and Perfect Penmanship Institute, or under any other name, their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of correspondence courses of study and instruction for Civil Service positions and in penmanship, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly that:

1. Men and women are constantly needed for Government positions and that such positions are immediately available.
2. Any person having only a common school education may obtain a well-paying Government position.
3. Railway mail clerks are allowed to travel and receive allowances for expenses immediately upon appointment and are paid while off duty.
4. Large numbers of prison guards, watchmen, and men for similar Government positions are needed and that no special qualifications are necessary for such positions.
5. Various civil service examinations are held frequently or almost every week throughout the United States, without stating that a large number of such examinations are restricted to residents in certain localities.
6. Thousands of civil service positions will be available to applicants, unless the true facts are disclosed with respect to the method under which the majority of such positions are filled.
7. Appointments to civil service positions are made within a few days after the taking of an examination or soon thereafter; and that the applicant's grade alone without any other consideration determines the time of appointment.

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8. Respondent Ozment has any connection with the United States Civil Service Commission or is now or within recent years has been employed by the United States Government in any capacity.

9. The course in penmanship is furnished free or without cost with the purchase of any of respondents' courses of instruction in civil service training, when said course in penmanship is a regular offer made by respondents to all applicants and prospective students and the price thereof is in fact included in the cost of the respective course of study for which an applicant may subscribe.

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

W. S. LIBBEY COMPANY

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

Docket 3638. Complaint, Oct. 27, 1938—Decision, Feb. 24, 1939

Where a corporation engaged in manufacture of blankets, and in sale and distribution thereof under trade name "Golden Fleece," to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in manufacture, sale, and distribution, as aforesaid, of such blankets, and including those who do not, through use of labels, falsely represent that the material from which their blankets are made is composed chiefly, or entirely, of wool, when such is not the fact—

Represented, through use of "fleece" in its trade name and on labels attached to its said blankets, to members of the purchasing public, that such products were made from material composed entirely of wool, or that chief constituent thereof was wool, facts being they were made chiefly, if not entirely, of cotton, and wool content thereof was negligible;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that composition thereof was chiefly, if not entirely, wool, and with result that substantial portion of such public, acting upon such erroneous and mistaken belief and by reason of preference for such blankets made from wool rather than those made from materials containing other products, purchased substantial volume of said goods, and trade was unfairly diverted to it from competitors:

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

Mr. Alden S. Bradley for the Commission.

Skelton & Mahon, of Lewiston, Maine, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that W. S. Libbey Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, W. S. Libbey Co., is a corporation existing under and by virtue of the laws of the State of Maine, and has its principal office and place of business in the city of Lewiston, in the State of Maine. Respondent now is, and for many years last

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past has been, engaged in the manufacture, sale, and distribution of blankets under the trade name "Golden Fleece." Respondent causes, and has caused, its said products, when sold, to be transported from its place of business in the State of Maine to the purchasers thereof located in the various States of the United States other than the State of Maine and in the District of Columbia.

Respondent now maintains, and at all times herein mentioned has maintained, a constant current of trade and commerce in such merchandise into and through 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 now is, and at all times herein mentioned has been, in competition with other corporations and with individuals, firms, and copartnerships likewise engaged in the manufacturing, sale, and distribution of blankets in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. A substantial majority of the blankets sold and distributed by the respondent in said commerce, as aforesaid, are labeled "Golden Fleece." Through the use of the word "fleece" in the trade name used on the labels attached to said blankets, respondent represents and implies that the blankets are made from material composed entirely of wool, or that the chief constituent of the material from which said blankets are made is wool.

In truth and in fact the blankets, labeled "Golden Fleece" and sold and distributed by the respondent in said commerce, as aforesaid, are not made from material composed entirely of wool or from material in which the chief constituent is wool, but are made from material composed chiefly, if not entirely, of cotton and the wool content thereof, if any, is negligible.

PAR. 4. There are among the competitors of the respondent those who manufacture and who sell and distribute blankets in said commerce who do not by their labels falsely represent and imply that the material from which said blankets are manufactured is composed chiefly or entirely of wool when such is not the fact.

PAR. 5. A substantial portion of the purchasing public has a preference for blankets made from a material composed of wool rather than for blankets made from materials containing products other than wool. The use of the word "fleece" in the trade name and on the labels attached to said blankets has a tendency and capacity to, and does, lead purchasers and prospective purchasers of said blankets erroneously and mistakenly to believe that the material from which such blankets are made is chiefly, if not entirely, composed of wool.

As a result of the mistaken and erroneous belief, as aforesaid, a substantial portion of the purchasing public has been induced to purchase blankets from the respondent, thereby unfairly diverting trade in said commerce to the respondent from its competitors who do not misrepresent the materials from which their products are made.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of the respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 27, 1938, issued, and on October 28, 1938, served, its complaint in this proceeding upon respondent, W. S. Libbey Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the 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 facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, W. S. Libbey Co., is a corporation existing and doing business under the laws of the State of Maine, with its principal office and place of business located in the city of Lewiston, State of Maine.

Respondent is now, and for many years last past has been, engaged in the business of manufacturing, selling, and distributing blankets under the trade name "Golden Fleece." Said blankets, when sold, are transported by respondent from its office and principal place of business in the State of Maine to purchasers thereof located at

various points in States of the United States other than the State from which said shipments are made, and in the District of Columbia.

Respondent now maintains, and at all times herein mentioned has maintained, a current of trade and commerce in said merchandise distributed and sold by it between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now and has been in substantial competition with other corporations and with individuals, firms, and copartnerships likewise engaged in the business of manufacturing, selling, and distributing blankets in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. A substantial majority of the blankets sold and distributed by respondent, as aforesaid, are labeled "Golden Fleece." Respondent's use of the word "fleece" in its trade name and on labels attached to its blankets serves as a representation to members of the purchasing public that respondent's blankets are made from material composed entirely of wool, or that the chief constituent from which said blankets are made is wool.

In truth and in fact the blankets, labeled "Golden Fleece," and sold and distributed by respondent in commerce, as herein set out, are not made from material composed entirely of wool or from material in which the chief constituent is wool. In fact, said blankets are made from material composed chiefly, if not entirely, of cotton. The wool content of respondent's said blankets is negligible.

There are, among the competitors of respondent, corporations, individuals, firms, and copartnerships likewise engaged in the business of distributing and selling blankets in similar commerce, who do not, by use of labels, falsely represent that the material from which their blankets are manufactured is composed chiefly or entirely of wool, when such is not the fact.

PAR. 4. The use of the word "fleece" in the trade name and on the labels attached to respondent's blankets has a tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the material from which respondent's blankets are made is chiefly, if not entirely, composed of wool.

Further, a substantial portion of the purchasing public has a preference for blankets made from a material composed of wool rather than for blankets made from materials containing products other than wool. Acting upon the erroneous and mistaken belief that the said blankets are made of a material whose chief, if not sole, constituent is wool and because of the said preference last above stated a

substantial portion of the purchasing public have purchased a substantial volume of respondent's blankets, with the result that trade has been unfairly diverted to respondent from its competitors.

CONCLUSION

The aforesaid acts and practices of respondent, as hereinabove found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 that, without further evidence or other intervening procedure, the case might proceed to final hearing upon the record, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, W. S. Libbey Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of blankets and other similar products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "fleece," or any other word or term descriptive of wool, to describe, designate, or in any way refer to, any fabric or product which is not composed wholly of wool, except that in the case of fabrics or products composed in part of wool and in part of other materials, the word "fleece" may be used as descriptive of the wool content if there is used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof in the order of its predominance by weight, beginning with the largest single constituent, and provided that if any particular fiber in said fabrics or products is not present in a substantial amount by weight, the percentage in which such fiber is present shall then be specifically disclosed.

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2. Representing in any manner whatsoever that the fabrics or products manufactured or sold by it contain wool in greater quantity, percentage or degree than is actually the case.

This order shall not be construed as approving the use of the term "fleece" to designate, describe, or refer to any wool which is not virgin wool.

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
SPECIALTIES, INC.

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

Docket 3248. Complaint, Oct. 20, 1937—Decision, Feb. 25, 1939

Where a corporation engaged in manufacture and sale of assortments of candy which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to purchasing public, and which were composed of small pieces of candy, together with 4-section punch card for sale and distribution of said candy to the penny purchasers under a plan and in accordance with said card's explanatory legend, pursuant to which purchaser received only 1, or received number of pieces ranging from 2 to 20 in accordance with success or failure in selecting by chance certain numbers, and last sale in each of said card's 3 sections received 5 pieces and last sale on card entitled purchaser to 20 pieces—

Sold to wholesalers and jobbers for display and resale by retail dealer buyers thereof to purchasing public in accordance with aforesaid sales plan, such assortments and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of its said merchandise in accordance with such sales plan above described involving game of chance or sale of a chance to procure merchandise at a price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the laws of several States, and in competition with many who sell and distribute like or similar candies and are unwilling to offer for sale and sell their said product by any method or sales plan which involves game of chance, gift enterprise, or lottery scheme, or any other method contrary to public policy, and refrain therefrom;

With effect of inducing purchasers of its said merchandise to buy same in preference to like or similar products offered and sold by its competitors who do not use such sales plan or method in sale and distribution of their said product, and with result that many purchasers of its said merchandise were attracted by element of chance involved in its said sales plan or method and were thereby induced to buy its said product in preference to like or similar merchandise of competitors who did not or do not use such or equivalent methods, and wholesalers and jobbers, by reason of such preference on part of members of purchasing public, were induced and persuaded to buy its said merchandise in preference to like or similar articles sold or distributed by its said competitors and it sold, as consequence thereof, substantial quantities of its said merchandise and trade was unfairly diverted to it from competitors aforesaid:

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

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

Mr. D. C. Daniel and *Mr. Henry C. Lank* 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 Specialties, 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, Specialties, Inc., is a corporation organized and operating under the laws of the State of Maryland with its principal office and place of business located at 601 South Smallwood Street, Baltimore, Md. Respondent is now, and for some time last past has been engaged in the manufacture of candies 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. Respondent causes and has caused its said products when so 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; and there is now, and has been for 1 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 retail and 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 small 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 arranged in 4 sections, and when a push is made and the disc separated from the card a number is disclosed. Sales are 1 cent each and the card bears statements informing customers and prospective customers that

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certain specified numbers receive 2 of the said small bars of candy, that certain other specified numbers receive 3 of the small pieces of candy, that certain other specified numbers receive 5 pieces of candy, that 2 of the numbers receive 10 pieces of candy, that 1 of the numbers receives 20 pieces of candy, that the last sale in each of the first 3 sections receives 5 pieces of candy and that the last sale on the card receives 15 pieces of candy. All other numbers on said card receive 1 of the small pieces 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 number of small bars of candy which a customer receives for the price of 1 cent is thus determined wholly by lot or chance.

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

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure additional small 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 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 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 the 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 the Federal Trade Commission Act, the Federal Trade Commission, on October 20, 1937, issued and thereafter served its complaint in this proceeding upon respondent, Specialties, 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 D. C. Daniel and Henry C. Lank, attorneys for the Commission, and in opposition to the allegations of the complaint by Samuel A. Spector, vice president of respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly

recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, brief in support of the complaint (respondent not having filed brief and oral argument not having been requested), 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, Specialties, Inc., is a corporation organized and doing business under the laws of the State of Maryland, with its principal office and place of business located at 601 South Smallwood Street, Baltimore, Md. Since April or May of 1934, respondent has been engaged in the manufacture of candies, and in the sale and distribution thereof to wholesale dealers and jobbers located in various States of the United States at their respective points of location. At all times hereinabove mentioned, respondent has caused its said products, when sold, to be shipped or transported from its said place of business in Baltimore, Md., to purchasers thereof in various States of the United States other than the State of Maryland, at their respective places of business.

In so carrying on said business, respondent has been in substantial competition with other corporations and with individuals, and partnerships engaged in the sale and distribution of like or similar products in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in the course and conduct of its business as described in paragraph 1 hereof, has sold and distributed 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 purchasing public. This said assortment is known as the Dixie Assorted Cocomanut Fudge Assortment, and is sold and distributed to the purchasing public in the following manner:

Respondent furnishes with assortments of this candy, for use in disposing of same to the consuming public, devices known as push cards, each of which has a number of partially perforated discs arranged in 4 sections, and when a push is made and the disc separated from the card, a number is disclosed. Sales are 1 cent each, and the card bears statements or legends informing customers and prospective customers that for certain specified numbers the customer receives 2 of said small bars of candy; that for other specified numbers the customer receives

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3 of the small pieces of candy; that certain other specified numbers entitle the purchasers thereof to 5 pieces of candy; that 2 of the numbers entitle the purchasers thereof to 10 pieces of candy; and for 1 of the numbers the purchaser thereof is entitled to 20 pieces of candy; and that the last sale in each of the first 3 sections entitles the purchasers thereof to 5 pieces of candy; and that the last sale on the card entitles the purchaser thereof to 15 pieces of candy. All other numbers on said card entitle the purchasers thereof to 1 of the small pieces of candy. The numbers on the discs are effectively concealed from the purchaser or prospective purchaser until the selection has been made and the discs separated from the card. The number of small bars of candy which a customer receives for the price of 1 cent is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its merchandise, together with said push card, resell the same to retail dealers, who in turn sell and distribute said merchandise by means of said push card to members of the purchasing public in accordance with the aforesaid sales plan. Respondent has thus supplied to and placed in the hands of others the means of conducting lotteries in the sale and distribution of its said merchandise, in accordance with the sales plan hereinabove described. Said sales plan has the capacity and tendency to induce, and has induced purchasers of respondent's merchandise to purchase the same in preference to like or similar merchandise offered for sale and sold by respondent's competitors who do not use such sales plan or method in the sale and distribution of their said merchandise.

PAR. 4. The sale and distribution of merchandise to the purchasing public in the manner hereinabove found involves a game of chance or the sale of a chance to procure merchandise at a price much less than the normal retail price thereof. The sale and distribution of merchandise in the manner hereinabove described is a practice of the sort which is contrary to an established public policy of the Government of the United States, and is in violation of the laws of several States of the United States. Among the respondent's competitors there are many persons, firms, and corporations who sell and distribute like or similar candies in competition with respondent as hereinabove found, and said competitors are unwilling to offer for sale or sell their said candies by any method or sales plan which involves a game of chance, gift enterprise, or lottery scheme, or any other method that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many purchasers of respondent's merchandise were attracted by the element of chance involved in the respondent's said sales plan or method, and were thereby induced to purchase respondent's merchan-

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dise in preference to the like or similar merchandise of respondent's competitors who did not or do not use the same or equivalent methods. Because of said preference on the part of members of the purchasing public, wholesale dealers, and jobbers have been induced and persuaded to purchase respondent's said merchandise in preference to like or similar articles of merchandise sold or distributed by respondent's said competitors. As a result thereof, respondent has sold substantial quantities of its said merchandise, and trade has been unfairly diverted to respondent from its said competitors.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove found 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 the Federal Trade Commission Act.

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 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, brief filed herein by counsel for the Commission (respondent having filed no brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Specialties, Inc., its officers, representatives, agents, and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or other merchandise so packed and assembled that sales of such candy or other merchandise to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.
2. Supplying to or placing in the hands of others packages or assortments of candy which are to be used or may be used to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of candy or other merchandise to the public.

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3. Supplying to or placing in the hands of others assortments of candy or other merchandise together with a lottery device, which lottery device is to be used or may be used in selling and distributing such candy or other merchandise to the public.

4. Supplying to or placing in the hands of others a lottery device either with assortments of candy or other merchandise or separately, which lottery device is to be used or may be used in selling or distributing such candy or other merchandise to the public.

5. Selling or otherwise disposing of candy or other merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

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IN THE MATTER OF
CHARLES ATLAS, LTD.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3308. Complaint, Jan. 22, 1938—Decision, Feb. 25, 1939*

Where a corporation engaged in sale of a course of training in physical culture featuring dynamic tension by correspondence, as successor to a business theretofore carried on by an individual who was its treasurer and owner of one-half of its outstanding capital stock, and, as thus engaged, in advertising its said course or system through its booklet entitled "Everlasting Health and Strength" which it sent, along with circular letter and circular, to those applying therefor in response to its invitation so to do in advertisements in magazines and other periodicals of general circulation in the various States, and in which it set forth, among other things, purported facsimile of certificate of award to aforesaid individual as "America's Most Perfectly Developed Man," together with what was represented as an actual photograph showing his very remarkable muscular development, and with statements as to his height, weight, and body measurements, and also with representation, among others in his advertisements published as above described, to the effect that before he discovered the system of training in physical culture now offered and sold, he was "a physical wreck, a sickly half-pint runt, a 97 pound weakling, flat chested, spindly legs and with arms like pipe stems," and with representations in his various advertisements as aforesaid, along with such photographs, to the effect that the remarkable physical development made by him was due to his use of said course—

- (a) Represented, in said advertisements and advertising matter, that users of its course of training could thereby acquire a muscular development similar to that of said individual, including broad, powerful shoulders, biceps that bulge with smashing strength, chest which would stand out solid and muscular, and an evenly developed body that would make others look like dwarfs in comparison, and that it could prove in 7 days to anyone that he could have such a muscular development, facts being, while such course of training might be generally beneficial to users thereof, it would not accomplish results claimed therefor as above set out, muscular development of anyone is limited by the bony structure and other characteristics of his body, and it is impossible for persons of only average physical development, or less than average, to acquire muscular development approximating that depicted in its advertisements or advertising matter;
- (b) Represented that use of said course would bring about a healthy condition, and that constipation, pimples, skin blotches, and similar ailments would be banished, facts being that use thereof would not, in all cases, bring about a healthy condition or banish constipation, pimples, skin blotches, and similar ailments, and would not affect all users alike, and that, while such use might be beneficial to some, others would receive very little benefit or none at all, and such use on still others might have injurious, rather than beneficial, effect; and

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- (c) Made so-called "extraordinary offer" to prospective purchasers offering, along with course for sum of \$5 as special reduced price, said entire course, together with "free" "Outline Course" on Jiu-Jitsu, wrestling, boxing, feats of strength, and hand-balancing, and so-called 150-page book on sex, and represented that supply of said "Outline Course" and book were limited, facts being said price was not special or extraordinary, but usual and customary price charged by it for said course, including such so-called free items, and such offer of free goods was one of long standing and constituted its permanent method of doing business, and price of such free items was included in that of course of training which had to be purchased in order to obtain such items;

With capacity and tendency to induce members of purchasing public to buy its said course in erroneous belief that such statements and representations were true, and to divert trade unfairly to it from competitors engaged in sale in commerce among the various States and in the District of Columbia of similar courses of training by correspondence, and who do not misrepresent the conditions or terms upon which their courses are sold, and the results that may be expected to be obtained from use thereof; to the injury of competition in commerce:

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

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

Mr. William L. Pencke for the Commission.

Mr. Daniel R. Forbes, 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 Charles Atlas, Ltd., 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. Charles Atlas, Ltd., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 115 East Twenty-third Street in the city and State of New York. Said respondent is now, and for many years immediately last past has been, engaged in the business of offering for sale and selling a course of instruction by correspondence in the science and art of physical culture to persons residing in various States of the United States

and in the District of Columbia. In the course and conduct of said business, respondent causes its said course of instruction to be sent through the United States mails from its said place of business in the city and State of New York to purchasers thereof located in a State or States of the United States other than the State of New York. There is now, and has been at all times hereinafter mentioned, a course of trade and commerce in said courses of instruction so sold and distributed 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 its business, as aforesaid, respondent is now, and for many years last past has been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the sale and distribution of correspondence courses of instruction in the science and art of physical culture 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 aforesaid, and for the purpose of inducing the purchase of its courses, the respondent offers its said course of instruction to the purchasing public in advertisements in magazines, newspapers, and elsewhere, and in letters and printed circulars which are sent out by it through the mail and otherwise. Respondent publishes, among others, advertisements in magazines having a national circulation, containing statements and claims of which the following are typical examples:

Atlas makes muscles grow like magic. Five inches of new muscle after one week. My arms increased 1½ inches, chest 2½ inches, forearms ¾" and I have gained 4 pounds. I have no use for apparatus.

Dynamic Tension—ALONE—right in your own home. Will start new inches of massive power pushing out your chest. Build up your shoulders to champion huskiness. Put regular mountains of muscle under your biceps. Free you of constipation, pimples, makes those stomach muscles of yours hard ridges!

I'll prove in the first 7 days YOU can have a body like mine. No other physical instructor in the world has ever dared to make such an offer. Don't get the idea that it takes a lot of time and hard work for you to get amazing strength and powerful muscles. And don't think you need a room full of contraptions.

All I want to know is where do you want big, powerful muscles. How many pounds of firm flesh do you want distributed over your body to fill you out. Where do you lack vitality, pep and robust health. Where do you want to take off flabby surplus fat. Just tell me. Give me a week and I'll show you that I can make a new man of you, give you bodily power and drive and put you in that magnificent physical condition which wins you the envy and respect of any man and the admiration of any woman.

Give me your measure and I'll prove in the first 7 days you can have a body like mine. I'll give you proof or—in 7 days that I can turn you into

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a man of might and muscle. And I'll also give you a rugged health that banishes constipation, pimples, skin blotches and similar conditions that rob you of the good things of life.

PAR. 4. The said advertisements and others of like and similar import are false, misleading, and deceptive in that respondent represents that the use of the instructions and the practice of the physical exercises comprising respondent's course will in all cases—

(a) Build big powerful muscles on the body wherever they look best.

(b) Give vitality, pep, and strength to the system.

(c) Banish constipation, poor digestion, pimples, skin blotches, and other diseases and imperfections.

(d) Build a new body and make a new man.

(e) Transform the pupil, regardless of age or condition, into a person of superb strength and physical appearance.

In truth and in fact, said instructions and the practice of said physical exercises constituting respondent's course will not build big, powerful muscles on the body wherever they look best, nor will they give vitality, pep, and strength to the system, nor will they banish constipation, poor digestion, pimples, and other diseases and imperfections. Such instructions and the practice of respondent's physical exercises will not build a new body and make a new man, and will not transform the pupil, regardless of age or condition, into a person of superb strength or physical appearance in the manner set forth in said advertisements.

PAR. 5. Respondent, upon the receipt of letters from persons answering the said advertisements, mails to such persons the book or pamphlet entitled "Everlasting Health and Strength" and form letters, together with enrollment blanks. The book or pamphlet and the form letters above mentioned contain, in varying phraseology, the statements and representations set forth in the advertisements recited in paragraph 3 of this complaint and are misleading and deceptive in the particulars and for the reasons mentioned in paragraph 4 as to the false, misleading, and deceptive character of said advertisements.

PAR. 6. The final letter in the series of form letters above referred to and mailed to prospective purchasers of respondent is entitled: "Extraordinary Offer!!" and in substance offers to such prospective purchaser the entire course of physical instruction, together with an assortment of books containing sex information and various outline courses on sports for the sum of \$5, with a statement that the former price of the Dynamic Tension course was \$35. Said letter also contains the statement that the supply of said courses is limited and

suggests an enrollment by return mail in order to be sure of receiving said course.

The representations in said letter are false, misleading, and deceptive in that the so-called "Extraordinary Offer" does not bring about any saving to the pupil or any reduction from the price at which the course is regularly sold by the respondent so that the pupil, while offered the course at a purported saving or reduction of \$30, pays, in fact, the usual and ordinary price received by the respondent for its course.

The free offers of the said book on Sexual Education and Outline Courses, made in said letter, are false, misleading, and deceptive in that the said book and courses referred to are not furnished the pupil free but the price thereof is included in the price charged for the course of instruction.

The representation that the supply of said courses is limited and that the prospective purchaser should enroll by return mail to be sure of getting said course is false and misleading in that the supply is not limited and in that the said offer is not in any sense extraordinary, but is the offer made by respondent in the regular course of its business.

PAR. 7. The statements and representations so made by respondent in the ways and manners above alleged have the tendency and capacity to mislead and deceive pupils and prospective pupils into the erroneous and mistaken belief that such representations are true and to induce them to act on such belief and to enroll as pupils of respondent and thus cause patronage to be diverted unfairly to respondent from respondent's competitors in commerce among and between the various States of the United States.

PAR. 8. In the course and conduct of its business as hereinabove described, respondent is, and has been, in competition with corporations, partnerships, firms, and individuals engaged in the sale and distribution of courses of physical instruction in commerce between the several States of the United States and the District of Columbia, which said competitors do not misrepresent, and have not misrepresented, their said courses in advertisements and otherwise.

PAR. 9. The above-alleged acts and practices of respondent are all to the prejudice of the public and of the competitors of respondent, Charles Atlas, Ltd., and constitute unfair methods in 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 the Federal Trade Commission Act, the Federal Trade Commission on January 22, 1938, issued its complaint in the above-entitled proceeding and caused same to be served on the respondent, Charles Atlas, Ltd., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent entered its appearance herein and filed an answer to said complaint on March 5, 1938, and thereafter, at the instance of William L. Pencke, counsel for the Commission, testimony was introduced and evidence received in support of the charges stated in the complaint and in opposition thereto by Daniel R. Forbes, counsel for the respondent, before William C. Reeves, an examiner of the Commission duly designated by it, and said testimony and other evidence were reduced to writing and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, testimony, and other evidence, briefs of the respective counsel, and the Commission having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Charles Atlas, Ltd., is a corporation organized in February 1929, under the laws of the State of New York, with its principal place of business in New York City in said State. It is engaged in the business of selling a course of training in physical culture featuring dynamic tension by correspondence. The course so sold consists of 13 multigraphed lessons. The respondent upon its organization succeeded to the business theretofore carried on by Charles Atlas who is now treasurer of the respondent corporation and the owner of one-half of its outstanding capital stock. Respondent causes copies of the lessons which constitute the course of training sold by it, to be sent by the United States mails from its office in the State of New York to purchasers thereof located in various States of the United States other than the State of New York, and in the course and conduct of its said business, respondent has been and is now in active competition with various persons and partnerships and other corporations also engaged in the sale of courses in physical culture, by correspondence, in commerce among several of the States of the United States.

PAR. 2. The respondent in the course of its business, as set out in paragraph 1 hereof, has caused advertisements to be published in magazines and other periodicals having general circulation in various States of the United States. Each of these advertisements contained an invitation to members of the public to send to respondent for a copy of a free 48-page book entitled "Everlasting Health and Strength," and when responses to such advertisements were received by respondent, it then sent to each of the persons so responding a copy of the book together with a circular letter and circular. This book had on its front inside cover page what purported to be a facsimile of a certificate of award to Charles Atlas of the title "America's Most Perfectly Developed Man," with the statement that such award was made in October 1922, at Madison Square Garden in a physical-culture exhibition and on pages 24 and 25 of the book was what was represented to be an actual photograph of Charles Atlas together with a statement of his height, weight, and bodily measurements which were as follows: Height, 5 feet, 10 inches; weight, 180 pounds; chest, normal, 47 inches; waist, 32 inches; neck, 17 inches; biceps, 17 inches; forearm, 14½ inches; thigh, 23¾ inches; calf, 16¼ inches. Among the representations in the advertisements which respondent caused to be published as stated, were representations to the effect that before Charles Atlas discovered the system of training in physical culture now offered for sale and sold by respondent, that he was "a physical wreck, a sickly half-pint runt, a 97-pound weakling, flat chested, spindly legs and with arms like pipe stems." Each of the advertisements which respondent has caused to be published, as stated, was illustrated by what was represented as a reproduction of a recent photograph of Charles Atlas showing his very remarkable muscular development and throughout such advertisements there were representations to the effect that the remarkable physical development made by Charles Atlas was due to the use by him of the course of training now offered for sale and sold by respondent.

PAR. 3. In the advertisements and advertising matter referred to in paragraph 2 hereof the respondent made many false, misleading, and exaggerated representations concerning the course of training in physical culture offered for sale and sold by it and the benefits that might be derived from such course by the users thereof. Among and typical of such false, misleading, and exaggerated claims were those to the effect that by the use of respondent's course of training anyone could acquire a muscular development similar to that of Charles Atlas; that by the use of such course anyone could acquire broad, powerful shoulders, biceps that bulge with smashing strength, a

chest which would stand out solid and muscular and an evenly developed body that would make others look like dwarfs in comparison; that respondent in 7 days could prove to anyone that he could have a muscular development like that of Charles Atlas; that the use of such course would bring about such a healthy condition that constipation, pimples, skin blotches, and similar ailments would be banished. Other claims and representations of similar import concerning the benefits which would be offered for sale by respondent were contained in such advertisements and advertising matter.

PAR. 4. In truth and in fact while the course of training by correspondence sold by the respondent may be generally beneficial to the users thereof such course of training will not accomplish the results claimed for it by respondents as set out above. The muscular development of anyone is limited by the bony structure and other characteristics of his body and it is impossible for persons of only average physical development, or less than average, to acquire a muscular development approximating that depicted in the advertisement or advertising matter of the respondent. Furthermore, the use of such course of training would not, in all cases, bring about a healthy condition or banish constipation, pimples, skin blotches, and similar ailments. The use of such course will not affect all users alike, and while its use may be beneficial to some users, other users will receive very little benefit or none at all, and the use of such course might have an injurious effect rather than a beneficial effect on others.

PAR. 5. In truth and in fact the representations made by the respondent in connection with its so-called "extraordinary offer" are false, misleading, and deceptive in that the supply of the so-called "Outline Course" on Jiu-Jitsu, wrestling, boxing, feats of strength, and hand-balancing, and the so-called 150-page book on sex were not limited and were not given free to the purchasers of said course of training, but instead the price of \$5 is the usual and customary price charged by the respondent for such course of training including the so-called free items. Furthermore, this offer of free goods is one of long standing and constitutes respondent's permanent method of doing business, and the price of "free" items is included in the price of the course of training which must be purchased in order to obtain the so-called "free" items.

PAR. 6. The statements and representations made by the respondent in its advertisements and advertising matter, as hereinbefore set out, have had and do have the capacity and tendency to induce members of the purchasing public to buy respondent's course of training in the erroneous belief that such statements and representa-

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tions are true and to divert trade unfairly to respondent from competitors engaged in the sale in commerce between and among the various States of the United States and the District of Columbia of similar courses of training by correspondence who do not misrepresent the conditions or terms upon which their courses of training are sold and who do not misrepresent the results that may be expected to be obtained upon a use of such courses. As a result injury is being done by respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent as hereinbefore found are all to the prejudice and injury of the public, and to competitors of respondent, and constitute unfair methods of competition in commerce within the intent and meaning of the provisions of the Federal Trade Commission Act.

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 Wm. C. Reeves, an examiner of the Commission, theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, and briefs filed herein by William L. Pencke, counsel for the Commission, and by Daniel R. Forbes, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Charles Atlas, Ltd., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its course of training in physical culture by correspondence in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that users of its course of training could thereby acquire a muscular development similar to that of Charles Atlas, or any other person of similar physique and appearance.

2. Representing that respondent in 7 days, or any other specified period of time could prove to anyone that he could have a muscular development like that of Charles Atlas, or any other person of similar physique and appearance.

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3. Representing that the use of respondent's course of training will cure, relieve, or benefit constipation, pimples, skin blotches, and similar ailments.

4. Representing that any price is a special or extraordinary price for respondent's course of training or publications when said price is the usual and customary price charged by the respondent under similar circumstances.

5. Using the term "free" or any other term of similar import or meaning to designate or describe articles of merchandise regularly included in a combination offer with identical, similar, or other articles of merchandise.

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

J. D. DRUSHELL TRADING AS J. D. DRUSHELL COMPANY,
AND LAURENCE A. SMITH

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

Docket 3642. Complaint, Oct. 31, 1938—Decision, Feb. 25, 1939

Where an individual engaged in sale and distribution of (1) coin-vending machines especially designed to market 1- and 5-cent candy bars made by Hershey Chocolate Corporation, and referred to in conduct of said business as "Hershey Automatic Merchandisers," "Hershey Vending Machines," "Hershey Machines," and "Advance Hershey Vending Machines," and of (2) "Automatic Stores" vending machines which usually contained four separate slots and compartments for distribution of candy, etc., and of (3) candy, confectionery, peanuts, and other commodities for use in said machines, and of (4) assortments of toys and charms designed to be mixed with commodities placed in said "Automatic Stores," so that members of public, on placing coin therein, would occasionally receive one of said toys or charms, presence of which was concealed, in addition to other commodities purchased, and thus secure same wholly by lot or chance, and in selling and distributing his said products through numerous representatives whom he employed and who traveled throughout the various States calling upon retail trade and soliciting orders for said machines, and whose practice it was, on arrival in city in which they expected to canvass, to insert "Man Wanted" advertising in local newspaper or periodical setting forth glowing opportunities to make large profits with own business in sale of Hershey bars through new patented machines, etc.; and, as thus engaged, in active and substantial competition with others engaged in sale and distribution of coin-operated vending machines of various types, and candy, confectionery, peanuts, and other commodities for use therein, in commerce among the various States and in the District of Columbia; and a traveling and sales representative of said individual; as a part of a fraudulent sales plan and scheme entered into by said individual and his representatives, and which included use of contact advertising as above set forth, and acting directly and through said sales representatives, with his knowledge, acquiescence, and active cooperation—

- (a) Represented to prospects contacted and secured as aforesaid that said individual was the representative or agent of the Hershey Chocolate Corporation or the Chocolate Sales Corporation of Hershey, Pa., and that he, or the said business, was directly connected with said concerns, and a division or subsidiary thereof, and that said individual, or the business, was the sole distributor of Hershey penny candy bars, and that such bars were vended exclusively in his vending machines, facts being said individual, trading under company trade name employed by him, was not a part of said Hershey concerns, had no direct connection therewith, was not a division or subsidiary thereof, nor sole distributor of their penny candy bars, which were not vended exclusively in said individual's machines, and he had no authority to arrange for distributors for such concerns;

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- (b) Represented, as aforesaid, or in such contact advertising, that said machines would pay the prospect an average net profit of \$1 per week each, and produced false and fraudulent testimonial letters purportedly signed by various individuals and containing exaggerated, untrue, and misleading statements as to profits obtained from machines in question in support of such claim, and represented, in contact advertising aforesaid, that the operator would receive an income from machines in question of \$125 a month and up, depending on expansion, and that said "Automatic Stores" vending machines would earn six times as much as other types of machines sold by said individual, and that when toys and charms were used, through their appeal to children and adults, said machines could be set to vend candy and other merchandise at about \$1 a pound, and that its said vending machines were strictly slug-proof and insured against fire, theft, or mysterious disappearance, facts being such machines, distributed as aforesaid, would not produce such exaggerated earnings as represented, nor would said "Automatic Stores" equal in earnings six times those of a single machine nor average net profit of \$5 per week, nor could they be set to vend at about \$1 per pound, and still distribute toys and charms;
- (c) Represented that said individual or business assigned exclusive territorial rights within a certain city or cities, county or counties, and that it or its representatives would obtain desirable locations for the purchasers of its said machines, and that, if locations failed to bring net profit of \$1 per week someone from such concern would relocate the purchaser's machines where such net profit would be obtainable, and that if, after location of machines, purchaser was dissatisfied therewith, said individual would permit machines to be returned and would refund investment in full, less 12½-percent sales cost, or resell same for purchaser, and, in support of such representations or in connection therewith, produced alleged contract for operators and distributors for signature of prospective purchaser and to be sent to said individual or concern for execution, but which in fact never was executed or returned, facts being such individual never expected, planned, or intended to assign any such exclusive territory or rights, location for purchasers' machines was not obtained nor were they relocated as above set forth, and said individual did not either resell or permit return of merchandise of purchasers and refund of investment in event of purchasers' dissatisfaction as above represented and set out; and
- (d) Supplied, as above set forth, and placed in the hands of operators of its said vending machines toys and charms for distribution under plan or arrangement involving game of chance or sale of chance to procure such toy or charm, contrary to public policy and to established public policy of the United States Government, and in competition with many who are under a moral and legal compulsion not to adopt such practices, and refrain from so doing; with effect of securing said individual an undue preference and operating unjustly against competitors aforesaid who refrain from use of such methods;

With effect of deceiving, through such false and misleading statements and representations made by said individual himself, or through his aforesaid and other sales representatives in describing said products and in promotion of his said fraudulent sales plan and scheme, ultimate purchasers into contracting for and buying his said vending machines, and with capacity and tendency so to do, and to divert unfairly to said individual and repre-

sentative trade of competitors engaged in sale in commerce among the States and in said District of same kind and nature as those dealt in by said individual and sales representative, and truthfully advertised and described by such competitors; to the injury of competition in commerce:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. Franklin R. Overmyer and *Mr. Henry Junge*, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that *J. D. Drushell*, an individual trading as *J. D. Drushell Co.* and *Laurence A. Smith*, an individual, hereinafter referred to as respondents, have violated the provisions of the 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. *J. D. Drushell* is an individual trading as *J. D. Drushell Co.*, with his office and principal place of business located at 4753 Broadway, Chicago, Ill.

Laurence A. Smith of 4753 Broadway, Chicago, Ill., is an individual and sales representative of *J. D. Drushell*, trading as *J. D. Drushell Co.* This respondent, acting individually and in cooperation with the respondent *J. D. Drushell*, trading as *J. D. Drushell Co.*, has actively participated in the acts and practices hereinafter alleged.

PAR. 2. The respondent *J. D. Drushell*, trading as *J. D. Drushell Co.*, is now, and for more than 2 years last past has been, engaged in the business of selling and distributing coin-operated vending machines of various type and character and candy, confectionery, peanuts, and other commodities for use in said vending machines. Respondent causes said products when sold to be transported from the city of Chicago in the State of Illinois to operators and purchasers thereof located in other States of the United States and in the District of Columbia.

These vending machines sold by respondent *J. D. Drushell*, trading as *J. D. Drushell Co.*, are placed in public business places where members of the public may secure therefrom candy, confectionery, peanuts, and other commodities by inserting a coin in the machine. These vending machines, sold and distributed by respondent, comprise two

general types: A coin-vending machine specially designed to market 1- and 5-cent candy bars manufactured by the Hershey Chocolate Corporation of Hershey, Pa., which said vending machines are referred to by respondents in orders, correspondence, and advertising material as "Hershey Automatic Merchandisers," "Hershey Vending Machines," "Hershey Machines" and "Advance Hershey Vending Machines"; the second type sold and distributed by respondent is a vending machine known as "Automatic Stores" and usually contains four separate slots and compartments for the distribution of candy, confectionery, peanuts, and other commodities. In addition to the commodities mentioned above for use in said "Automatic Stores," respondent sells and distributes an assortment of toys and charms which are designed to be mixed with the commodities placed in said vending machines known as "Automatic Stores" so that members of the public, when placing a coin in said machine will occasionally receive one of said toys or charms in addition to or as a part of the commodities purchased, the said toys and charms being so concealed from the purchaser or prospective purchaser that their distribution to the purchasing public is wholly by lot or chance.

PAR. 3. In the course and conduct of his business the respondent, J. D. Drushell, trading as J. D. Drushell Co., is in active and substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of coin-operated vending machines of various types and character, and candy, confectionery, peanuts, and other commodities for use in said vending 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 said business and for the purpose of inducing the purchase of said coin-vending machines designed to market candy bars manufactured by the Hershey Chocolate Corporation of Hershey, Pa., respondent J. D. Drushell, trading as J. D. Drushell Co., has made use of a sales plan consisting of false representations, fraudulent schemes, devices, and practices, among which are the following:

The respondent, J. D. Drushell, trading as J. D. Drushell Co., employs numerous traveling sales representatives, including said respondent, Laurence A. Smith, who travel throughout the various States of the United States, calling upon the retail trade and soliciting orders for respondent's machines. These sales representatives, with the knowledge, acquiescence, and active cooperation of the respondent, J. D. Drushell, trading as J. D. Drushell Co., as a part of a fraudulent sales plan and scheme, entered into by this respondent and this respondent's representatives, for the purpose and with

the result of selling this respondent's machines, make false and misleading representations as follows:

(a) Representatives of respondent J. D. Drushell, trading as J. D. Drushell Co., on arrival in a city which they expect to canvass cause to be inserted in a newspaper or periodical of said city one of the following, or some similar advertisement:

Wanted man to own and operate route of new patented machines that vend **NEW HERSHEY BARS**. World's largest selling chocolate. Full or part time. Nearly 100% profit. To qualify you must have good reference and \$395 cash for equipment. Give security. Income \$125 per month and up depending on expansion. We furnish all locations. Give phone. Box -----.

IMMEDIATE opening, here and adjacent territory, for trustworthy man to manage distribution of nationally advertised products enjoying 100 million profit. No selling required as accounts are established and will be turned over to party who finances self to extent \$675, fully secured. Starting income about \$40 weekly. Right man will receive additional financial aid, assuring expansion after indication of worthiness. Address Box ----- Give Phone. Personal interview will be arranged with company executive.

National company has opportunity here for reliable party. Supervise own business. A new merchandising system for special Hershey products to industry. Income starts at about \$200 per month, will assist to build income to \$400 monthly. Requires \$660 cash. No selling or experience. Give phone for interview. Address Box -----.

(b) When said representative of respondent J. D. Drushell, trading as J. D. Drushell Co., receives response to the advertisement inserted, an appointment is arranged with the prospective purchaser and the said representative outlines that he represents a large concern which is the sole distributor of Hershey penny candy bars, that respondent's company is directly connected with the Hershey Chocolate Corporation of Hershey, Pa., and the Chocolate Sales Corporation of Hershey, Pa., and that Hershey bars are vended exclusively in respondent's vending machines, and large sales from the coin vending machines which he is attempting to sell are described. An effort is made to corroborate the exaggerated average income referred to in the advertisement to which the prospective purchaser has replied, and prospective purchaser is informed by said representative that these vending machines will pay him an average net profit of \$1.00 per week each. To support this the representative produces false and fraudulent testimonial letters purported to be signed by various individuals which contain exaggerated, untrue and misleading statements as to profits obtained from operation of the vending machines distributed by respondent J. D. Drushell, trading as J. D. Drushell Co.

(c) Said representative of respondent J. D. Drushell, trading as J. D. Drushell Co., further represents as a part of this fraudulent

sales plan and scheme that the purchaser will be assigned exclusive territorial rights within a certain city or cities, county, or counties. The prospective purchaser is further informed that respondent's representative or someone from respondent's concern will obtain desirable locations for the purchaser's vending machines and that, if the locations fail to bring a net profit of \$1 per week for each machine, someone from respondent's concern will relocate purchaser's machines in locations where such net profit will be obtainable. Said representative also states that if, after location of the machines, the purchaser is dissatisfied with them, respondent will permit the machines to be returned and will refund this investment in full less 12½-cent sales cost or resell them for the purchaser. In addition to this, respondent's representative further represents that the machines are strictly slug proof and are insured against theft, fire, and mysterious disappearance. In connection with the above representations, the representative produces an alleged contract for operators and distributors for signature by the prospective purchaser and which is to be sent to said respondent J. D. Drushell, trading as J. D. Drushell Co., for execution, but which is never executed or returned to the purchaser. Also in connection with the allegations of the relationship with the Hershey Chocolate Corporation, the representative produces a printed form, alleging it to be a distributor's application, which features in very large letters the following legend:

Industrial Department
HERSHEY CHOCOLATE
Machine Division
J. D. Drushell Co.
4641-47 Ravenswood
Chicago, Illinois

Largest Organization in the World for Distribution
of Hershey Products through Advance Automatic
Equipment

PAR. 5. All the representations made by respondent as a part of said fraudulent sales plan and scheme are grossly exaggerated, misleading and untrue. In truth and in fact, the respondent J. D. Drushell, trading as J. D. Drushell Co., is not a part of the Hershey Chocolate Corporation or the Chocolate Sales Corporation of Hershey, Pa., and does not have any direct connection with said companies, is not a division or subsidiary of said companies, and is not the sole distributor of Hershey penny candy bars. Hershey candy bars are not vended exclusively in vending machines of said respondent J. D. Drushell trading as J. D. Drushell Co., and said respondent has no authority to arrange for distributors for said Com-

panies. The coin-vending machines distributed by the respondent, J. D. Drushell, trading as J. D. Drushell Co., will not produce such exaggerated earnings as represented. The respondent J. D. Drushell, trading as J. D. Drushell Co., never expected, planned, or intended to assign "exclusive territorial rights" within any city or county to the purchaser. The location for purchaser's machines is not obtained by said respondent or anyone acting for him, and purchaser's machines are not relocated by either said respondent or anyone acting for him, should first location prove unsatisfactory. The respondent J. D. Drushell, trading as J. D. Drushell Co., does not resell or permit the return of machines of the purchaser for refund of investment in event purchaser is dissatisfied. The machines distributed by said respondent are not strictly slug proof, and are not insured against theft, fire, and mysterious disappearance.

PAR. 6. In the course and conduct of his business and for the purpose of inducing retailers to purchase said coin-operated vending machines known as "Automatic Stores," respondent J. D. Drushell, trading as J. D. Drushell Co., has made use of and now uses various types of advertising matter purporting to be descriptive of said vending machines known as "Automatic Stores." Such advertising used by this respondent contains among others, the following statements and representations:

Six times the earnings of a single machine.

The use of charms and toys creates amazing sales. Grown-ups, as well as kiddies, are intrigued at the sight of these clever toys and charms mixed with candy and nuts. We have seen youngsters drop in 10 to 15 pennies seeking to receive the toy they see through the glass. Read these figures: Peanuts cost 8¢ and 10¢ per lb. depending on locality. Hard candies can be purchased at approximately 12¢ lb. This merchandise sells from 60¢ to 70¢ per lb.

When charms and toys are used operators are setting them to vend at about \$1 per lb.

By using "Automatic Stores" and this merchandise, operators have found that they can easily and quickly develop their business.

In addition to said advertising, representatives of respondent J. D. Drushell, trading as J. D. Drushell Co., including Laurence A. Smith, with the knowledge, acquiescence, and active cooperation of respondent J. D. Drushell, trading as J. D. Drushell Co., for the purpose and with the result of selling respondent's vending machines, make representations that said "Automatic Stores" will return earnings of "Six times the earnings of a single machine;" that the earnings can be greatly stimulated and increased by the use of toys and charms; that when toys and charms are used, the vending machines can be set to vend at about \$1 per pound; that said machines will average a net profit of \$5 weekly per machine.

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PAR. 7. Said statements and representations contained in said advertising and in representations of salesmen of this respondent J. D. Drushell, trading as J. D. Drushell Co., are grossly exaggerated, misleading, and untrue. In truth and in fact, one "Automatic Stores" will not equal the earnings of six times the earnings of a single machine and will not average a net profit of \$5 per week for each machine; and also, said machine cannot be set to vend at about \$1 per pound and still distribute toys and charms. Furthermore, the use of toys and charms as above alleged involves a game of chance or the sale of a chance to procure a toy or charm, which is a practice 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 located in the several States of the United States and engaged in competition with respondent J. D. Drushell, trading as J. D. Drushell Co., are under a moral and legal compulsion not to adopt such practices and do refrain from adopting them. The use of said method by this respondent gives him an undue preference and operates unjustly against those competitors of said respondent who are required to refrain from the use of such methods.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondent J. D. Drushell, trading as J. D. Drushell Co., himself, or through the respondent Laurence A. Smith and other sales representatives in describing his products or in the promotion of said fraudulent sales plan and scheme hereinabove set forth, were and are calculated to, have had, and now have a capacity and tendency to deceive and do deceive the ultimate purchasers into contracting for and buying that which they did not intend to buy. The aforesaid practices have the capacity and tendency to unfairly divert to the respondents the trade of competitors engaged in selling in commerce between and among the States of the United States and the District of Columbia products of the same kind and nature as those of the respondents, which said products are truthfully advertised and described by said competitors.

As a consequence thereof, injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and of the respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 31, 1938, issued, and subsequently served, its complaint in this proceeding upon the respondents, J. D. Drushell, an individual, trading as J. D. Drushell Co., and Laurence A. Smith, an individual, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of said complaint, and the filing of separate answers by the respondents, the Commission by order herein designated and appointed Arthur F. Thomas, an examiner of the Commission, to take testimony and receive evidence in this proceeding, and ordered the taking of testimony to begin on January 3, 1939, in Chicago, Ill. At the time and place designated by the Commission the respondent J. D. Drushell appeared by Franklin R. Overmyer and Henry Junge, his attorneys, and the respondent Laurence A. Smith appeared pro se, and moved that they be granted leave to file amended answers admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the facts. The hearing was thereupon closed by the trial examiner. Subsequently, on, to wit, January 21, 1939, the Commission, by order entered herein, granted the separate motions of the respondents for leave to withdraw their original answers and to substitute therefor amended answers admitting all the material allegations of the complaint, and waiving all intervening procedure and further hearing as to the facts, which amended answers were duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission, on the said complaint and the amended answers of the respondents, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent J. D. Drushell is an individual trading as J. D. Drushell Co., with his office and principal place of business at 4753 Broadway, Chicago, Ill. The respondent Laurence A. Smith is an individual and sales representative of J. D. Drushell, trading as J. D. Drushell Co. This respondent, acting individually and in co-

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operation with the respondent J. D. Drushell, trading as J. D. Drushell Co., has actively participated in the acts and practices alleged in the complaint.

PAR. 2. The respondent J. D. Drushell, trading as J. D. Drushell Co., is now, and for more than 2 years last past has been, engaged in the business of selling and distributing coin-operated vending machines of various types and character and candy, confectionery, peanuts, and other commodities for use in said vending machines. Respondent causes said products when sold to be transported from the city of Chicago in the State of Illinois to operators and purchasers thereof located in other States of the United States and in the District of Columbia.

These vending machines sold by respondent J. D. Drushell, trading as J. D. Drushell Co., are placed in public business places where members of the public may secure therefrom candy, confectionery, peanuts, and other commodities by inserting a coin in the machine. These vending machines, sold and distributed by respondent, comprise two general types: A coin-vending machine specially designed to market 1- and 5-cent candy bars manufactured by the Hershey Chocolate Corporation of Hershey, Pa., which said vending machines are referred to by respondents in orders, correspondence, and advertising material as "Hershey Automatic Merchandisers," "Hershey Vending Machines," "Hershey Machines," and "Advance Hershey Vending Machines"; the second type sold and distributed by respondent is a vending machine known as "Automatic Stores" and usually contains four separate slots and compartments for the distribution of candy, confectionery, peanuts, and other commodities. In addition to the commodities mentioned above for use in said "Automatic Stores," respondent sells and distributes an assortment of toys and charms which are designed to be mixed with the commodities placed in said vending machines known as "Automatic Stores" so that members of the public, when placing a coin in said machine, will occasionally receive one of said toys or charms in addition to or as a part of the commodities purchased, the said toys and charms being so concealed from the purchaser or prospective purchaser that their distribution to the purchasing public is wholly by lot or chance.

PAR. 3. In the course and conduct of his business, the respondent, J. D. Drushell, trading as J. D. Drushell Co., is in active and substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of coin-operated vending machines of various types and character, and candy, confectionery, peanuts, and other commodities for use in said vending ma-

chines 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 said business and for the purpose of inducing the purchase of said coin-vending machines designed to market candy bars manufactured by the Hershey Chocolate Corporation of Hershey, Pa., respondent, J. D. Drushell, trading as J. D. Drushell Co., has made use of a sales plan consisting of false representations, fraudulent schemes, devices, and practices, among which are the following:

The respondent, J. D. Drushell, trading as J. D. Drushell Co., employs numerous traveling sales representatives, including said respondent, Laurence A. Smith, who travel throughout the various States of the United States, calling upon the retail trade and soliciting orders for respondent's machines. These sales representatives, with the knowledge, acquiescence, and active cooperation of the respondent, J. D. Drushell, trading as J. D. Drushell Co., as a part of a fraudulent sales plan and scheme, entered into by this respondent and this respondent's representatives, for the purpose and with the result of selling this respondent's machines, make false and misleading representations as follows:

(a) Representatives of respondent, J. D. Drushell, trading as J. D. Drushell Co., on their arrival in a city which they expect to canvass, cause to be inserted in a newspaper or periodical of said city one of the following, or some similar advertisement:

Wanted—man to own and operate route of new patented machines that vend NEW HERSHEY BARS. World's largest selling chocolate. Full or part time. Nearly 100% profit. To qualify you must have good reference and \$395 cash for equipment. Give security. Income \$125 per month and up depending on expansion. We furnish all locations. Give phone. Box -----

IMMEDIATE opening, here and adjacent territory, for trustworthy man to manage distribution of nationally advertised products enjoying 100 million profit. No selling required as accounts are established and will be turned over to party who finances self to extent \$675, fully secured. Starting income about \$40 weekly. Right man will receive additional financial aid, assuring expansion after indication of worthiness. Address Box ----- Give Phone. Personal interview will be arranged with company executive.

National company has opportunity here for reliable party. Supervise own business. A new merchandising system for special Hershey products to industry. Income starts at about \$200 per month, will assist to build income to \$400 monthly. Requires \$660 cash. No selling or experience. Give phone for interview. Address Box -----

(b) When said representative of respondent, J. D. Drushell, trading as J. D. Drushell Co., receives response to the advertisement inserted, an appointment is arranged with the prospective purchaser

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and the said representative outlines that he represents a large concern which is the sole distributor of Hershey penny candy bars, that respondent's company is directly connected with the Hershey Chocolate Corporation of Hershey, Pa., and the Chocolate Sales Corporation of Hershey, Pa., and that Hershey bars are vended exclusively in respondent's vending machines, and large sales from the coin vending machines which he is attempting to sell are described. An effort is made to corroborate the exaggerated average income referred to in the advertisement to which the prospective purchaser has replied, and prospective purchaser is informed by said representative that these vending machines will pay him an average net profit of \$1 per week each. To support this the representative produces false and fraudulent testimonial letters, purported to be signed by various individuals, which contain exaggerated, untrue, and misleading statements as to profits obtained from operation of the vending machines distributed by respondent, J. D. Drushell, trading as J. D. Drushell Co.

(c) Said representative of respondent, J. D. Drushell, trading as J. D. Drushell Co., further represents as a part of this fraudulent sales plan and scheme that the purchaser will be assigned exclusive territorial rights within a certain city or cities, county, or counties. The prospective purchaser is further informed that respondent's representative or someone from respondent's concern will obtain desirable locations for the purchaser's vending machines and that, if the locations fail to bring a net profit of \$1 per week for each machine, someone from respondent's concern will relocate purchaser's machines in locations where such net profit will be obtainable. Said representative also states that if, after location of the machines, the purchaser is dissatisfied with them, respondent will permit the machines to be returned and will refund this investment in full less 12½ percent sales cost or resell them for the purchaser. In addition to this, respondent's representative further represents that the machines are strictly slug proof and are insured against theft, fire, and mysterious disappearance. In connection with the above representations, the representative produces an alleged contract for operators and distributors for signature by the prospective purchaser and which is to be sent to said respondent, J. D. Drushell, trading as J. D. Drushell Co., for execution, but which is never executed or returned to the purchaser. Also in connection with the allegations of the relationship with the Hershey Chocolate Corporation, the representative produces a printed form, alleging it to be a distributor's application, which features in very large letters the following legend:

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Industrial Department

HERSHEY CHOCOLATE

Machine Division

J. D. Drushell Co.

4641-47 Ravenswood

Chicago, Illinois

Largest Organization in the World for
Distribution of Hershey Products through
Advance Automatic Equipment

PAR. 5. All the representations made by respondent as a part of said fraudulent sales plan and scheme are grossly exaggerated, misleading, and untrue. In truth and in fact, the respondent, J. D. Drushell, trading as J. D. Drushell Co., is not a part of the Hershey Chocolate Corporation or the Chocolate Sales Corporation of Hershey, Pa., and does not have any direct connection with said companies, is not a division or subsidiary of said companies, and is not the sole distributor of Hershey penny candy bars. Hershey candy bars are not vended exclusively in vending machines of said respondent, J. D. Drushell, trading as J. D. Drushell Co., and said respondent has no authority to arrange for distributors for said companies. The coin-vending machines distributed by the respondent, J. D. Drushell, trading as J. D. Drushell Co., will not produce such exaggerated earnings as represented. The respondent, J. D. Drushell, trading as J. D. Drushell Co., never expected, planned, or intended to assign "exclusive territorial rights" within any city or county to the purchaser. The location for purchaser's machines is not obtained by said respondent or anyone acting for him, and purchaser's machines are not relocated by either said respondent or anyone acting for him, should first location prove unsatisfactory. The respondent, J. D. Drushell, trading as J. D. Drushell Co., does not resell or permit the return of machines of the purchaser for refund of investment in event purchaser is dissatisfied. The machines distributed by said respondent are not strictly slug proof, and are not insured against theft, fire, and mysterious disappearance.

PAR. 6. In the course and conduct of his business and for the purpose of inducing retailers to purchase said coin-operated vending machines known as "Automatic Stores," respondent, J. D. Drushell, trading as J. D. Drushell Co., has made use of and now uses various types of advertising matter purporting to be descriptive of said vending machines known as "Automatic Stores." Such advertising

used by this respondent contains among others the following statements and representations:

Six times the earnings of a single machine.

The use of charms and toys creates amazing sales. Grown-ups as well as kiddies are intrigued at the sight of these clever toys and charms mixed with the candy and nuts. We have seen youngsters drop in 10 to 15 pennies seeking to receive the toy they see through the glass. Read these figures: Peanuts cost 8¢ to 10¢ per lb. depending on locality. Hard candies can be purchased at approximately 12¢ lb. This merchandise sells from 60¢ to 70¢ per lb.

When charms and toys are used operators are setting them to vend at about \$1 per lb.

By using "Automatic Stores" and this merchandise, operators have found that they can easily and quickly develop their business.

In addition to said advertising, representatives of respondent, J. D. Drushell, trading as J. D. Drushell Co., including Laurence A. Smith, with the knowledge, acquiescence, and active cooperation of respondent, J. D. Drushell, trading as J. D. Drushell Co., for the purpose and with the result of selling respondent's vending machines, make representations that said "Automatic Stores" will return earnings of "Six times the earnings of a single machine;" that the earnings can be greatly stimulated and increased by the use of toys and charms; that when toys and charms are used, the vending machines can be set to vend at about \$1 per pound; that said machines will average a net profit of \$5 weekly per machine.

PAR. 7. Said statements and representations contained in said advertising and in representations of salesmen of this respondent, J. D. Drushell, trading as J. D. Drushell Co., are grossly exaggerated, misleading, and untrue. In truth and in fact, one "Automatic Stores" will not equal in earnings six times the earnings of a single machine and will not average a net profit of \$5 per week for each machine; and also, said machine cannot be set to vend at about \$1 per pound and still distribute toys and charms. Furthermore, the use of toys and charms as above alleged involves a game of chance or the sale of a chance to procure a toy or charm, which is a practice 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 located in the several States of the United States and engaged in competition with respondent, J. D. Drushell, trading as J. D. Drushell Co., are under a moral and legal compulsion not to adopt such practices and do refrain from adopting them. The use of said methods by this respondent gives him an undue preference and operates unjustly against those competitors of said respondent who are required to refrain from the use of such methods.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondent, J. D. Drushell, trading as J. D. Drushell Co., himself, or through the respondent, Laurence A. Smith, and other sales representatives in describing his products or in the promotion of said fraudulent sales plan and scheme hereinabove set forth, were and are calculated to, have had, and now have a capacity and tendency to deceive and do deceive the ultimate purchasers into contracting for and buying the vending machines of the respondent, J. D. Drushell. The aforesaid practices have the capacity and tendency to unfairly divert to the respondents the trade of competitors engaged in selling in commerce between and among the States of the United States and the District of Columbia, products of the same kind and nature as those of the respondents, which said products are truthfully advertised and described by said competitors. As a consequence thereof, injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents have been, and are, all to the prejudice and injury of the public and said respondents' competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of the respondents, in which answers respondents admit all the material allegations of fact set forth in the complaint and waive all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, J. D. Drushell, individually and as sole trader under the name and style of J. D. Drushell Co., or trading under any other name, and Laurence A. Smith, individually, or in combination or conspiracy with each other, their agents, representatives, and employees, directly or through any device, corporate or otherwise, in connection with the offering for sale, sale, and distribution of the coin-operated vending machines specially designed to

market 1- and 5-cent candy bars manufactured by the Hershey Chocolate Corporation of Hershey, Pa., variously known as "Hershey Automatic Merchandisers," "Hershey Vending Machines," "Hershey Machines," "Advance Hershey Vending Machines," "Automatic Stores," or the same or similar machines under whatever name sold, in interstate commerce or in the District of Columbia, do forthwith cease and desist, directly or indirectly, from:

1. Representing that the respondent, J. D. Drushell, is the representative or agent of, or in any manner connected with, the Hershey Chocolate Corporation or the Chocolate Sales Corporation, of Hershey, Pa., or that the "company" operated by said respondent is a division or subsidiary of or affiliated with either of said firms, when such is not the fact.

2. Representing that the respondent, J. D. Drushell, is the sole distributor of Hershey penny candy bars or that such bars are distributed exclusively through the vending machines sold by said respondent, or that said respondent has authority to arrange for distribution of candy for the Hershey Chocolate Corporation or the Chocolate Sales Corporation.

3. Representing that respondents' vending machines will pay the operator thereof an average net profit of \$1 per week for each machine, or that the operator thereof will receive an income of \$125 per month or any other amount, unless such is the fact.

4. Representing that the respondent, J. D. Drushell, assigns exclusive territorial rights within any certain trade area to any purchaser or prospective purchaser of his vending machines, unless and until such exclusive territory is in fact assigned.

5. Representing that the respondent, J. D. Drushell, obtains locations for said vending machines, or that he relocates said vending machines should first location prove unsatisfactory, unless and until such locations are in fact obtained.

6. Representing that the respondent, J. D. Drushell, resells or permits the return of said vending machines for refund of investment in case the purchaser thereof is dissatisfied, unless and until such machines are so disposed of and the investment in fact returned to dissatisfied purchasers.

7. Representing that said vending machines are strictly slug proof or are insured against fire, theft, or mysterious disappearance, unless such is the fact.

8. Representing that said "automatic stores" vending machines will earn six times as much as other types of machines sold by the respondent, J. D. Drushell, or that they will average a net profit of \$5

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per week for each such machine, or any other amount, unless such is the fact.

9. Representing that said "automatic stores" vending machines can be set to vend candy and other merchandise at the rate of \$1 per pound, or any other amount, unless such is the fact.

10. Supplying to, or placing in the hands of, operators of any of said vending machines, toys, charms, or other articles of merchandise which may be distributed through said vending machines in such a manner as to constitute a lottery device or the distribution of such merchandise by lot or chance.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission separate and individual reports in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
**CHARLES W. CROMER DOING BUSINESS AS SHALWIN
HOSIERY MILLS**

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

Docket 2794. Complaint, Apr. 30, 1936—Decision, Feb. 27, 1939

Where an individual engaged in manufacture of hosiery which had appearance and feel of silk but which was composed largely of rayon and cotton, and in sale and distribution thereof to purchasers in various other States, in substantial competition with those engaged in sale and distribution of hosiery of same type, kind, and grade and of various other types, kinds, and grades, and including those who do not represent, brand, label, advertise, or describe their said product falsely or deceptively and do not represent that their said product contains more silk than is in fact present therein—

- (a) Caused to be stamped on two types of his said hosiery, words "PURE THREAD SILK," together with words, on one of said types, "Reinforced with Art Silk," and words, on the other, "Reinforced with Fine Rayon," and placed on both types label setting forth, in part, "New Style Split Foot Silk Hose are made of the finest materials," etc., and represented thereby, directly and by implication, to members of the purchasing public, that such hosiery contained silk, product of the cocoon of the silk worm, as the principal or major constituent therein, and contained said product in a proportion or quantity larger than that present in said hosiery, top, heel, toe, and sole of which were made of cotton, and body of which, designated by term "PURE THREAD SILK" as aforesaid, was composed of 87 percent rayon and 13 percent silk, with percentage of silk in whole hose amounting to only 3 percent thereof by weight;
- (b) Caused to be stamped on another type of hose sold and distributed by him words "Rayon reinforcing Two THREADS PURE SILK," with said last four words in large conspicuous type and first words in small and less conspicuous type, and thereby represented, directly and by implication, to members of the purchasing public in various States as aforesaid, that such hosiery contained silk as aforesaid as principal or major constituent therein, and also in proportion or quantity larger than that of rayon present in said product, top, heel, toe, and sole of which were made of cotton, with body thereof, stamped with words "Rayon Reinforcing Two THREADS PURE SILK," containing approximately 60 percent rayon and 40 percent silk;

With result of thereby placing in the hands of dealers means or instrumentality of deception and fraud whereby they were enabled, aided, and assisted in misleading and deceiving members of the purchasing public as to the contents of said hosiery and the quality, value, grade, and substance thereof; and

- (c) Caused to be stamped on substantial number of said hose words "50¢ per pair," and represented thereby that said price was customary and ordinary retail value thereof, facts being it was fictitious and much higher than that at which it was customarily offered for sale and sold at retail;

With effect of misleading and deceiving members of purchasing public in the various States into the erroneous and mistaken belief that such false and misleading statements and representations were true, and that said hosiery contained silk as above set forth, and of causing members of such public to purchase substantial quantities of said hosiery because of such erroneous and mistaken belief and of thereby diverting unfairly trade to him from competitors in said commerce who truthfully advertise and represent their respective hosiery and materials contained therein; to the injury of competition in commerce:

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

Before *Mr. W. W. Sheppard* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Harry D. Michael and *Mr. William L. Pencke* for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Charles W. Cromer, doing business under the name and style of Shalwin Hosiery Mills, 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, Charles W. Cromer, doing business under the name and style of Shalwin Hosiery Mills, is now and has been engaged for more than 3 years last past, under said trade name, in the manufacture of hosiery and in the sale and distribution thereof in commerce, as herein set out, with his factory or mill, office, and principal place of business in the city of Hagerstown, in the State of Maryland. Said respondent, in the course and conduct of his said business, causes the hosiery, manufactured and sold by him, to be transported from his said place of business in Maryland to, into, and through States of the United States other than Maryland to various and numerous customers in such other States to whom such hosiery is or has been sold. Respondent's usual course of dealing is to sell his hosiery to jobbers, wholesalers, and retail dealers through whom or which it is in turn sold to members of the consuming public.

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 manufacture, sale, and distribution of

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hosiery of the general type, kind, and grade as that made and sold by respondent as hereinafter described, as well as other types, kinds, and grades of hosiery, and such other individuals, firms, and corporations have caused and do now cause their said hosiery, 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 thereof at their respective places of location. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said hosiery with such other individuals, firms, and corporations.

PAR. 3. That one of the types of men's hosiery made and sold by respondent is made of cotton so far as the top, heel, toe, and sole are concerned while the remaining part thereof is made of a mixture of rayon and silk, each thread consisting of approximately 60 percent rayon and 40 percent silk. The percentage of silk in said hosiery is only a small fraction of the whole. Respondent, in the sale of said hosiery as aforesaid, causes to be stamped thereon the following statement:

Rayon
Reinforcing
TWO THREADS PURE SILK

The words "Two Threads Pure Silk" are stamped in large conspicuous type while the word "Rayon" is in smaller and less conspicuous type. The effect and implication of said statement, as so printed, is to create the false impression on the purchasing public that said hosiery is composed in substantial part of silk.

PAR. 4. That, during said period as aforesaid, but prior to the use of the transfer stamp as stated in the preceding paragraph, respondent stamped such hose as therein described as follows:

PURE THREAD SILK
Reinforced
With Fine Rayon
Made in U. S. A.

On a label or tag attached to the top of some such hose, the following statement appeared:

SHALWIN
New Style Split-Foot
—SILK HOSE—
Are made of the finest
Materials and will
give the wearer
complete satisfaction

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Another type of transfer stamp formerly used by respondent on socks made as aforesaid was the following:

DURENE TOP AND FOOT
First Quality Rayon
Reinforced with
Two Threads Pure Silk
Made in U. S. A.

Such hose so stamped also had attached thereto labels or tags with the wording thereon as last above described.

That, at one time within the period as aforesaid, respondent manufactured and sold as aforesaid a type of hose of the same general type as above described, but with a silk content of only about 13 percent exclusive of the top, heel, toe, and sole. Said type of hose, and also that previously described, were stamped with a transfer stamp as follows:

Pure Thread Silk
Reinforced
With Art Silk
Made in U. S. A.

and also

Pure Thread Silk
Reinforced
With Fine Rayon
Made in U. S. A.

That the said representations imply and import that the major portion of said hosiery is made from silk, the same being the product of the cocoon of the silk worm, or that the major portion of the parts of such hosiery so stamped and described is made from silk, and that the rayon content so designated constitutes a relatively small part of each piece of such hosiery or of the part thereof so designated, when, in fact the major portion of each piece of such hosiery as well as of such portions thereof as contain silk are made of material or materials other than silk.

PAR. 5. That, in many instances in the sale of his said hosiery above described, respondent has caused to be stamped upon such hose the following price mark as the retail price at which such hose is and should be sold, to wit:

50¢ per pair

when, in truth and in fact such price was fictitious and much higher than hose of the quality and price at the factory would warrant and higher than the retail prices at which such hose has customarily been offered for sale and sold.

PAR. 6. That the representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's said hosiery is composed in large part or wholly of silk, the product of the cocoon of the silk worm, and that it is of a quality and price higher than it is in fact and to cause and induce such members of the public to buy said hosiery because of the erroneous beliefs engendered as above set forth. Said stampings and statements placed upon and attached to said hosiery further place in the hands of retail dealers, who handle and sell the same, an instrument of fraud and deceit by means of which they may mislead and defraud the purchasing public. 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 hosiery of the same or similar grade and kind as well as that made wholly of silk. There are among the competitors of respondent those who in no wise make the same or similar misleading representations as made by respondent as herein set out and who truthfully and accurately state the quality of their merchandise, the materials of which it is made and the normal price at which it should be sold at retail. As a result thereof, 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 the Federal Trade Commission Act, the Federal Trade Commission, on April 30, 1936, issued and served its complaint in this proceeding upon respondent, Charles W. Cromer, trading as Shalwin Hosiery Mills, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Harry D. Michael, attorney for the Commission, and in opposition to the allegations of the complaint by respondent, before W. W.

Sheppard and Miles J. Furnas, 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, brief in support of the complaint (respondent not having filed brief and oral argument not having been requested), 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, Charles W. Cromer, is an individual trading and doing business as Shalwin Hosiery Mills and having his office and principal place of business in the town of Hagerstown, State of Maryland. Respondent is now, and has been for more than 6 years last past, engaged in the business of manufacturing, selling, and distributing hosiery in commerce among and between various States of the United States. Respondent causes such hosiery, when sold by him, to be transported from his aforesaid place of business in the State of Maryland to the purchasers thereof at their respective points of location in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said hosiery among and between various States of the United States.

PAR. 2. Respondent is engaged in substantial competition in commerce among and between various States of the United States with other individuals and with firms, partnerships, and corporations selling and distributing hosiery of the same type, kind, and grade as that manufactured and sold by respondent and of various other types, kinds, and grades. Among such competitors in said commerce are many who do not represent, brand, label, advertise, or describe their hosiery falsely or deceptively and who do not represent that their hosiery contains more silk than is in fact present in such hosiery.

PAR. 3. In the course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his hosiery, the respondent has caused such hosiery to be sold and distributed in commerce among and between various States of the United States bearing certain brands, labels and stamps purporting to relate to and be descriptive of the silk content of the said hosiery.

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Respondent caused to be stamped on one type of hose which he sold and distributed as aforesaid the following statement and representation:

PURE THREAD SILK
Reinforced
With Art Silk
Made in U. S. A.

and on another type of hose the following:

PURE THREAD SILK
Reinforced
With Fine Rayon
Made in U. S. A.

Respondent caused to be placed on both of the above types of hose a label which read on one side:

Manufactured by
Shalwin Hosiery Mills

and on the other side:

Shalwin New Style
Split Foot Silk Hose
are made of the
finest materials
and will give the wearer
complete satisfaction

In truth and in fact, the top, heel, toe, and sole of such hosiery was made of cotton. The body of said hose designated by the term "Pure Thread Silk" is in fact part rayon and part silk, in the percentage of rayon—87 percent, and silk—13 percent. In truth and in fact, the percentage of silk contained in the whole sock is only 3 percent of the hose by weight.

Respondent caused to be stamped on another type of hose which he sold and distributed as aforesaid the following statement and representation:

Rayon
reinforcing
TWO THREADS PURE SILK

The words "Two Threads Pure Silk" are stamped in large, conspicuous type on said hose while the word "Rayon" is in small and less conspicuous type. In truth and in fact, the top, heel, toe, and sole of said hosiery are made of cotton. The body of said hosiery, stamped with the words "Rayon reinforcing Two Threads Pure Silk," contains approximately 60 percent rayon and 40 percent silk.

By means of such stamps, brands, and labels disseminated as aforesaid, respondent has represented, directly and by implication,

to members of the purchasing public situated in various States of the United States that such hosiery contains silk, the product of the cocoon of the silkworm, as the principal or major constituent therein, and contains silk, the product of the cocoon of the silkworm, in a proportion or quantity larger than the proportion or quantity of rayon present in such hosiery.

PAR. 4. In truth and in fact, said hosiery branded, stamped, labeled, and represented as aforesaid has the appearance and feel of silk but is composed largely of rayon and cotton. Said hosiery is not composed of nor does it contain silk, the product of the cocoon of the silkworm, as the principal or major constituent of said hosiery. The proportion or quantity of rayon is larger than the proportion or quantity of silk present in such hosiery. Such silk as is or may be present in the first type of hose described above is less than 5 percent of the hose by weight, to wit, 3 percent of the hose by weight.

PAR. 5. Through the use of the aforesaid labels, brands, and stamps in the sale and distribution of said hosiery in commerce among and between various States of the United States, respondent has thereby placed, and is continuing to place, in the hands of dealers a means or instrumentality of deception and fraud whereby such dealers are enabled, aided, and assisted in misleading and deceiving members of the purchasing public as to the contents of said hosiery and the quality, value, grade, and substance thereof.

PAR. 6. In the course and conduct of his business as aforesaid respondent has caused to be stamped on a substantial number of said hose the words "50c per pair," which serves as a representation by the respondent that 50 cents per pair is the customary and ordinary retail value of said hose. In truth and in fact, such purported retail value is fictitious and is much higher than the price at which such hose is customarily and ordinarily offered for sale and sold at retail.

PAR. 7. The use by respondent of the foregoing false and misleading statements and representations disseminated as aforesaid has had, and now has, the capacity and tendency to, and does, mislead and deceive members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief that such false and misleading statements and representations are true and that said hosiery contains silk, the product of the cocoon of the silkworm, in a larger proportion than is in fact present in such hosiery, and that such hosiery is composed of or contains silk in a quantity or proportion larger than the proportion of rayon contained in said hosiery, and causes members of the purchasing public to purchase substantial quantities of said hosiery because of said erroneous and mistaken belief. As a result, trade has been diverted

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unfairly to the respondent from his competitors in said commerce who truthfully advertise and represent their respective hosiery and the materials contained in such hosiery. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce among and between various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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 the Federal Trade Commission Act.

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 Miles J. Furnas and W. W. Sheppard, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint, respondent having waived filing of 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Charles W. Cromer, individually and trading and doing business as Shalwin Hosiery Mills, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of hosiery in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner whatsoever that the hosiery manufactured or sold by him contains "silk" or "pure thread silk," the product of the cocoon of the silkworm, in greater quantity, percentage, or degree than is actually the case.

2. Advertising, offering for sale, or selling, hosiery composed in whole or in part of rayon without clearly disclosing the fact that such hosiery is composed of rayon, and when such hosiery is composed in part of rayon and in part of other fibers or materials, such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent, provided that if any particular fiber in said hosiery is not present

in a substantial amount by weight, the percentage in which such fiber is present shall then be specifically disclosed.

3. Using the words "silk" or "pure thread silk," or words of similar import and meaning, to describe, designate, or refer to hosiery which is not composed wholly of silk, the product of the cocoon of the silkworm, provided that in the case of hosiery composed in part of silk and in part of materials other than silk, such words may be used as descriptive of the silk content if there are used in immediate connection and conjunction with the word "silk," in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof in the order of its predominance by weight, beginning with the largest single constituent, and provided that if any particular fiber in said hosiery is not present in a substantial amount by weight, the percentage in which such fiber is present shall then be specifically disclosed.

4. Using the term "pure thread silk reinforced with rayon" to describe, designate, or refer to any hosiery other than that in which the chief constituent is pure thread silk, the product of the cocoon of the silkworm, combined solely with rayon as a reinforcing substance.

5. Marking, stamping, or affixing to such hosiery, or the containers thereof, or otherwise representing as the customary or regular retail prices therefor, prices which are in fact fictitious and greatly in excess of the prices at which said hosiery is regularly and customarily offered for sale and sold at retail.

This order shall not be construed as permitting the use of the unqualified word "silk" to designate, describe, or refer to weighted silk.

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
EDWARD HARRIS AND DOROTHY HARRIS, TRADING AS
ACE BUSINESS BUILDERS

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

Docket 3171. Complaint. July 12, 1937—Decision, Feb. 27, 1939

Where two individuals engaged in selling their so-called business stimulator or sales-promotion plan or trade-promotion cards which were so designed and arranged that use thereof constituted a lottery or gift enterprise when used by retail merchant in promoting and increasing sales of his merchandise to consuming public, and which consisted of cards arranged for punching out \$5 or \$10 in trade, as case might be, and had concealed within their so-called "Treasure Chest," for disclosure, when card, as suggested, had been punched out through merchandise sales made to customer to which given, legends entitling chance holder to amounts in trade ranging from 20 cents to \$5 for the \$5 cards, and from 40 cents to \$10 for the \$10 cards—

Sold to retail dealer customers such cards, together with variety of display posters and advertising matter for such customers in use and distribution of said cards, and punch for canceling numbers arranged on border to indicate amount of sale, and with suggestion for use thereof by their said retail customer merchants who distributed said cards to their customers and prospective customers and honored awards as shown thereon, and thereby knowingly supplied to and placed in the hands of others means of operating lotteries, games of chance, or gift enterprises, contrary to public policy, and in competition with many who are opposed to use or sale of trade-promotion cards or systems which involve lotteries, games of chance, or gift enterprises and refrain from sale thereof;

With effect of inducing many of the consuming public to deal with or purchase merchandise from retail merchants using cards sold by them in preference to purchasing from merchants using sales-booster plans or schemes or devices of competitors which have connected with them no element of lot or chance, and with result, by reason of such fact, that many of such merchants, who cannot use more than one type of sales-promotion or price-concession card or coupon at same time, were induced to purchase cards sold by them in preference to devices or plans of competitors, and trade was thus diverted to them from their competitors, and with result that sales of competing plans or promotion schemes or premium cards or coupons of competitors were injuriously affected; to the prejudice and injury of the public and competitors, and to the restraint and detriment of freedom of fair and legitimate competition:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel*, 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 Edward Harris and Dorothy Harris, individually and as copartners trading as Ace Business Builders, 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, Edward Harris and Dorothy Harris, are individuals and are doing business as a partnership under the trade name Ace Business Builders, with their principal office and place of business located at 417 South Dearborn Street, Chicago, Ill. Respondents are now, and for more than 1 year last past have been engaged in the manufacture of sales-promotion cards and in the sale and distribution thereof to retail merchants located at points in the various States of the United States. Respondents cause and have caused their said products when sold to be transported from their principal place of business in the city of Chicago, State of Illinois, to purchasers thereof in other States of the United States at their respective places of business. There is now, and has been for more than 1 year last past, a course of trade and commerce by said respondents in such sales-promotion cards between and among the States of the United States. In the course and conduct of said business, respondents are in competition with other partnerships and with corporations and individuals engaged in the manufacture of sales-promotion cards, trade cards, discount cards, premium cards, coupons, and trading stamps, and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise when used by retail merchants in promoting and increasing sales of their merchandise to the consuming public. The respondents manufacture and distribute several groups of sales-promotion cards, but they all involve the same lottery scheme or gift enterprise and vary only in detail. The sales-promotion cards in one such group are herein described for the purpose of showing

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arrangement, design, and principle involved. On the front such cards are as follows:

| | | | | | | | | | | | | | | | | | | | | |
|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| 10 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 15 |
| 10 | | | | | | | | | | | | | | | | | | | | 15 |
| 10 | | | | | | | | | | | | | | | | | | | | 15 |
| 10 | | | | | | | | | | | | | | | | | | | | 15 |
| 10 | | | | | | | | | | | | | | | | | | | | 15 |
| 10 | | | | | | | | | | | | | | | | | | | | 15 |
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| 10 | | | | | | | | | | | | | | | | | | | | 15 |
| 10 | | | | | | | | | | | | | | | | | | | | 15 |
| 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 15 |

Under the "Treasure Chest" panel is the following:

"When properly punched good for 20¢ in trade."

The "Treasure Chest" referred to on the said card is a panel partially perforated to indicate where it may be opened, but until the said panel is opened the legend thereunder is effectively concealed from the holder of the said card. The said legends under the "Treasure Chest" panel vary in amount from 20 cents to \$5. The legend under the said panel is effectively concealed until the panel has been opened and the amount which the holder of said card will receive in trade is thus determined wholly by lot or chance. On the reverse or back of the said sales-promotion cards is the following language:

EVERY CARD WINS—Awards Up to \$5

These awards are given in appreciation of your patronage. When this card is fully punched, present same to us intact. We will then open the TREASURE CHEST and you will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THE TREASURE CHEST, THIS CARD BECOMES VOID.

Patronize us always—It will pay you.

(Merchant's Ad)

Other cards manufactured and distributed by the respondents provide for recording the sale of \$10 worth of merchandise by the numbers arranged around the border of the card and provide for the winning of amounts up to \$10 by the legends under the panel. In some groups the legends begin with 20 cents and go to \$10, and in other groups they begin with 40 cents and go to \$10.

Respondents furnish the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 3. The retail merchants to whom respondents sell assortments of said sales-promotion cards distribute the same to their customers and prospective customers and honor the awards as shown under the panel of said cards. One method advocated or suggested by respondents and used by a substantial number of retail merchant customers is as follows: The cards are distributed free to customers and prospective customers of said retail merchants and when purchases are made punches corresponding to the amount of such purchases are made around the margin of said card, and when all the numbers around the margin of said card are punched the panel is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the said panel free of charge.

PAR. 4. There are in competition with respondents various manufacturers and distributors of sales-promotion cards, premium cards, price-concession cards, coupons, and trading stamps, which when used by retail merchants do not involve a lottery scheme or gift enterprise. By reason of the lottery scheme or gift enterprise connected with the distribution and use of the respondents' said cards, many retail merchants are induced to purchase respondents' said cards in preference to the devices manufactured and distributed by respondents' competitors, and trade is thus diverted to respondents from their said competitors.

PAR. 5. The consuming public is induced to deal with or purchase merchandise from retail merchants using respondents' cards in preference to retail merchants using the devices of respondents' competitors, because of the lottery scheme or gift enterprise connected with respondents' said cards. By reason thereof, retail merchants are induced to purchase respondents' said cards in preference to devices of respondents' competitors, and trade is thus diverted to respondents from their said competitors.

PAR. 6. The use by the respondents of said method in designing and arranging their said cards is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has a tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude 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, lottery scheme, or gift enterprise. Many persons, firms, and corporations who make and sell various cards or devices for promoting or increasing sales of retail

merchants are unwilling to offer for sale or sell cards or devices so designed and arranged as above alleged or otherwise designed and arranged as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

PAR. 7. The respondents, in shipping the said cards to their customers, assort and pack them so that such customers know the amount of award stated under the panel; thus the retail merchants to whom respondents sell their cards are enabled to perpetrate a fraud on their customers. This practice has the capacity and tendency to induce, and does induce retail merchants to purchase respondents' said cards in preference to cards or devices of respondents' competitors.

PAR. 8. The aforesaid method, acts, and practices of the respondents are all to the prejudice of the public and 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 the Federal Trade Commission Act, the Federal Trade Commission on July 12, 1937, issued, and thereafter served its complaint in this proceeding upon the respondents, Edward Harris and Dorothy Harris, individually and as copartners trading as Ace Business Builders, 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 Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by the respondents (respondents not being represented by counsel), before William C. Reeves, an examiner for the Commission heretofore 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 brief in support of the complaint (respondents not having filed brief, and oral argument not having been requested); 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 respondents, Edward Harris and Dorothy Harris, are partners, and since July 1935 have been carrying on business under the name and style of Ace Business Builders with place of business at Chicago, Ill. They have been engaged in the business of the sale of what they term a business-stimulator plan or sales-promotion plan, which plan has been sold to retail dealers in various States of the United States, and respondents have caused the printed matter intended for use in the operation of said plan to be transported from Chicago in the State of Illinois, through and into or into the various States of the United States to the respective purchasers thereof, and in the course and conduct of their said business respondents have been and are now in active competition with various persons and corporations and other partnerships, also engaged in the sale of various types of plans and systems designed for the stimulation and promotion of the business of retail merchants in commerce among several of the States of the United States.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and have sold cards so designed and arranged that their use constitutes a lottery scheme or gift enterprise when used by retail merchants in promoting and increasing sales of the merchandise of such merchants to the consuming public. One type of the card so sold by respondents is substantially as follows:

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|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|---------------------------|---------------------------|----------------|--|--|----|---------------|----|--|--|--|----------|--|----------------|--|--|--|--|--|--|----|
| 10 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 15 | | | | | | | | | | | | | | | | | | | |
| 10 | KEEP THIS HIDDEN TREASURE CHEST CARD | | | | | | | | | | | | | | | | | | 15 | | | | | | | | | | | | | | | | | | | | |
| 10 | YOU CAN WIN up to \$5.00 | | | | | | | | | | | | | | | | | | 15 | | | | | | | | | | | | | | | | | | | | |
| 10 | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 60%; text-align: center;">Under this TREASURE CHEST</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td style="text-align: center;">\$</td> <td style="text-align: center;">IS YOUR AWARD</td> <td style="text-align: center;">\$</td> <td colspan="2"></td> </tr> <tr> <td></td> <td style="text-align: center;">Warning!</td> <td></td> <td colspan="2" style="text-align: center;">Void if Opened</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table> | | | | | | | | | | | | | | | | | | | Under this TREASURE CHEST | | | | \$ | IS YOUR AWARD | \$ | | | | Warning! | | Void if Opened | | | | | | | 15 |
| | | | | | | | | | | | | | | | | | | | Under this TREASURE CHEST | | | | | | | | | | | | | | | | | | | | |
| \$ | | | | | | | | | | | | | | | | | | | IS YOUR AWARD | \$ | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | Warning! | | Void if Opened | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10 | EVERY CARD A WINNER—NO BLANKS | | | | | | | | | | | | | | | | | | 15 | | | | | | | | | | | | | | | | | | | | |
| 10 | (Read Rules On Other Side) | | | | | | | | | | | | | | | | | | 15 | | | | | | | | | | | | | | | | | | | | |
| 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 15 | | | | | | | | | | | | | | | | | | |

Under the Treasure Chest is the following:

When properly punched, good for 20 cents in trade

The Treasure Chest referred to on the said card was partially perforated to indicate where it might be opened, but until said chest

was opened, the legend thereunder was effectively concealed from the holder of said card. The said legends under the Treasure Chest varied in amount from 20 cents to \$5. Thus the amount which the holder of said card would receive in trade was determined wholly by lot or chance.

On the reverse or back of said sales promotion cards was the following:

EVERY CARD WINS—AWARDS UP TO \$5.00

These awards are given in appreciation of your patronage. When this card is fully punched, present same to us intact. We will then open the Treasure Chest and you will receive the award printed thereon **ABSOLUTELY FREE.**

SHOULD YOU OPEN THE TREASURE CHEST, THIS CARD BECOMES VOID.

PATRONIZE US ALWAYS—IT WILL PAY YOU

(MERCHANT'S ADVERTISEMENT)

PAR. 3. Each of the cards included in one of the groups sold by respondents is intended for use in sales of merchandise aggregating \$5 and the cards in such group provide for awards ranging from 20 cents in trade to \$5 in trade; the cards in other groups sold by respondents are intended for use in sales of merchandise aggregating \$10 and provide for awards ranging from 40 cents in trade to \$10 in trade. Respondents furnish their customers with a variety of display posters and advertising matter to be used by such customers in the use and distribution of said cards; respondents also furnish their customers with a punch for canceling the numbers arranged along the border of such cards to indicate the amount of the sale made in each instance.

The retail merchants to whom respondents sell and have sold assortments of said sales-promotion cards or trade cards distribute the same to their customers and prospective customers, and honor the awards as shown under the Treasure Chest of said cards. One method advocated or suggested by respondents and used by a substantial number of retail merchant customers of respondents is as follows: The cards are distributed free to customers and prospective customers of said retail merchants and when purchases are made numbers corresponding to the amount of such purchase are punched from the margin of said card and when all the numbers around the margin of said card are punched the Treasure Chest is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the Treasure Chest without additional charge.

PAR. 4. Employees or officers of concerns manufacturing and distributing trade stamps and other trade-booster cards not involving a lottery or chance feature were called as witnesses and testified in this

matter. The Commission finds that manufacturers and distributors of trading stamps, 99-cent and other price-concession cards, and premium coupons are in competition with the respondents and the business of the respondents. Retail merchants desiring to install some plan by which to boost sales of their merchandise cannot use more than one type of sales-promotion or price-concession card or coupon at the same time and retail merchants purchasing the cards sold by the respondents are not then in the market for other trade-booster schemes or plans which do not involve a lot or chance feature.

The lot or chance feature connected with the cards sold by respondents has the capacity to and does induce many of the consuming public to deal with or purchase merchandise from retail merchants using the cards sold by respondents in preference to retail merchants using the sales-booster schemes or plans or devices of competitors of respondents which have connected with them no element of lot or chance, and by reason of this last-mentioned fact many retail merchants are induced to purchase the cards sold by respondents in preference to devices or plans of competitors of respondents, and trade is thus diverted to respondents from their competitors.

PAR. 5. The use by retail merchants of the cards sold by respondents in the manner and by the methods described herein, constitutes a lottery, game of chance, or gift enterprise and the sale of such cards by respondents and the use of the cards by the customers of respondents is contrary to public policy. The Commission finds that many competitors of respondents are opposed to the use or sale of trade-promotion cards or systems which involve lotteries, games of chance, or gift enterprises and refrain from selling same. Such competitors are thereby put to a competitive disadvantage.

PAR. 6. The respondents, in selling and distributing said cards, have knowledge that they are, and will be, used by their customers in the operation of a lottery, game of chance, or gift enterprise. The respondents thus supply to and place in the hands of others the means of operating lotteries, games of chance, or gift enterprises. The sale and distribution of such cards by the respondents injuriously affects the sales of competing sales plans or sales-promotion schemes or premium cards or coupons by competitors of respondents, and the use of such methods by the respondents, in the sale and distribution of said cards, is prejudicial and injurious to the public and to competitors of respondents and is a restraint upon and a detriment to the freedom of fair and legitimate competition. Respondents have made sales of the cards to customers in a majority of the States of the United States.

CONCLUSION

The acts and practices of the respondents as set forth in the foregoing findings, are all to the prejudice and injury of the public and to competitors of respondents and constitute unfair methods of competition in commerce within the intent and meaning of the provisions of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence taken before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of the said complaint and in opposition thereto, brief filed by attorney for the Commission (respondents not having filed brief or requested oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Edward Harris and Dorothy Harris, individually, and as copartners trading as Ace Business Builders, or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of sales-promotion cards, or any other sales-promotion plans or schemes in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing sales-promotion cards or any other articles of merchandise so designed that their use by retail merchants constitutes or may constitute the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others, sales-promotion cards or sales-promotion plans or schemes, or any other articles of merchandise which are used, or which may be used without alteration or rearrangement thereof, to conduct a lottery, game of chance, or gift enterprise, when distributed to the consuming public.

3. Furnishing or supplying to dealers display posters or circulars or other advertising literature bearing legends or statements informing the public as to the manner in which said sales-promotion cards or other lottery devices are to be or may be distributed and used.

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

H. G. PAYNE, INDIVIDUALLY, AND TRADING AS
H. G. PAYNE COMPANY

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

Docket 3175. Complaint, July 16, 1937—Decision, Feb. 27, 1939

Where an individual engaged in sale and distribution of penknives, hunting knives, automatic razors, watches, clocks, and various other articles to wholesalers, jobbers, and retailers—

Supplied or furnished his customers with various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise was distributed to purchasing public wholly by lot or chance and which involved sale and distribution of punchboards and push cards, separately and with merchandise, for sale and distribution of his said products under a plan in accordance with which purchasers for 5 cents of chance on 1,500-hole punchboard, divided into 60 sections, received certain articles of merchandise as prizes or nothing, in accordance with success or failure in securing certain numbers, and last punch in each section entitled purchaser to 25 cents as a prize, and purchaser thus secured or failed to secure article of merchandise, value of which, in any event, exceeded that of cost of punch, and combined value of all of which articles was much less than the sum produced by sale of all punches, and under which plan, in some instances, customer received postcard for the 5 cents paid, with right to punch number from board; and

Supplied thereby to and placed in the hands of others, means of conducting lotteries in the sale and distribution of his said merchandise in accordance with aforesaid and similar sales plans involving game of chance or sale of a chance to procure articles of merchandise at prices much less than normal retail prices thereof; contrary to established public policy of the United States Government, and in violation of the laws of several states, and in competition with many who are engaged in sale and distribution of like or similar articles and who are unwilling to offer or sell their said merchandise by any method or sales plan which involves game of chance, gift enterprise, or lottery scheme, or any method contrary to public policy, and refrain therefrom;

With effect of inducing purchaser of his said merchandise to buy same in preference to like or similar merchandise offered and sold by competitors who do not use such plans or methods in sale and distribution of their products, and with result that many members of the purchasing public were attracted by element of chance involved in his said sales plan or method and thereby induced to purchase his said products in preference to like and similar merchandise of competitors who do not use same or equivalent methods, and with result that wholesalers and jobbers, by reason of such preference, were induced and persuaded to buy his said products in preference to like or similar articles sold or distributed by

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- his competitors and substantial quantities of his said merchandise were sold as result thereof, and trade was unfairly diverted to him from his competitors aforesaid:

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

Before *Mr. Robert S. Hall* and *Mr. William C. Reeves*, trial examiners.

Mr. DeWitt T. Puckett, *Mr. Henry C. Lank* and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, 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 H. G. Payne, individually and trading as H. G. Payne Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is an individual doing business under the trade name and style of H. G. Payne Co. and has his principal office and place of business at 312-314 Broadway, in the city of Nashville, State of Tennessee. He is now, and for some time last past has been, engaged in the sale and distribution of penknives, hunting knives, automatic razors, safety razors, watches, clocks, cigarette lighters, smoking pipes, cigar holders, flashlights, fountain pens, automatic pencils, cameras, opera glasses, and various other articles of merchandise, to wholesale dealers, jobbers, and retail dealers. Respondent's customers are located at points in the various States of the United States, and respondent causes his said merchandise when sold to be transported from his principal place of business in Nashville, Tenn., to purchasers thereof in other States of the United States at their respective places of business. 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 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 sale and distribution of his said merchandise, respondent 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. Said devices or plans of merchandising consist of a variety of punchboards and push cards or similar devices, 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 or products was and is substantially as follows:

Said punchboards consist of boards of various shapes and sizes with from 100 to 3,000 holes. Into each of the holes has been inserted a small slip of paper bearing a printed number, the printed slips bearing consecutive numbers according to the number of holes contained in the board but not arranged in numerical sequence, and said slips are so placed and secreted in said punchboards that they cannot be seen by the customer except when they are punched from the board. The punchboards bear legends indicating the numbers which entitle the purchasing public to an article of merchandise or prize, and in some cases the last punch in each board receives a prize. Customers pay 1 cent, 5 cents, or 10 cents for each punch from the board, and the purchasers of punches who receive numbers calling for an article of merchandise receive such article, and purchasers who receive numbers other than those enumerated on the board, or who do not qualify by purchasing the last punch on the board, receive nothing for their money. The said articles of merchandise vary in value, but each of said articles of merchandise is of greater value than the cost of a single punch from the said board, and the combined value of the articles of merchandise is much less than the cost of the total punches on the board. On some of the boards furnished by respondent certain punches are free.

The push cards furnished by the respondent involve the same principle, but vary in detail.

The purchasing public is thus induced and persuaded into purchasing punches from said boards or pushes from said cards in the hope of making a prize-winning selection and thus obtain an article of merchandise for a sum less than the normal retail value thereof. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells his merchandise resell the same to retail dealers, together with the punchboards or push cards furnished by respondent, and such retail dealers and the retail dealers to whom respondent sells direct

offer for sale and sell said merchandise to the purchasing public by means of said punchboards of push cards in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise 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 merchandise in preference to like or similar merchandise offered for sale and sold by his competitors.

PAR. 4. The sale and distribution of merchandise to the purchasing public, as above alleged, involves a game of chance or the sale of a chance to procure such articles of merchandise in the manner alleged. The use by respondent of said methods in the sale of his merchandise, and the sale of such merchandise 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. Many persons, firms and corporations who sell and distribute merchandise in competition with the respondent, as above alleged, are unwilling to offer for sale or sell merchandise by 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.

PAR. 5. Many dealers in and ultimate purchasers of merchandise as distributed by respondent are attracted by respondent's said methods or sales plans and by the element of chance involved in the sale or purchase thereof in the manner above described, and are thereby induced to purchase said merchandise of respondent in preference to merchandise offered for sale and sold by competitors of respondent who do not use the same or equivalent methods. The use of said methods or sales plans by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from his said competitors who do not use the same or equivalent methods; to exclude from said 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 trade, and to tend to create a monopoly of said trade in respondent and such other distributors as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said methods or sales plans 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 methods or equivalent methods.

PAR. 6. 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, 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 the Federal Trade Commission Act, the Federal Trade Commission, on July 16, 1937, issued and thereafter served its complaint in this proceeding upon respondent, H. G. Payne, individually, and trading as H. G. Payne Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony, and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, Henry C. Lank, and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by Horace J. Donnelly, Jr., and John A. Nash, attorneys for the respondent, before Robert S. Hall and William C. Reeves, 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, brief in support of the complaint (respondent having filed no brief and not having requested oral argument), and the Commission, having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, H. G. Payne, is an individual doing business under the trade name of H. G. Payne Co., with his principal place of business located at 312-314 Broadway, Nashville, Tenn. For several years last past respondent has been engaged in the sale and distribution of penknives, hunting knives, automatic razors, safety razors, watches, clocks, cigarette lighters, pipes, cigarette holders, flashlights, fountain pens, automatic pencils, cameras, opera glasses, lottery devices, and various other articles to wholesale dealers, jobbers, and retail dealers. Respondent has caused his said

merchandise, when sold, to be shipped or transported to purchasers thereof located in various States of the United States at their respective points of location from his aforesaid place of business in Nashville, Tenn.

Respondent has been at all times mentioned herein in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In so carrying on his said business as described in paragraph 1 hereof, respondent has supplied or furnished his customers with various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise has been distributed to the purchasing public wholly by lot or chance. The devices sold and distributed by respondent are what are commonly known as punchboards and push cards. One of said punchboards is operated substantially as follows: This board contains 1,500 small holes, into each of which has been inserted a small slip of paper with a number printed thereon, and the said slips are so placed and secreted in said punchboard that they cannot be seen by the customer until after they have been punched from the board. There are a number of cut-outs on the board, in which are placed articles of merchandise. The punchboard bears legends or statements explaining the operation thereof. Sales are 5 cent each, and each purchaser is entitled to punch one of said numbers from the board, which board is divided into 60 sections, and certain designated numbers entitle the purchasers thereof to designated articles of merchandise as prizes, and the last punch in each section entitles the purchaser thereof to 25 cents as a prize. Purchasers who do not qualify by punching one of the numbers designated as prize-winning numbers, or the last number in one of the sections, receive nothing for their money. The said articles of merchandise vary in value, but each of said articles of merchandise is of greater value than the cost of a single punch from the said board, and the combined value of the articles of merchandise is much less than the sum produced by the sale of all the punches on the board. In the above-described manner respondent's merchandise is distributed to the purchasing public wholly by lot or chance. In some instances, customers of respondent buy post cards for sale and distribution in connection with the above-described punchboard, and when such post cards are used, each purchaser, for the sum of 5 cents receives one of said post cards, and is entitled to punch one number from said board.

Respondent has furnished various punchboards, together with merchandise to be sold thereby, to his customers located in various States of the United States, but said punchboards involve the same principle of operation as the one hereinabove described, and vary only in detail. In so carrying on said business, respondent also has sold and distributed to his said customers, separately and apart from said merchandise, a device commonly known as a push card, which push card is operated on the same principle as the punchboard hereinabove described, and varies only in detail. Respondent has also furnished and supplied his customers with said punchboards separately and apart from said merchandise. Many dealers have used said devices purchased from respondent in making up lottery deals from their own assortments of merchandise, and said merchandise has been sold to the general public by means of said devices.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells his merchandise, together with said punchboards, resell the same to retail dealers, who in turn sell and distribute said merchandise by means of said punchboards to members of the purchasing public in accordance with the aforesaid sales plans. Respondent has thus supplied to, and placed in the hands of, others, the means of conducting lotteries in the sale and distribution of his said merchandise, in accordance with the sales plans hereinabove described. Said sales plans have the capacity and tendency to induce, and have induced purchasers of respondent's merchandise to purchase the same in preference to like or similar merchandise offered for sale and sold by respondent's competitors who do not use such sales plans or methods in the sale and distribution of their said merchandise.

PAR. 4. The sale and distribution of merchandise to the purchasing public in the manner hereinabove found involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail prices thereof. The sale and distribution of merchandise in the manner hereinabove described is a practice of the sort which is contrary to an established public policy of the Government of the United States, and is in violation of the laws of several States of the United States. Among the respondent's competitors there are many persons, firms, and corporations who sell and distribute like or similar articles of merchandise in competition with respondent as hereinabove found, and said competitors are unwilling to offer for sale or sell their said merchandise by any method or sales plan which involves a game of chance, gift enterprise, or lottery scheme, or any other method that is contrary to public policy, and such competitors refrain therefrom, and as a result are placed at a disadvantage in competition.

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PAR. 5. Many members of the purchasing public were attracted by the element of chance involved in the respondent's said sales plan or method, and were thereby induced to purchase respondent's merchandise in preference to the like or similar merchandise of respondent's competitors who did not or do not use the same or equivalent methods. Because of said preference on the part of members of the purchasing public, wholesale dealers and jobbers have been induced and persuaded to purchase respondent's said merchandise in preference to like or similar articles of merchandise sold or distributed by respondent's said competitors, and as a result respondent has sold substantial quantities of his said merchandise, and trade has been unfairly diverted to respondent from his said competitors.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove found 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 the Federal Trade Commission Act.

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 and William C. Reeves, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by attorney for the Commission (respondent having filed no brief nor 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 the Federal Trade Commission Act.

It is ordered, That the respondent, H. G. Payne, individually, and trading as H. G. Payne Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of penknives, hunting knives, automatic razors, safety razors, watches, clocks, cigarette lighters, pipes, cigarette holders, flashlights, fountain pens, automatic pencils, cameras, opera glasses, lottery devices, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others any merchandise together with punchboards, push or pull cards, or any other lottery

device, for the purpose of enabling such persons to dispose of or sell said merchandise by the use thereof.

2. Supplying to or placing in the hands of others punchboards, push or pull cards, or other lottery devices, for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

3. Mailing, shipping, or transporting to his agents or to distributors or to members of the public punchboards, push or pull cards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

4. Selling or otherwise disposing of any merchandise by the use of punchboards, push or pull cards, or other lottery devices.

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

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IN THE MATTER OF
SWAMP AND DIXIE 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 3680. Complaint, Dec. 29, 1938—Decision, Feb. 27, 1939

Where a corporation engaged in sale of "Swamp Chill and Fever Tonic" and "Dixie Fever and Pain Powder" to retail druggists and others in various States and in the District of Columbia; in false advertisements which it disseminated through the mails and through insertion in newspapers and periodicals of general circulation, and through circulars and other printed matter distributed in commerce and in said District—

- (a) Represented, directly and by implication, that said "Swamp Chill and Fever Tonic" medicinal preparation was a doctor's prescription which constituted a safe, certain, and permanent cure for malaria and every kind of fever and ague, and that it would break up malaria in 3 days and was a general tonic, and a remedy or competent and effective treatment for colds, chills, poor appetite, and run-down condition, and that it regulated the bowels and purified the system, facts being said representations were grossly exaggerated, misleading, and untrue, said preparation was not a safe, certain, and permanent cure for malaria, etc., as above set forth, or general tonic, nor remedy for colds, etc., and would not accomplish other results above claimed, and while each of certain ingredients therein contained might be beneficial at some stage in treatment of malaria, it might be unnecessary and perhaps definitely counter-indicated in other stages, and in other cases, and preparation was not a wholly safe drug for use by lay public in self-medication; and
- (b) Represented that its "Dixie Fever and Pain Powder" was a safe remedy or treatment for sleeplessness, neuralgia, rheumatism, grippe, or influenza, cold in the head, catarrh, and all kinds of fever, facts being such representations were grossly exaggerated, misleading, and untrue, said preparation was not such a remedy or treatment for sleeplessness and for other ailments and conditions above set out, and was not a wholly safe drug for use by lay public in self-medication;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and into purchase of its said medicinal preparations as a result of such statements, representations, and advertisements:

Held, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Gerard A. Rault for the Commission.

Warner & Warner, of Fort Smith, Ark., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by, virtue of the authority vested in it by said act, the Federal

Trade Commission, having reason to believe that Swamp and Dixie Laboratories, Inc., a corporation hereinafter referred to as respondent, has violated the provisions of 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, Swamp and Dixie Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 301-311 Rogers Avenue, Fort Smith, Ark. The respondent is now, and for more than 2 years last past has been engaged in the business of selling and distributing two medicinal preparations known as "Swamp Chill and Fever Tonic" and "Dixie Fever and Pain Powder." Respondent sells these medicinal preparations to retail druggists and others located in various States of the United States and in the District of Columbia and causes said preparations when sold by it to be transported from its aforesaid place of business in the State of Arkansas to the purchasers thereof located in various States of the United States other than the State of Arkansas and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said drugs 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 aforesaid business, respondent has disseminated, and is now disseminating, and has caused and does now cause to be disseminated, false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of respondent's said medicinal preparations. Said false advertisements were and are disseminated by use of the United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States and in the District of Columbia. Various means have been and are used by respondent to disseminate, or cause the dissemination of, said false advertisements for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States and in the District of Columbia of respondent's said medicinal preparations. Among and typical of the statements and representations contained in said false advertisement so used and disseminated as aforesaid are the following:

Swamp Chill and Fever Tonic.
For malarial fever and ague.

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A safe, certain and permanent cure for every form of fever. The remedy that cures.

A doctor's prescription which will break up malaria in 3 days if taken according to directions.

* * * If you have trouble with malaria chills and fever, poor appetite, lost energy or a run-down condition, then * * * Swamp Chill and Fever Tonic will prove your best friend * * * It is a good general tonic, an ideal treatment for colds * * * Swamp Chill and Fever Tonic regulates the bowels, enriches the blood, improves the appetite, purifies the system, quickly and completely freeing you from the dreaded malaria germs which make you inefficient and life miserable.

Dixie Fever and Pain Powder.

For the relief of simple headache and neuralgia, muscular aches and pains. Indicated also for head colds. Useful in reducing fever.

Dependable for 40 years.

A sovereign remedy for all aches and pains. For the relief of headache, neuralgia, rheumatism, la grippe, cold in the head, sleeplessness and all nervous conditions.

For the relief of fevers, such as intermittent, remittent, hay fever, chill fever, etc.

Through the use of the statements and representations hereinabove set forth and others similar thereto not set forth herein, respondent has represented directly and by implication that the medicinal preparation "Swamp Chill and Fever Tonic" is a doctor's prescription, that it is a safe, certain, and permanent cure for malaria and every kind of fever and ague, that it will "break up" malaria in 3 days, that it is a general tonic, that it is a remedy or competent or effective treatment for colds, chills, poor appetite, and run-down condition, and that it regulates the bowels and purifies the system; that the medicinal preparation "Dixie Fever and Pain Powder" is a safe remedy or treatment for sleeplessness, neuralgia, rheumatism, la grippe or influenza, cold in the head, catarrh, and all other kinds of fever.

PAR. 3. The said representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading, and untrue. The medicinal preparation "Swamp Chill and Fever Tonic" is not a safe, certain, and permanent cure for malaria and for all kinds of fever and ague, nor will it "break up" malaria in 3 days. It is not a general tonic. It is not a remedy for colds, chill, poor appetite and run-down condition. It neither regulates the bowels nor purifies the system. The preparation "Dixie Fever and Pain Powder" is not a safe remedy or treatment for sleeplessness, neuralgia, rheumatism, la grippe or influenza, cold in the head, catarrh, and for all kinds of fever.

The true facts are the preparation "Swamp Chill and Fever Tonic" contains quinoidine, acetanilid, iron, nux vomica, formaldehyde, and

syrup senna. Each of these ingredients may be beneficial at some stage in the treatment of malaria though unnecessary and perhaps definitely counter-indicated at other stages and in other cases. The preparation "Dixie Fever and Pain Powder" contains acetanilid, sodium bicarb, caffeine concentrated, and Po. charcoal. Neither of these two preparations is a wholly safe drug to be used by the lay public in self-medication.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations and advertisements disseminated as aforesaid has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and into the purchase of respondent's medicinal preparations as a result of such statements, representations, and advertisements.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 29, 1938, issued and served its complaint upon respondent, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On February 3, 1939, respondent filed its answer in which it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. 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 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, Swamp and Dixie Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 301-311 Rogers Avenue, Fort Smith, Ark. The respondent is now and for more than 2 years last past has been engaged in the business of selling and distributing two medicinal preparations known as

“Swamp Chill and Fever Tonic” and “Dixie Fever and Pain Powder.” Respondent sells these medicinal preparations to retail druggists and others located in various States of the United States and in the District of Columbia and it causes said preparations when sold by it to be transported from its aforesaid place of business in the State of Arkansas to the purchasers thereof located in various States of the United States other than the State of Arkansas and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparations 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 aforesaid business, respondent has disseminated, and is now disseminating, and has caused and does now cause to be disseminated, false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of respondent's said medicinal preparations. Said false advertisements were and are disseminated by use of the United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed matter, all of which are distributed in commerce among and between the various States of the United States and in the District of Columbia. Various means have been and are used by respondent to disseminate, or cause the dissemination of, said false advertisements for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States and in the District of Columbia of respondent's said medicinal preparations. Among and typical of the statements and representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Swamp Chill and Fever Tonic.

For malarial fever and ague.

A safe, certain and permanent cure for every form of fever. The remedy that cures.

A doctor's prescription which will break up malaria in 3 days, if taken according to directions.

* * * If you have trouble with malaria chills and fever, poor appetite, lost energy or a run-down condition, then * * * Swamp Chill and Fever Tonic will prove your best friend * * * It is a good general tonic, an ideal treatment for colds. * * * Swamp Chill and Fever Tonic regulates the bowels, enriches the blood, improves the appetite, purifies the system, quickly and completely freeing you from the dreaded malaria germs which make you inefficient and life miserable.

Dixie Fever and Pain Powder.

For the relief of simple headache and neuralgia, muscular aches and pains. Indicated also for head colds. Useful in reducing fever.

Dependable for 40 years.

A sovereign remedy for all aches and pains. For the relief of headache, neuralgia, rheumatism, la grippe, cold in the head, sleeplessness, and all nervous conditions.

For the relief of fevers, such as intermittent, remittent, hay fever, chill fever, etc.

The Commission finds that through the use of the statements and representations hereinabove set forth and others similar thereto not herein set forth, respondent has represented directly and by implication that the medicinal preparation "Swamp Chill and Fever Tonic" is a doctor's prescription, that it is a safe, certain, and permanent cure for malaria and every kind of fever and ague, that it will "break up" malaria in 3 days, that it is a general tonic, that it is a remedy or competent or effective treatment for colds, chills, poor appetite, and run-down condition, and that it regulates the bowels and purifies the system; that the medicinal preparation "Dixie Fever and Pain Powder" is a safe remedy or treatment for sleeplessness, neuralgia, rheumatism, la grippe or influenza, cold in the head, catarrh, and all kinds of fever.

PAR. 3. The Commission finds that the said representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading, and untrue. The medicinal preparation "Swamp Chill and Fever Tonic" is not a safe, certain, and permanent cure for malaria and for all kinds of fever and ague, nor will it "break up" malaria in 3 days. It is not a general tonic. It is not a remedy for colds, chill, poor appetite, and run-down condition. It neither regulates the bowels nor purifies the system. The preparation "Dixie Fever and Pain Powder" is not a safe remedy or treatment for sleeplessness, neuralgia, rheumatism, la grippe or influenza, cold in the head, catarrh, and for all kinds of fever.

The true facts are that the preparation "Swamp Chill and Fever Tonic" contains quinoidine, acetanilid, iron, nux vomica, formaldehyde, and syrup senna. Each of these ingredients may be beneficial at some stage in the treatment of malaria though unnecessary and perhaps definitely counter-indicated at other stages and in other cases. The preparation "Dixie Fever and Pain Powder" contains acetanilid, sodium bicarb, caffeine concentrated, and Po. charcoal. Neither of these two preparations is a wholly safe drug to be used by the lay public in self-medication.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid has had, and now has, the capacity and tendency to undoes mislead and deceive a substantial portion of the

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purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and into the purchase of respondent's medicinal preparations as a result of such statements, representations, and advertisements.

CONCLUSION

The above acts and practices of the respondent as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Swamp and Dixie Laboratories, Inc., its officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of medicinal preparations containing drugs now designated by the name of "Swamp Chill and Fever Tonic" and "Dixie Fever and Pain Powder," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same names or under any other name or names, or disseminating or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said medicinal preparations, which advertisements represent directly or through implication that said medicinal preparation "Swamp Chill and Fever Tonic" is a safe, certain, and permanent cure for malaria or for every kind of fever and ague, that it will break up or cure malaria, that it is a general

tonic, that it is a remedy or competent or effective treatment for colds, chills, poor appetite, and run-down condition, that it regulates the bowels and purifies the system, or that said preparation "Dixie Fever and Pain Powder" is a safe remedy or treatment for sleeplessness, neuralgia, rheumatism, la grippe or influenza, cold in the head, catarrh, and all kinds of fever, and which advertisements fail to reveal that these preparations are not wholly safe drugs to be used by the lay public in self-medication.

It is further ordered, That the respondent shall within 10 days after service upon it of this order, file with the Commission an interim report in writing stating whether it intends to comply with this order, and if so, setting forth in detail the manner and form in which it intends to comply; and that within 60 days after the service upon it of this order, said respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
JOHN MILTON BREGSTONE, INDIVIDUALLY, AND TRADING AS J. M. BREGSTONE & COMPANY

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

Docket 3326. Complaint, Feb. 8, 1938—Decision, Feb. 28, 1939

Where an individual engaged in sale and distribution of radios, clocks, cocktail sets, and other articles of merchandise to dealers and to members of the public; in soliciting sale of his said products—

Distributed to members of the public through the mails advertising literature depicting his said merchandise and push cards and instructions, and sold and distributed to purchasers such merchandise and cards for use in distribution thereof under a plan by which amount paid for chance or receipt of free chance were dependent upon particular number pushed by chance, and purchaser received or failed to receive article of merchandise being thus disposed of, or anything other than push or chance, in accordance with success or failure in selecting from feminine name that corresponding with name concealed under card's master seal; and

Supplied thereby to and placed in the hands of others, means of conducting lotteries in the sale and distribution of his said merchandise in accordance with such plan above described, involving distribution thereof to public wholly by lot or chance and determination wholly by lot or chance of amount paid for chance or securing of such chance without cost, and game of chance or sale of a chance to procure merchandise at prices much less than normal retail prices thereof or without cost, contrary to an established public policy of the United States Government and in competition with those engaged in sale and distribution of like or similar articles who do not sell and distribute their merchandise by use of lotteries or games of chance;

With result that he thereby sold and distributed substantial quantities of his said articles to members of the general public, and many purchasers of his said products were attracted by element of chance involved in his said sales plan or method and thereby induced to purchase his said products in preference to like and similar merchandise of his competitors who do not use same or equivalent methods, and public purchased substantial volume, by reason of such preference, of his said products, and trade was unfairly diverted to him from competitors aforesaid:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

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COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that John Milton Bregston, individually, and trading as J. M. Bregstone & Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is an individual trading under the name and style of J. M. Bregstone & Co., with his principal office and place of business located at 538 South Clark Street, Chicago, Ill. Respondent is now, and, for some time last past, has been, engaged in offering for sale and selling radios and other articles of merchandise to purchasers thereof located in various States of the United States. He causes and has caused said merchandise when sold to be shipped or transported from his 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 various States of the United States. In the course and conduct of his business respondent is in competition with other individuals and with partnerships and corporations 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 his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing his merchandise through 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 method and sales plan adopted and used by respondent was, and is, substantially as follows:

Respondent has caused advertisements to be inserted in magazines of interstate circulation and has distributed to the purchasing public, through the United States mails in interstate commerce, certain literature, instructions and sales outfits, including paper push cards, order

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blanks, and advertisements, containing illustrations of his 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 pushcards have a corresponding number of partially perforated disks marked "push," below each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disk is a number, which is disclosed when the disk is pushed or separated from the cards. The push cards have a master seal, 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:

Licensed
R C A ZEPHYR RADIO
TO PERSON SELECTING
NAME UNDER SEAL
Five Tube A. C.-D. C. Short
Wave Switch. Self Contained
Aerial. Full R. M. A. Guar-
antee. Large Airplane Dial.
Full 5'' Dynamic Speaker.
RCA Licensed Tubes. Gets
Police Calls, Aviation, Ama-
teur, Etc.

| | |
|-------------------------|------|
| Fully Guaranteed | FREE |
| Do Not Remove (SEAL) | |
| Until All Sold | |
| Nos. 1 to 35 Pay | |
| Amount of No. Drawn | |
| Nos. Over 35 Pay Only | |
| 35¢. No higher. | |
| FREE NUMBERS ARE: | |
| 10—20—30—40—50—60— | |
| 70—80—90—100 | |

WRITE YOUR NAME OPPOSITE THE NAME YOU SELECT
IN SPACE PROVIDED ON INSERT SHEET

Sales of respondent's products by means of said push cards are made in accordance with the specified legends or instructions. Said articles of merchandise sold and distributed by respondent are of greater value than the cost of a single push from said push cards. The purchasing public is thus induced and persuaded to purchase pushes from said cards in the hope of selecting a prize-winning name or number and thus obtaining an article of merchandise for a price of 35 cents, or less, or without charge. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance, or whether the chance is without charge, are determined wholly by lot or chance. Respondent furnishes his representatives with additional printed instructions or suggestions for using said push cards. One of said printed instructions bears the following legend, to wit:

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DIRECTIONS

This catalog contains 150 girls' names. The amount to be paid for the sale of each name ranges from 1¢ to 35¢. No sale pays over 35¢. There are also 10 Free Numbers. Persons selecting names showing numbers 10—20—30—40—50—60—70—80—90—100 pay Nothing.

As each person "pushes" a name, the amount to be paid is the number which appears on the inside of the slip. For example: If the name "pushed" shows the inside number to be 3, then 3¢ is the amount to be paid; if a name is "pushed" showing the inside number 19, then 19¢ is to be paid.

DO NOT OPEN SEAL UNTIL ALL NAMES HAVE BEEN SOLD.

When the entire card has been sold, turn the receipts over to your distributor, and you will receive the radio illustrated.

One radio is given to the person who handles the sale of names on the card and another is given to the person who selected the name which corresponds to the name under the seal.

Respondent furnishes or sells various devices, including push cards and punchboards, for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. Said sales plan or method varies in detail, but the above-described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes the said push cards and punchboards 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 an article of merchandise at a price much less than the normal retail price thereof. 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 his 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 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 the Federal Trade Commission Act, the Federal Trade Commission, on February 8, 1938, issued and thereafter served its complaint in this proceeding upon respondent John Milton Bregstone, individually and trading as J. M. Bregstone & Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint (respondent having filed no answer thereto), testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by John A. Nash, attorney for the respondent, before William C. Reeves, an Examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, brief in support of the complaint (respondent not having filed brief and oral argument not having been requested), and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, John Milton Bregstone, is an individual doing business under the name of J. M. Bregstone & Co., with his principal office and place of business located at 538 South

Clark Street, Chicago, Ill. Respondent for several years last past has been engaged in the sale and distribution of radios, clocks, cocktail sets, toys, and other articles of merchandise to dealers and to members of the public located at points in the various States of the United States. During the time above mentioned, respondent has caused said merchandise when sold to be transported from his aforesaid place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State from which said shipments were made.

Respondent has been at all times hereinabove mentioned in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. In so carrying on said business as described in paragraph 1 hereof respondent, in soliciting the sale of his merchandise, has distributed through the United States mails, to members of the general public, circular letters, and advertising literature explaining the sales plan or method employed by the respondent in the sale and distribution of his merchandise. The advertising literature contained picturizations of respondent's merchandise and of respondent's devices commonly known as push cards and punchboards, by means of which devices respondent's merchandise was to be sold and distributed to the purchasing public. As a result of the distribution of such advertising literature and circular letters, members of the public have purchased respondent's said devices and used the same in purchasing, selling, and distributing respondent's said merchandise. The sales plan or method used in connection with respondent's said push cards is substantially as follows: On the face of said push cards are printed legends showing the manner in which said card is operated. The advertising literature and circular letters contained additional detailed instructions concerning the operation of said cards and the sale and distribution of said merchandise by the use thereof. Each of the push cards had printed thereon a number of feminine names, with blank spaces opposite an alphabetical list of the names, for writing in the names of customers who purchased chances on the push cards. Each push card had a corresponding number of partially perforated disks marked "push." Below each disk was printed one of the feminine names printed elsewhere on the card. Concealed within each disk was a number which was disclosed when the disk was pushed or separated from the card. Each card had a master seal, concealed within which was one of the

feminine names. Said cards also contained the legends or statements to the effect that purchasers punching certain designated numbers would receive those numbers without cost.

When all the disks had been selected or pushed by customers and the master seal removed, the person who had selected the name corresponding to the name concealed within the master seal received the article of merchandise specified without further charge. Customers pushing numbers 1 to 35 paid in cents the amount indicated by the number pushed by them, with the exception of those numbers which were indicated as free numbers. Customers who pushed or removed disks from said card which revealed numbers higher than 35, paid only 35 cents. Customers selecting names which did not correspond with the name revealed by the removal of the master seal received nothing for their money other than the privilege of making a selection and pushing a disk from said board. In this manner the respondent sold and distributed substantial quantities of the said articles of merchandise to members of the general public.

{The Commission finds that respondent's merchandise was distributed to the purchasing public wholly by lot or chance, and that the amount which a customer paid for a chance, or whether the same was without cost, was determined wholly by lot or chance.

The sales plan or method employed in connection with said punchboards was the same in principle, varying only in detail, as that used in connection with the said push cards and constituted the sale and distribution of merchandise by lot or chance.

PAR. 3. The Commission finds that the persons to whom respondent furnished his said push cards and punchboards used the same in purchasing, selling, and distributing respondent's merchandise 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 and distribution of his merchandise in accordance with the sales plan hereinabove described. The Commission further finds that the sale of respondent's merchandise to the purchasing public as hereinabove found involved a game of chance or the sale of a chance to procure respondent's merchandise at prices much less than the normal retail prices thereof or without cost, and that the use of said method in the sale and distribution of merchandise was and is a practice of the sort which is contrary to an established public policy of the United States.

PAR. 4. There are among the competitors of respondent, individuals, firms, partnerships, and corporations engaged in the business of selling and distributing like or similar articles of merchandise in commerce between and among the various States of the United

States, who do not sell and distribute their merchandise by use of lotteries or games of chance.

Many purchasers of respondent's merchandise were attracted by the element of chance involved in respondent's sales plan or method and were thereby induced to purchase respondent's merchandise in preference to like or similar merchandise of respondent's competitors who did not and do not use the same or equivalent methods. Because of said preference the public has purchased a substantial volume of respondent's merchandise with the result that trade has been unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove found 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (respondent having filed no answer), 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, brief filed by attorney for the Commission (respondent having filed no brief nor 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 the Federal Trade Commission Act.

It is ordered, That the respondent, John Milton Bregstone, individually, and trading as J. M. Bregstone & Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of radios, cocktail sets, toys, or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery device, for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents or to distributors or members of the public push or pull cards, punchboards or other

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lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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

NATIONAL PUBLICITY BUREAU, INC., TRADING IN ITS OWN NAME AND AS NATIONAL PUBLICITY BUREAU AND ROGERS SILVERWARE DISTRIBUTORS, AND HUGH J. WANKE, INDIVIDUALLY AND AS PRESIDENT OF NATIONAL PUBLICITY BUREAU, INC., TRADING AS ROGERS SILVERWARE DISTRIBUTORS

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

Docket 2908. Complaint, Aug. 21, 1936—Decision, Mar. 1, 1939

Where an individual engaged, under trade name "National Publicity Bureau," in purchase of silverplated ware from Wm. A. Rogers at Oneida, N. Y., and under trade name "Rogers Silverware Distributors," in sale of trading cards redeemable in such silverplated ware, to retail merchants for distribution to their customers, and in selling said cards at \$1.50 a 1,000, with dealer customers under contracts entered into with him by them in which they agreed to cooperate with Rogers Silverware Distributors in distribution of Wm. A. Rogers Silverware for advertising purposes—

- (a) Represented, directly and by implication, that said Rogers Silverware Distributors trading cards were a method of advertising used by Wm. A. Rogers, maker of silverware, facts being he had no connection, either directly or through such Rogers Silverware Distributors, with Wm. A. Rogers, silverware maker, except as a customer for its wares:
- (b) Represented that said Rogers Silverware Distributors, for cooperation given by the merchant in distributing Wm. A. Rogers Silverware, would furnish him gratis display set of 26 pieces of said ware with the distribution of 25,000 cards, facts being he did not furnish such a set on such condition, but claimed that, under contract, dealer was not entitled to set until he had distributed cards for 6 months and had completely distributed that number of cards, which interpretation was not made clear and necessary by contract, dealer signatories to which expected to receive display set along with delivery of cards bought;
- (c) Represented that said Rogers Silverware Distributors in consideration of publicity and cooperation extended during life of agreement, would pay merchant buying cards cash refund at rate of \$1.50 for each and every 1,000 cards redeemed, facts being he did not pay such refund but claimed that dealer was not entitled to any refund until he had distributed cards for period of 6 months under contract, which did not make clear such interpretation, and dealer signatories of which expected refund to be made whenever thousand of such cards had been redeemed;
- (d) Represented that said Silverware Distributors would redeem said trading cards in Wm. A. Rogers Silverware for customers of dealers without cost to such customers, facts being he did not thus redeem said trading cards, but required customers to send in an amount of money therewith which approximated cost of the silverware to such Rogers Silverware Distributors; and

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(e) Represented, through use of said name Rogers Silverware Distributors in and as a part of his trade name, that he was directly connected with, or a part of, the company which made Wm. A. Rogers Silverware, and failed to remove implication of such direct connection through use on his contract of words "We have no connections with any other companies," which did not suffice for such purpose;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and false belief that said representations were true, and to induce number of retail merchants to buy substantial quantity of said trading cards which, lacking such erroneous and false belief, they would not purchase, and, as direct consequence of such erroneous and false belief induced by such representations, to cause number of purchasing public to buy substantial quantities of said cards, with result of thereby diverting trade unfairly to him from his competitors who truthfully advertise and represent their said cards; to the substantial injury of competitors in commerce:

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

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

Mr. John Darsey and *Mr. Earl J. Kolb* for the Commission.

Mr. Leon H. A. Pierson, of Baltimore, Md., 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 National Publicity Bureau, Inc., a corporation trading under its own name and as National Publicity Bureau and Rogers Silverware Distributors, and Hugh J. Wanke, individually and as president of National Publicity Bureau, Inc., trading as Rogers Silverware Distributors, hereinafter designated as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in this respect as follows:

PARAGRAPH 1. Respondent, National Publicity Bureau, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, under articles of organization in the year 1927, with its principal office and place of business in the Rollins Building in the city of Baltimore in the said State.

Respondent National Publicity Bureau, Inc., in its own name and under the trade names National Publicity Bureau and Rogers Silverware Distributors, is now and has been for more than 1 year last past, engaged in the business of selling and distributing advertising

cards or coupons redeemable in silverware, in commerce between and among the several States of the United States and in the District of Columbia.

Respondent Hugh J. Wanke is an individual with his principal office and place of business in the Rollins Building, in the city of Baltimore in the State of Maryland, and is the president of and owns a majority of the stock in the respondent National Publicity Bureau, Inc., and controls and directs its practices and policies, and is now, and has been for more than 1 year last past, through the said respondent National Publicity Bureau, Inc., and under the trade name Rogers Silverware Distributors, engaged in the business of selling and distributing advertising cards or coupons redeemable in silverware in commerce between and among the several States of the United States and in the District of Columbia.

Said respondents in the course and conduct of their business as aforesaid, cooperated with each other and have acted together during all the times herein mentioned and in doing the acts and things herein alleged. In the course and conduct of their business the respondents cause said advertising cards or coupons redeemable in silverware, when sold, and the silverware used from the redemption of such advertising cards and coupons, when said cards or coupons are redeemed, to be transported from their principal place of business in the city of Baltimore, State of Maryland, to the purchasers of said cards or coupons and to the persons sending in said cards or coupons for redemption located in the several States of the United States other than the State of Maryland and in the District of Columbia. Respondents now maintain a constant current of trade in said products sold and distributed by them in commerce between and among the several States of the United States and in the District of Columbia.

The respondents are in substantial competition in commerce between and among the several States of the United States and in the District of Columbia with individuals, partnerships, and corporations, who do not use the acts, practices, and methods used by the respondents as hereinafter alleged, engaged in the business of selling and distributing sales-promotion plans, advertising cards or coupons redeemable in silverware or other merchandise, and silverware in said commerce.

PAR. 2. In the course of the operation of their business, it has been and is the practice of respondents to offer for sale and sell advertising cards or coupons as described in paragraph 1 hereof, through the personal solicitation of local retail and wholesale dealers in and through the various States of the United States. The said adver-

tising cards or coupons are offered for sale and sold by respondents to such local retail and wholesale dealers to be distributed as a stimulation of their business, among their customers, according to the amount of merchandise sold them by such retail and wholesale dealers. Forms of contracts, specimen advertising cards and coupons, and other advertising matter are used in the solicitation of such retail and wholesale dealers.

PAR. 3. In the course and conduct of their business as aforesaid, respondents represent and imply that they are representatives of, or connected with, a specified concern manufacturing silverware, to wit: William A. Rogers, or William A. Rogers, Ltd.; that a plan, including the sale to the dealer of the advertising cards or coupons, offered by the respondents, has been adopted by the specified silverware manufacturer as an advertising campaign for the purpose of introducing and advertising its said products, in lieu of the advertising theretofore conducted through magazines, newspapers, and other periodicals, and in the expectation that by introducing a high-grade silverware directly into the homes, the public appreciation and the market therefor would be greatly increased, and that the business of a dealer participating in the plan would likewise be greatly increased; and that the silverware used in the redemption of the cards or coupons is of a high and guaranteed quality and the well known and genuine William A. Rogers silverware. In truth and in fact the said respondents were not and are not representatives of or connected in any capacity with any concern manufacturing silverware and the plan offered by the respondents is not an advertising campaign adopted in lieu of advertising theretofore conducted through magazines, newspapers, and other periodicals and the silverware with which the said respondents redeem said cards or coupons was not and is not of a high quality, and is not the well known and genuine William A. Rogers silverware, but is a low quality plated ware greatly inferior to and of much less value than the genuine William A. Rogers silverware.

In the course and conduct of their business as aforesaid, the respondents represent and imply that the prices at which the so-called advertising cards or coupons are sold to the dealers are merely sufficient to cover the cost of printing the cards with the name of the individual dealer thereon, and that the charge to persons sending in cards or coupons for redemption is merely to cover the cost of the package in which the silverware is shipped and the delivery thereof, and that the silverware used in redemption of said cards or coupons is donated by the manufacturer. In truth and in fact the cost of printing said cards or coupons is much less than the price charged

therefor and the silverware is not donated by the manufacturers thereof, but is purchased by the respondents, and the sum received by the respondents from persons redeeming said cards or coupons, under their plan, is more than the regular retail price for the grade of silverware used in making redemption.

Respondents, in many instances, represent to dealers that they redeem the advertising cards or coupons without any charge at all to the persons presenting said cards or coupons for redemption. In truth and in fact the persons seeking to redeem said cards or coupons are compelled to and do pay to the respondents certain specified sums dependent upon the kind and character of silverware selected. Respondents, in many instances, represent to a prospective purchaser of said advertising cards or coupons that such dealer is the only one to whom the "plan" will be sold in the particular community when in truth and in fact the respondents do not restrict the sale of the plan to the specified dealer to whom the representation is made, but sell the plan to other dealers in that particular community. Respondents represent to prospective purchasers of said cards or coupons used in connection with said "plan," that if a specified number of advertising cards or coupons is purchased, the respondents will furnish to such dealers a 26-piece set of silverware to be used by the dealer to whom furnished for exhibition purposes during the "advertising campaign," and which is to become the property of the dealer to whom furnished at the conclusion of the "campaign" without cost to such dealer. In truth and in fact, in many instances, where a dealer has purchased the specified number of advertising cards or coupons and the respondents have promised to deliver a 26-piece set of silverware, they have failed and refused to do so.

PAR. 4. The word "Rogers" and the terms "Rogers Silverware" and "Genuine Rogers Silverware" and the names "Wm. A. Rogers" and "William A. Rogers, Ltd." have long been used by the manufacturers thereof to designate, and are understood by wholesale and retail dealers and the public generally to mean, a high quality, expensive silverware as distinguished from a low quality, inexpensive plated silverware; and the use of the word "Rogers" in the trade name and the terms "Rogers Silverware" and "Genuine Rogers Silverware" by the respondents in describing the silverware to be used in redeeming said cards or coupons, and of the representations that the respondents are representatives of William A. Rogers, Ltd., misleads and deceives many wholesale and retail dealers and causes them to become a party to said "plan" and to purchase said cards or coupons in the mistaken belief that the silverware used for redemption and the 26-piece set furnished the dealers is the high quality, expensive

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silverware long known to the public generally as "Rogers," "Rogers Silverware," or "Genuine Rogers Silverware." In truth and in fact the silverware used for redemption of said cards or coupons is manufactured by the company which manufactures the high quality, expensive silverware known as "Rogers," "Rogers Silverware," or "Genuine Rogers Silverware," but is a low quality, inexpensive plated silverware and not comparable with, or of a similar quality to the silverware long known and sold as "Rogers," "Rogers Silverware," or "Genuine Rogers Silverware." The grade of silverware used for redemption of said cards or coupons has never been known or sold as "Rogers," "Rogers Silverware," or "Genuine Rogers Silverware."

PAR. 5. In the contract executed by the said respondents and a dealer who has agreed to participate in the "plan" is a provision whereby the respondents agree to refund to such a dealer a sum certain in money for each and every 1,000 cards issued by the dealer and redeemed by the respondents. This payment to such a dealer, if made, would permit the dealer to participate in the "plan" without cost. The contract provides that the dealer is to participate for a period of 6 months and the contract further provides, in effect, that the dealer's initial order must not exceed a 90-day supply. The respondents engage in the general practice of not making refunds to participating dealers in accordance with the terms of their agreements with said dealers. Respondents' policy is to fail and refuse to make such refunds and when a demand is made for such a refund, on some pretext or another, to contend that the dealer has breached the contract and that the respondents are, therefore, relieved from their obligation to make the refund as provided in the contract. The principal contention of the respondents, in this connection, is that the dealer has breached the contract by placing an initial order for cards or coupons in excess of a 90-days supply. In many instances dealers do, because of the aforesaid false and misleading representations, and more especially because of the offer of the free 26-piece set of silverware, place an initial order for cards or coupons in excess of a 90-day supply. In such instances the "breach" of the contract is induced by the aforesaid false and misleading representations of the respondents and any of the rights claimed by the respondents as a result thereof have been acquired by the respondents through an overreaching of such dealers and are unlawful and are not binding on the dealers. In many instances the failure of the dealer to dispose of the initial supply of cards or coupons within the 90-day period is the result of the failure of the respondents to redeem the cards or coupons placed in the hands of customers by the dealers in silverware of the quality promised by the respondents, which causes less demand

among the customers of the dealer for said cards or coupons than there would have been but for said failure of the respondents to redeem said cards or coupons in silverware of the quality promised. This causes the initial order of cards or coupons to exceed a 90-day supply, when they would have been disposed of within 90 days had the respondents not misrepresented the silverware.

The purported manufacturers' plan of advertising as submitted by the respondents to said dealers is simply a scheme, by the means and in the manner hereinabove alleged, on the part of the respondents, unlawfully and fraudulently to convert to their own use the difference, which is approximately \$3 per thousand, between the cost of printing said cards or coupons, the purpose for which respondents purportedly collect the money from dealers, and the amount of money paid to the respondents per thousand cards or coupons by the participating dealers.

PAR. 6. The acts, practices, and methods of the respondents, as hereinabove alleged, have had and do have the tendency and capacity to and do mislead and deceive a substantial portion of wholesale and retail dealers who are prospective purchasers of said cards or coupons, and have caused and do cause many such prospective purchasers erroneously to believe that the false and fraudulent representations and implications, as hereinabove alleged, are true and cause a substantial portion of such prospective purchasers, because of such erroneous belief, to purchase respondents' said cards or coupons and to become participants in said plan, thereby diverting trade to respondents from their competitors in said commerce who do not use the acts, practices, and methods used by the respondents, to the substantial injury of said competitors in said commerce and to the injury of the public.

PAR. 7. The acts, practices and methods of the respondents, as hereinabove alleged, are all to the prejudice of the public and respondents' 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 the Federal Trade Commission Act (U. S. Code, title 15, sec. 45), the Federal Trade Commission, on August 21, 1936, issued, and on August 24, 1936, served, its complaint in this proceeding upon Hugh J. Wanke, trading as National Publicity Bureau and as Rogers Silverware Distributors, charging him

with the use of unfair methods of competition in commerce in violation of the provisions of said act; and respondent entered his appearance and filed his answer herein. Thereafter, hearings were held and testimony and other evidence were introduced by John Darsey, attorney for the Commission, in support of the allegations of the complaint, and by Leon H. A. Pierson, attorney for the respondent, in opposition to the allegations of the complaint, before John W. Addison, an examiner of the Commission theretofore duly appointed by it. Thereupon, this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint, and the Commission, having duly considered said complaint, answer, testimony, and other evidence, and brief, 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. Hugh J. Wanke, 601 Phoenix Building, 4 East Redwood Street, Baltimore, Md., is an individual trading at this address as Rogers Silverware Distributors and as National Publicity Bureau. As National Publicity Bureau he buys silverplated ware from Wm. A. Rogers, at Oneida, N. Y. As Rogers Silverware Distributors he is engaged in the business of selling trading cards redeemable in Wm. A. Rogers silverplated ware, to retail dealers for distribution to their customers. He sells the cards at \$4.50 per thousand, and his annual sales of them amount to from \$8,000 to \$10,000. He enters into contracts with his dealer customers, in the form reproduced on page 3 hereof, for the purchase of the cards, in which contracts they agree to cooperate with Rogers Silverware Distributors in the distribution of Wm. A. Rogers silverware for advertising purposes.

The contract form used is so framed as to emphasize the name "Rogers Silverware Distributors" and contains the following:

DISPLAY SET OF 26-pieces of Wm. A. Rogers Silverware furnished gratis with distribution of 25,000 cards.

To Be Displayed Attractively for Our Mutual Benefit for a Period of at Least 30 Days—

and

GUARANTEED CASH REFUND

In consideration of publicity and co-operation extended during the life of this agreement the *Rogers Silverware Distributors* agrees to pay us a cash refund at the rate of \$4.50 for each and every thousand cards redeemed.

PAR. 2. National Publicity Bureau, Inc., was a Maryland corporation controlled by Wanke, which from 1927 to 1933 was used to carry on the sale of said cards. It was dissolved about 1933, but Wanke still uses the trade name "National Publicity Bureau" in the purchase of said silverware.

PAR. 3. Wanke sells said cards to dealers in States other than the State of Maryland, including Pennsylvania, Ohio, West Virginia, and Michigan, and ships them in interstate commerce from Maryland through and into these other States and causes them to be there delivered to the buyers.

PAR. 4. Wanke, in the course and conduct of his business of selling trading cards, is in competition in interstate commerce with other individuals, partnerships, and corporations also engaged in selling in commerce among the several States cards or coupons redeemable in silverplated ware.

PAR. 5. Wanke, to promote the sale of said cards, represents:

(a) Directly and by implication that Rogers Silverware Distributors' trading cards are a method of advertising used by Wm. A. Rogers, maker of silverware.

(b) That Rogers Silverware Distributors, for cooperation given by the merchant in distributing Wm. A. Rogers silverware, will furnish him gratis a display set of 26 pieces of Wm. A. Rogers silverware with the distribution of 25,000 cards.

(c) That Rogers Silverware Distributors, in consideration of publicity and cooperation extended during the life of the agreement, will pay the merchant buying the cards a cash refund at the rate of \$4.50 (the cost of the cards to the merchant) for each and every thousand cards redeemed.

(d) That Rogers Silverware Distributors will redeem said trading cards in Wm. A. Rogers silverware for the customers of the dealers without cost to such customers.

PAR. 6. In truth and in fact:

(a) Rogers Silverware Distributors' trading cards are not a method of advertising used by Wm. A. Rogers, maker of silverware. Wanke has no connection, either directly or through Rogers Silverware Distributors, with Wm. A. Rogers, silverware maker, except as a customer of Wm. A. Rogers for its silverware.

(b) Wanke does not furnish gratis to the dealer a display set of 26 pieces of Wm. A. Rogers silverware for use with the distribution of 25,000 cards, but claims that, under the contract, the dealer is not entitled to the display set until the dealer has distributed the cards for 6 months and has completely distributed 25,000 cards.

The contracts fail to make such interpretation clear and necessary, and the dealers signing them expect to receive the display set along with the delivery of the cards bought.

(c) Wanke does not pay the merchant buying cards a cash refund at the rate of \$4.50 per thousand for each and every thousand cards redeemed, but claims that under the contract the dealer is not entitled to any refund until he has distributed the cards for a period of 6 months. The contracts do not make it clear that no refunds are to be made for 6 months, and dealers signing them expect refund to be made whenever a thousand of these cards have been redeemed.

(d) Rogers Silverware Distributors does not redeem its trading cards in Wm. A. Rogers Silverware without cost to the customers of the dealers who send them in for redemption, but requires these customers to send in an amount of money with the cards which approximates the cost of the silverware to Rogers Silverware Distributors.

PAR. 7. The Commission further finds from examination of the contract used by this respondent and the testimony of witnesses that the use by respondent of the words "Rogers Silverware" in and as part of his trade name is a representation that he is directly connected with or is a part of the company which manufactures Wm. A. Rogers Silverware. The use of the words "We have no connections with any other companies" on respondent's contract is not sufficient to remove the implication of respondent's direct connection with such manufacturer.

PAR. 8. Each and all of the false and misleading statements made by respondent, as set forth above, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and false belief that said representations are true, and to induce a number of retail merchants to buy a substantial quantity of said trading cards, which they would not buy except for such erroneous and false belief. Further, said representations have the capacity and tendency, as a direct consequence of such erroneous and false belief, induced by the representations as set forth above, to cause a number of the purchasing public to buy substantial quantities of said trading cards, with the result that trade is diverted unfairly to respondent from his competitors who truthfully advertise and represent their trading cards, and substantial injury has been and is being done by respondent, Hugh J. Wanke, trading as Rogers Silverware Distributors, to his competitors in commerce among the several States of the United States and to the public.

Order

CONCLUSION

The aforesaid acts and practices of the respondent as herein found have been and are 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 the Federal Trade Commission Act.

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 W. Addison, an examiner of the Commission duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by counsel for the Commission, and the Commission having made its findings as to the facts and conclusion that said respondent Hugh J. Wanke, individually and trading as National Publicity Bureau and Rogers Silverware Distributors, has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Hugh J. Wanke, individually and trading as National Publicity Bureau and Rogers Silverware Distributors, or under any other name or names, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce as commerce is defined by the Federal Trade Commission Act, of silverware or sales-promotional plans including premium certificates, gift cards, or coupons redeemable in silverware or other articles of merchandise, do forthwith cease and desist from:

1. Representing, by use of the words "Rogers Silverware" in a corporate or trade name, or by statements or representations in advertising or in any other way, that the respondent has an interest in, forms a part of, or has any connection with the manufacturer of William A. Rogers Silverware; provided, however, that this order shall not be construed to in any way prohibit the respondent from dealing in William A. Rogers Silverware or other products.

2. Representing that premium certificates, gift cards, or other similar devices can be redeemed in silverware or other merchandise unless and until all the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer and there is no deception as to the services or other actions to be performed or the price to be paid in connection with obtaining such silverware or other articles of merchandise.

3. Representing that the respondent will give a set of silverware or other merchandise free or will refund the sum of \$4.50 or any other sum to the purchaser of said premium certificates, gift cards, coupons, or other and similar devices on the redemption of a specified number of cards, certificates, or coupons unless such refund is actually made or such merchandise is given free, and if there are any conditions connected with such refund or gift of silverware, such conditions must be clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer of free merchandise or refund in such a manner that there is no deception as to the terms of such conditions.

4. Representing that the respondent is conducting any special campaign or advertising campaign to introduce or advertise any article or articles of merchandise on behalf of the manufacturer of William A. Rogers Silverware or any other manufacturer or concern unless such a campaign is in fact being conducted at the instance of and on behalf of such manufacturer.

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

WILLIAM H. PEARCE & COMPANY, WILLIAM H. PEARCE,
PHILIP S. SHASSIAN, AND E. E. BRAZELTON

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

Docket 3071. Complaint, Mar. 8, 1937—Decision, Mar. 1, 1939

Where two individuals engaged in making, under and pursuant to patents, tops to replace open grates on gas ranges and providing smooth cooking surface similar to that of coal ranges, and in selling and distributing said tops to consumers through crews of canvassers making house-to-house solicitation and using advertising literature supplied or approved by them, and selling such tops at prices ranging from \$7.90 to \$9.90, as case might be—

Represented that every top was properly ventilated to insure proper combustion and that use thereof materially reduced gas bills and increased cooking capacity, cooking two to four articles with one burner, facts being, while one of two types made by them was properly ventilated to insure proper combustion, other type was not thus ventilated with more than one burner in use and, used with more than one burner lighted, emitted carbon monoxide in dangerous quantities, use of such tops materially decreased efficiency of gas used and tended to increase, rather than reduce, gas bills, and use of such tops with one burner lighted would not bring to a boil, or cook, any article placed on top except directly over lighted burner, though articles brought to boil over lighted burner might be kept warm on other parts of top while another article was being heated or boiled directly over such lighted burner;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and false belief that such representations were true, and to induce number of such public to buy substantial quantity of said tops which they would not otherwise buy and, as direct consequence of such belief thus induced, to cause number of such public to buy substantial quantities of their said merchandise, with result that trade was diverted unfairly to them from others likewise engaged in sale of stove tops for gas ranges, and who truthfully advertise and represent their merchandise; to the substantial injury of competitors in commerce:

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

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

Mr. Floyd O. Collins for the Commission.

Butler & Denny, of Philadelphia, Pa., for respondents.

COMPLAINT

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

Federal Trade Commission, having reasons to believe that William H. Pearce and Philip S. Shassian, trading and doing business as William H. Pearce & Co., and E. E. Brazelton, an individual, hereinafter referred to as respondent, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to 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. William H. Pearce & Co. is a copartnership composed of William H. Pearce and Philip S. Shassian and the principal place of business of said partnership is 52 South Second Street, Philadelphia, Pa. They are now, and have been for a number of years last past, engaged in the manufacture, transportation, sale, and distribution, between and among various States of the United States, of an appliance to be used on an open top gas stove or range and designated as the "Pearce Stove Top." The respondent, E. E. Brazelton, of 200 S. Kennelworth Avenue, Elmhurst, Ill., is a sales agent of said William H. Pearce & Co., and has charge of the field agents of said company and directs the methods of their work and selects the territory in which they work. The respondents cause said appliances, when sold, to be shipped and transported in commerce from the respondents' place of business in Philadelphia, Pa., to purchasers thereof located at various points in States of the United States other than the State of Pennsylvania and they maintain a constant current of trade and commerce among and between the various States of the United States in the sale and distribution of said product.

PAR. 2. The respondents, in the course and conduct of said business are now, and at all times herein referred to have been, in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of closed top gas stoves and detachable tops for gas stoves and other appliances to be used for the same and similar purpose as the appliances which the respondents sell, and these competitors do not in any way misrepresent the quality or efficacy of their products or resort to unfair practices in offering for sale and selling their products.

PAR. 3. The respondents, William H. Pearce and Philip S. Shassian, in the course and conduct of their business, have employed the respondent E. E. Brazelton, on a commission basis, to sell said product, and the territory assigned to the said E. E. Brazelton is the whole of the United States, with the exception of the city of Philadelphia, Pa., and the city of New York, N. Y. The respondent, E. E. Brazelton, in the course of his employment and in the scope of his

employment, in selling and offering for sale said product to the purchasing public, has employed a large number of men to make a house-to-house canvass and solicit orders, collect for, and install gas stove tops. The respondents, William H. Pearce and Philip S. Shassian, have prepared and have caused to be prepared, printed pamphlets, circulars, etc., on which the name, William H. Pearce & Co., and the name of the product is prominently and conspicuously displayed. The said pamphlets, circulars, etc., are furnished by the respondents William H. Pearce and Philip S. Shassian, to said salesmen to be used by the salesmen in soliciting orders for said product, and to be distributed by the salesmen to prospective purchasers of said product. In describing the quality and efficacy of the product, the respondents represent:

Reduces your gas bill.

Increases cooking capacity of the range.

Eliminates unsanitary grates.

Will cook two to four articles with one burner.

Prevents burners from clogging.

Will keep a whole meal hot until ready to serve with one burner turned low.

Manufactured by the oldest and largest stove top company in the world.

Every Pearce Top is properly ventilated to insure proper combustion.

In addition to the representations in the pamphlets, circulars, etc., the salesmen, in the course of their employment, and in the scope of their employment, represent to the prospective purchasers that said stove tops will save from one-third to one-half on gas bills, and that said stove tops will save 2,000 feet of gas per month.

PAR. 4. All of said representations as above set out, and many other similar representations not specifically mentioned herein, are highly exaggerated, false, and misleading and had, and now have, the capacity and tendency to mislead and deceive the purchasing public and did, and do now, lead a substantial portion of the purchasing public into the false and erroneous belief that when said appliance is used on an open top gas range or stove; (1) it will reduce the amount of gas consumed; (2) it will reduce the amount of gas consumed from one-third to one-half; (3) it will increase the cooking capacity of the stove or range; (4) it will prevent the burners from clogging; (5) it will by the use of one burner turned low keep an entire meal hot; (6) it will add to the sanitary condition of the stove; (7) every Pearce stove top is properly installed to insure proper combustion; and (8) that the respondents are the oldest and largest stove top company in the world.

PAR. 5. In truth, and in fact, the said appliance, when used, will not lessen the consumption of gas in any respect, it will not increase the cooking capacity of an open top stove or range to any appreciable

degree. It will not prevent the burners from clogging. It will not add to the sanitary conditions of a stove. The respondents, William H. Pearce and Philip S. Shassian, do not operate the oldest and largest stove top company in the world as there are other companies as old and as large, if not older and larger. Not only is the appliance lacking in the advantages it is falsely represented to have, but the appliance is so constructed that there is a considerable likelihood of escape of carbon monoxide gas which renders the use of said appliance highly hazardous.

PAR. 6. In addition to the false and misleading representations and unfair practices as above set out, the salesmen in soliciting orders for said stove tops, and for the purpose of securing the initial payment, make representations that said stove tops will be delivered to the purchaser, and be delivered on a specified date. The truth is the stove tops are not delivered on the date promised and in many cases are never delivered and in such cases the respondents refuse to refund the amount deposited.

PAR. 7. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations hereinabove set out, a substantial number of the purchasing public has purchased a substantial amount of respondents' product with the result that trade has been unfairly diverted to the respondents from competitors engaged in selling and distributing closed top gas stoves and appliances for the same purpose and use for which the respondents' product is manufactured, distributed, and sold, and who in no way misrepresent the quality and efficacy of their product. As a result of the unfair acts and false and misleading representations of the respondents, injury has been, and is now being done to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice 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 the Federal Trade Commission Act (U. S. Code, title 15, sec. 45), the Federal Trade Commission, on March 8, 1937, issued, and on March 9, 1937, served its complaint in

this proceeding upon William H. Pearce & Co., a partnership, William H. Pearce, Philip S. Shassian, and E. E. Brazelton, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act and respondents entered their appearances and filed their answers herein. Thereafter, hearings were held and evidence was introduced by Floyd O. Collins, attorney for the Commission, in support of the allegations of the complaint, and by Joseph G. Denny, Jr., attorney for respondents, in opposition to the allegations of the complaint, before John W. Addison, an examiner of the Commission theretofore duly appointed by it. Thereupon this proceeding regularly came on for final hearing before the Commission on said complaint, the answers thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto filed by respondents, William H. Pearce and Philip S. Shassian, and oral arguments by said counsel for Commission and respondents, Pearce and Shassian; and the Commission having duly considered 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. Respondent, E. E. Brazelton, died March 25, 1937.

PAR. 2. Respondents, William H. Pearce and Philip S. Shassian, are individuals trading as partners under the firm name and style of William H. Pearce & Co. This partnership, in 1921, succeeded to the business established by William H. Pearce in 1910 and conducted by him until the partnership was formed. It is engaged at Philadelphia in the business of making and selling tops to replace open grates on gas ranges. The tops are made under and pursuant to patents issued by the United States Patent Office claiming to provide gas ranges with means whereby the heat from a single burner can be economized, controlled, and distributed in such manner as to provide for the effective heating of two or more cooking utensils and utilized to much better advantage than in the ordinary gas range. They provide a smooth cooking surface similar to that of coal ranges.

PAR. 3. Respondent, William H. Pearce & Co., sells these tops to consumers. The sales are made by men with crews of canvassers making house-to-house solicitations using advertising literature supplied or approved by respondent, William H. Pearce & Co. The price of the tops for four-burner gas ranges to the consumer in Philadelphia and New York and territory surrounding these cities is \$7.90 each, and in other territory the price to the consumer is \$9.90.

PAR. 4. Respondent, William H. Pearce & Co., sells the tops in commerce among the several States to buyers in States other than Pennsylvania and ships them through and into such other States and causes them to be there delivered to the buyers.

PAR. 5. There are other individuals, partnerships, and corporations also engaged in the business of selling tops to replace open grates on gas ranges in commerce among the several States who sell in competition with respondent, William H. Pearce & Co.

PAR. 6. Respondent, William H. Pearce & Co., to promote the sale of these stove tops, represents:

(a) Every Pearce top is properly ventilated to insure proper combustion.

(b) The use of Pearce tops materially reduces gas bills, and

(c) Their use increases cooking capacity—cooking two to four articles with one burner.

PAR. 7. In truth and in fact:

(a) Respondent, William H. Pearce & Co., make two types of said tops. One type is properly ventilated to insure proper combustion. The other type is not properly ventilated to insure proper combustion with more than one burner in use and when used with more than one burner lighted emits carbon monoxide in dangerous quantities.

(b) The use of the tops materially decreases the efficiency of gas used and tends to increase rather than reduce gas bills.

(c) The use of the tops with one burner lighted will not bring to a boil or cook any article placed on the top except directly over the lighted burner. Articles brought to a boil over a lighted burner may be kept warm on other parts of the top while another article is being heated or boiled directly over the lighted burner.

PAR. 8. Each and all of the false and misleading representations so made by respondent as set forth in paragraph 6 above, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and false belief that said representations are true; and to induce a number of the purchasing public to buy a substantial quantity of said tops which they would not buy except for such erroneous and false belief. Further, said representations have the capacity and tendency as a direct consequence of such erroneous and false belief induced by the representations of respondent as aforesaid, to cause a number of the purchasing public to buy substantial quantities of said merchandise with the result that trade is diverted unfairly to respondent from other partnerships, individuals, and corporations likewise engaged in the sale of stove tops for gas ranges who truthfully advertise and

represent their merchandise. Substantial injury has been and is being done by respondent, William H. Pearce & Co., to its competitors in commerce among the several States of the United States and to the public.

CONCLUSION

The aforesaid acts and representations of respondent, William H. Pearce & Co., have been and are 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 the Federal Trade Commission Act.

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 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 Floyd O. Collins, counsel for the Commission, and by Joseph G. Denny, Jr., counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents, William H. Pearce and Philip S. Shassian, individually and as copartners trading as William H. Pearce & Co., have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, William H. Pearce and Philip S. Shassian, individually and as copartners trading as William H. Pearce & Co., or under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of tops to replace open grates on gas ranges in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That their tops for gas ranges or any other article of similar construction or design are properly ventilated unless and until said tops are so ventilated as to insure proper combustion when used with one or more burners and so constructed and designed that they will not emit carbon monoxide gas.

2. That the use of the tops for gas ranges which are sold and distributed by the respondents will materially reduce gas bills or gas consumption unless and until such tops are so constructed and designed as to materially reduce the consumption of the gas.

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3. That the use of the tops for gas ranges which are sold and distributed by the respondents will increase cooking capacity unless and until such tops are so constructed and designed as to materially increase cooking capacity.

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

MATTHEW A. WILLIS, TRADING AS ROGERS REDEMPTION BUREAU AND THE THOMPSON POTTERY COMPANY ADVERTISING DEPARTMENT

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 15 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3198. Complaint, Aug. 9, 1937—Decision, Mar. 1, 1939

Where an individual engaged in sale and distribution of silverware in commerce among the various States by means of sales-promotional plans which included premium certificates redeemable in said ware as sent in by customers of the retail merchants and others to whom it sold said plans, through salesmen employed to solicit such merchants and furnished by him with forms of contract for execution by particular merchant in purchase of plan, and with folders and catalogs illustrating such ware and samples of premium certificates or gift cards, and, as thus engaged, in substantial competition with others similarly engaged in sale and distribution of sales promotional plans and silverware in commerce among the various States, and including many who do not in any manner misrepresent their business status or terms and conditions of their said plans or make any other false representations in regard to the sale and distribution of their respective products—

- (a) Made use of words "Rogers Redemption Bureau" in trade name employed by him in his said business, and printed on the face of his said contract forms, in conspicuous large red letters, words "Wm. A. Rogers Silverware" and "Wm. A. Rogers, Ltd.," with capacity and tendency, through use of term "Rogers" in his trade name as aforesaid, and statements on contract form, to cause members of purchasing public to have erroneous and mistaken belief that he was connected with or a part of the manufacture of Wm. A. Rogers silverware, and represented to retail merchants and others, through his said salesmen, that he, trading as aforesaid, was connected with or a part of "Oneida, Ltd.," manufacturer of Wm. A. Rogers silverware, facts being he had no connection, direct or indirect, with said Oneida, Ltd., manufacturer of said long and favorably known, high-grade silverware, except as purchaser through jobber of its products;
- (b) Made statements on reverse side of said contract relative to number of premium certificates or gift cards required to redeem the various items of silverware, there referred to as "free," through reference to "NUMBER OF CARDS REQUIRED FOR VARIOUS FREE ITEMS LISTED BELOW," and represented, through salesmen, to prospective purchasers of such sales plans that the retail dealer's customers would receive silverware without additional cost upon sending to him designated number of certificates or cards, facts being such items were not given away free, but there was a charge of 1 cent for each card redeemed in silverware, and his said agents, in many instances, did not show form of certificate or card to retail merchants, who discovered, after shipment to them of such certificates, that on reverse side thereof there was statement making the card redeemable in silverware aforesaid as per schedule below, provided holder had received card in regular course of trade and "encloses one cent for each card";

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- (c) Provided, in said contract, and represented through his said salesmen, that 26-piece set of silverware with buffet case would be furnished free of charge to every dealer purchasing minimum quantity of 10,000 certificates or cards, and that such set would become property of dealer, and also, through such representatives, that he would refund to dealer purchase price for certificates or cards when 25 percent of those purchased from him by the dealer had been sent in for redemption by customers thereof, facts being he refused, in many instances, to furnish to retailers such sets after their purchase of aforesaid minimum quantity of certificates or cards, and did not refund to them purchase price of the certificates or cards after 25 percent thereof, purchased by dealer, had been redeemed by customers of latter; and
- (d) Made statement on reverse side of his said contracts, "BUILD UP A COMPLETE SILVER SERVICE FREE," and provided in his said sales plan and through his said salesmen that other articles of silverware would be redeemed by him for various numbers of the premium certificates, and set forth on gift catalogs, consisting of one sheet of paper, which his salesmen furnished to purchaser of the cards for distribution among his customers, and which illustrated knives, forks, and spoons purported to be free of charge, and showed number of cards required to redeem such "free" items, statement "Build up a complete silver service free. Teaspoons packed in units of six items—75 cards each," facts being only teaspoons, tablespoons, dinner forks, and dinner knives were redeemable by said certificates or cards, all other articles had to be purchased outright from him, and last above statement as to teaspoons packed in units of six, etc., was likewise misleading and deceptive in that 75 cards were accepted in redemption of one only, and not the six teaspoons, redemption of which required 450 cards;

With effect of misleading and deceiving members of the purchasing public and retail dealers in the various States into erroneous and mistaken belief that he was connected with "Oneida, Ltd.," manufacturers of Wm. A. Rogers silverware, and that aforesaid false and misleading statements relative to his said sales promotional plan and premium certificates were true, and into purchasing quantities of his said product because of such erroneous and mistaken belief, and of thereby diverting unfairly trade to him from his competitors in commerce among the various States who truthfully advertise and represent their respective products; to the injury of competition in commerce:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Marvin A. Farrington, 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 Matthew

A. Willis, 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, Matthew A. Willis, is an individual, trading and doing business under the respective firm names and styles of Rogers Redemption Bureau and The Thompson Pottery Co., Advertising Department, with his principal office and place of business as to both of said firms at 419-427 Lumber Exchange Building, in the city of Minneapolis and State of Minnesota.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of offering for sale and selling silverware and earthenware or chinaware in commerce among and between the various States of the United States. Respondent has not been and is not a manufacturer of either silverware or earthen or chinaware but has purchased and is now purchasing said products from wholesalers or manufacturers thereof.

In the course and conduct of his business, it has been and is the practice of respondent, as is hereinafter more fully shown, to offer for sale and sell said products by means of the sale of premium certificates, redeemable in silverware or earthen or chinaware, to merchants and dealers of various kinds or others engaged in the class or type of business in which such premium certificates could or can be used. Respondent causes said products, when sold, to be transported from his place of business in the State of Minnesota to purchasers thereof located in the various other States of the United States.

PAR. 3. In the course and conduct of his business as aforesaid, respondent is now, and for several years last past has been, in substantial competition with other individuals, corporations, firms, and partnerships likewise engaged in the business of selling premium certificates, silverware, and earthen or chinaware to purchasers thereof in commerce among and between the several States of the United States and the District of Columbia.

"Wm. A. Rogers" silverware has been well and favorably known for many years by the consuming public. It is manufactured by Oneida, Ltd., New York. On the back of each piece of silverware are imprinted the words "Wm. A. Rogers, Oneida, Ltd." Respondent has not had and does not have any connection with or relationship to said Oneida, Ltd., except as a purchaser of its products through a jobber in Minneapolis.

In the course and conduct of his business, respondent, trading as Rogers Redemption Bureau, uses the premium certificate or "sales stimulator" plan of selling silverware through the agency of salesmen. Said salesmen are supplied with forms of a contract for the purchase of gift cards or premium certificates. Conspicuous on the face of said contract, printed in large red letters, appear the words "Wm. A. Rogers Silverware" and "Wm. A. Rogers, Ltd." As an inducement for the purchase of such premium certificates, respondent falsely represents to said local merchants and others that said Rogers Redemption Bureau is connected with, or is a part of, Oneida, Ltd., manufacturers of Wm. A. Rogers Silverware; that a 26-piece set of silverware with buffet case will be furnished free to every dealer purchasing the minimum quantity of 10,000 gift cards; that each merchant or dealer will be refunded the purchase price of said premium certificates after a certain number of them have been redeemed by customers of said merchant; that such customers can build up a complete silver service free; that such customers will receive silverware and earthenware or chinaware without any additional cost upon sending in a designated number of certificates; that such dealer or merchant would be given an exclusive territory for the distribution of said premium certificates.

There is also furnished to said merchants for distribution among the customers of the latter, a so-called gift catalog, consisting of one sheet of paper on which are illustrated the patterns of the knives, forks, and spoons purported to be given away free and showing the number of cards or premium certificates required for the "Free Items" in the following manner:

Build up a Complete Silver Service Free Teaspoons Packed in Units of Six 75 cards each,

and listing the other items in the same manner.

Respondent represents to said merchants or dealers, and said sales agreement specifically recites, that said gift cards will be redeemed absolutely free for articles listed in the gift catalog, postage prepaid. No samples of said gift cards or premiums certificates are shown to the merchant and such dealer has no opportunity to examine the cards and know the full terms of redemption actually stated thereon. Said cards are shipped to said merchant from respondent's place of business in Minneapolis after the execution of said sales agreement. Said cards contain the advertisement of the merchant; and many of them contain the following instruction:

Wm. A. Rogers Silverware to our Customers

This card is redeemable in Rogers Silverware as per schedule below, providing the holder has received this card in the regular course of trade and encloses one cent for each card. Shipping and packing charges fully prepaid.

In truth and in fact the said sales contract is ambiguous and misleading because of the appearance of the words "Wm. A. Rogers Silverware" and "Wm. A. Rogers, Ltd.," in that the prospective purchaser is led into the erroneous belief that respondent is connected with the manufacturer, namely, Oneida, Ltd., of New York. Likewise the name under which respondent does business, to wit, Rogers Redemption Bureau, is misleading in the use of the word "Rogers" because it implies that respondent in some manner is connected with the manufacture of Rogers silverware, which silverware has for many years been known throughout the United States by the consuming public as a high grade reliable product.

In truth and in fact the respondent has no connection whatever with Oneida, Ltd., except as an indirect purchaser of its merchandise. In many instances, the respondent has not furnished, or has refused to furnish, the 26-piece set of silverware after the purchase by a merchant of the minimum quantity of 10,000 gift cards. Contrary to the representations made by respondent's salesmen or agents, the respondent has not refunded to said merchants the purchase price paid for the gift cards after the number of cards required to be redeemed have in fact been redeemed by customers of such merchant. Customers of said merchants cannot build up a complete silverware service free, as represented in the advertising matter, in that only spoons, forks, and knives are redeemable with gift cards and all other articles necessary to constitute the complete set of silverware have to be purchased from respondent at prices substantially the same as those charged by regular retailers of silverware. A dealer or merchant is not given an exclusive territory for the distribution of gift cards, but on the contrary respondent has made it a practice to sell said gift cards to a number of merchants doing business in the same territory.

The language "Teaspoons packed in units of six 75 cards each" is ambiguous and misleading in that the consumer mailing in to the respondent 75 cards does so in the belief that a unit of 6 spoons will be sent in return for said 75 cards, whereas in truth and in fact the respondent furnishes only 1 spoon for each 75 cards sent in; therefore requiring 450 cards for each unit of 6 spoons.

Although the advertisements state that silverware will be redeemed absolutely free to customers of merchants to whom respondent sells said gift cards, said customers find in many instances that they are required to send 1 cent with each card given to them before they are entitled to any silverware.

PAR. 4. In the course and conduct of his business, respondent, trading as Thompson Pottery Advertising Department, uses the premium

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certificate of "sales stimulator" plan of selling earthen or chinaware through the agency of salesmen. Said salesmen are supplied with forms of a contract for the purchase of gift cards or premium certificates. Conspicuous on the face of said contract, printed in large red letters, appear the words "The Thompson Pottery Company," in smaller letters "Advertising Department," and directions are given that checks be made payable to "The Thompson Pottery Company, Advertising Department." The contract further contains the following statements:

Reference any mercantile agency and Potteries E. Liverpool, Ohio, established 1868.

IMPORTANT NOTICE

Inasmuch as this is purely a campaign to be used as a furtherance of our business, kindly do not enter into this agreement unless convinced of its efficiency as a sales stimulant and intending to cooperate with us. The name Thompson on chinaware is world known. Only genuine Thompson China USA will be used. The C. C. Thompson Pottery Company.

together with the facsimile signature "Geo. C. Thompson, President." Respondent agrees "to make refund to dealer at the rate of \$4.00 per thousand on all of these cards redeemed upon redemption of 25%." In addition to furnishing circulars and other advertising matter, respondent agrees to furnish to any dealer purchasing said cards, without any charge whatever, a set of chinaware consisting of various numbers of pieces depending upon the number of cards purchased.

In connection with the solicitation by respondent's salesmen or orders for said gift cards from merchants or dealers, said salesmen exhibit to such merchants a photostatic copy of a page of Dun & Bradstreet's financial rating book. A large and conspicuous arrow points to the name "Thompson C. C. Pottery Company, the mfrs. B 1," indicating that The C. C. Thompson Pottery Co. has a very high credit rating. Under the terms of said contract, respondent agrees to redeem said advertising cards according to the terms printed on the back of each card. It was and is the practice of respondent's salesmen in soliciting orders for such advertising cards, and as an inducement to the merchant to purchase said cards, to represent to such merchant that there would be no expense whatever connected with the redemption of said cards by the customers of said merchant, but that the chinaware would be sent free and without any additional cost upon receipt of a requisite number of cards; and at the time of soliciting such sales as aforesaid, the salesman would not exhibit any sample card to the prospective purchaser.

In truth and in fact the use of the name "Thompson Pottery Company, Advertising Department," and the phrase "Potteries East

Liverpool, Ohio, established 1868," together with the use of the name The C. C. Thompson Pottery Co. and the facsimile signature of the president is false and misleading in that it implies to the merchant or dealer purchasing said advertising cards that respondent's business is, in fact, a part or branch of The C. C. Thompson Pottery Co., and induces such merchant or dealer to purchase said cards because The C. C. Thompson Pottery Co. is, and for many years has been, well and favorably known throughout the country. The use of the reference contained in the financial rating book "Dun & Bradstreet" and the giving as a reference of any mercantile agency is false and misleading, because the respondent's firm, to wit, "The Thompson Pottery Company Advertising Department," has no rating of any nature whatever in any mercantile agency nor is it rated by Dun & Bradstreet.

The chinaware sent to merchants in accordance with said agreement is not of the same grade and quality as the chinaware exhibited to them at the time of the solicitation of orders, but in truth and in fact is of a much inferior quality. The respondent does not refund to the dealer the purchase price of said advertising cards after 25 percent thereof has been redeemed by said merchant's customers, but on the contrary refuses to make such refunds until all the said cards have been redeemed.

In truth and in fact, said chinaware is not sent free, but on the back of each card appears a condition to the effect that the holder of said card is required to enclose 1 cent for each card before he can receive said chinaware.

PAR. 5. There are, among respondent's competitors, many individuals, partnerships, and corporations offering for sale and selling in interstate commerce in competition with respondent's silverware and earthen or chinaware and similar products under similar advertising or business-stimulating plans, who do not mislead prospective purchasers and purchasers by falsely using names of firms whose products they sell, who do not use ambiguous and misleading contracts, and who do not in any manner misrepresent the products and merchandise which they offer for sale and sell.

PAR. 6. The acts and practices of respondent hereinabove described have had, and do have, the capacity and tendency to mislead and deceive the purchasing public into the erroneous and mistaken belief that the respondent is directly or indirectly connected with the manufacturers of Wm. A. Rogers Silverware, to wit, Oneida, Ltd., or with The C. C. Thompson Pottery Co., and that in entering into agreements or contracts with the respondent they are entering into contracts or agreements with Oneida, Ltd., or The C. C. Thompson

Pottery Co., and that the representations of respondent relative to the redemption of the premium or advertising certificate have been and are true; and they are led into the purchase of such certificates redeemable in silverware or chinaware in reliance upon such erroneous belief.

As a result of the aforesaid false and misleading statements, advertisements, and representations by the respondent with respect to said products, trade has been unfairly diverted to him from his said competitors, whose ability to compete successfully with respondent has been, and is, lessened and injured by the methods of the respondent hereinbefore set forth.

PAR. 7. 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 the Federal Trade Commission Act, the Federal Trade Commission, on the 9th day of August 1937, issued and thereafter served its complaint in this proceeding upon respondent, Matthew A. Willis, trading as Rogers Redemption Bureau and The Thompson Pottery Co., Advertising Department, 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, testimony, and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, and in opposition to the allegations of the complaint by Marvin L. Farrington, attorney for the respondent, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, testimony, and other evidence, brief in support of the complaint, respondent not having filed brief, and the oral arguments of counsel aforesaid; 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, Matthew A. Willis, is an individual trading and doing business under the firm name and style of "Rogers Redemption Bureau," and having his principal office and place of business at 419-427 Lumber Building in the city of Minneapolis, State of Minnesota.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of selling and distributing silverware in commerce among and between the various States of the United States by means of the sale and distribution of sales promotional plans, including premium certificates redeemable in silverware, to retail merchants and others situated in various States of the United States. Respondent has caused said products, when sold by him, to be transported from his aforesaid place of business in the State of Minnesota to the purchasers thereof at their respective points of location in various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said products among and between various States of the United States.

PAR. 3. In the course and conduct of his business as aforesaid, respondent is now, and has been during all of the times mentioned herein, in substantial competition in commerce among and between various States of the United States with other individuals and with corporations, firms, and partnerships engaged in the business of selling and distributing sales-promotional plans and silverware in commerce among and between various States of the United States. Among said competitors of respondent are many who do not in any manner misrepresent their business status, the terms and conditions of their sales promotional plans, or make any other false representations in regard to the sale and distribution of their respective products.

PAR. 4. In the course and conduct of his business as aforesaid, respondent sells and distributes to retail merchants and others a sales promotional plan in which the merchant agrees to purchase from the respondent a minimum number of premium certificates or gift cards redeemable in respondent's silverware, on which certificates is printed the name of the retail merchant, together with such other advertising matter as the merchant may desire. The said premium certificates or gift cards are distributed by the merchant to his customers, the number of cards so distributed to each customer being dependent upon the amount of the customer's purchases from the merchant. Respondent furnishes to such merchants catalogs describing respondent's silver-

ware for which such premium certificates will be redeemed by respondent. After the customer of the retail merchant has accumulated a specified number of premium certificates or gift cards, the customer sends such certificates to the respondent for redemption in the articles of silverware selected by the customer from respondent's catalog. Respondent thereafter distributes the silverware selected to the customer of the retail merchant.

PAR. 5. In the course and conduct of his business as aforesaid, respondent sells said sales promotional plan to retail merchants through the medium of salesmen. Approximately 16 salesmen are employed by respondent, and such salesmen sell such sales-promotional plan to the purchasers thereof in approximately three-fourths of the States of the United States. Respondent furnishes his salesmen with forms of a contract to be executed by the retail merchants in the purchase of such plan, folders, and catalogs illustrating said silverware and samples of the premium certificates or gift cards. There is printed on the face of said contract in conspicuous, large red letters the words, "Wm. A. Rogers Silverware" and "Wm. A. Rogers, Ltd." As an inducement for the purchase of said sales-promotional plan, respondent's salesmen represent to retail merchants and others that the respondent, Matthew A. Willis, trading as Rogers Redemption Bureau, is connected with or is a part of "Oneida, Ltd.," the manufacturer of Wm. A. Rogers Silverware. Said contract further provides and respondent's salesmen represent to prospective purchasers that a 26-piece set of silverware with a buffet case will be furnished free of charge to every dealer purchasing the minimum quantity (10,000) of premium certificates or gift cards, and that said display set of silverware will become the property of the dealer. On the reverse side of said contract there appear statements relative to the number of premium certificates or gift cards required to redeem the various items of silverware, which are referred to by respondent as "free" items. Such statements read, in part, as follows:

Number of Cards Required for Various Free Items Listed Below.

Build Up a Complete Silver Service Free.

Teaspoons Packed in Units of Six—75 Cards Each.

The sales plan further provides and respondent's salesmen represent that other articles of silverware will be redeemed by respondent for various numbers of the premium certificates. The salesmen of respondent represent to prospective purchasers of said sales plan that the customers of the retail dealer will receive silverware without any additional cost upon sending to the respondent a designated number of premium certificates or gift cards; that the dealer or merchant will be given exclusive territory for the distribution of such premium

certificates or gift cards, and that the respondent will refund to the dealer the purchase price for the premium certificates or gift cards when 25 percent of the premium certificates purchased from the respondent by such dealer had been sent in for redemption by customers of the dealer. The salesmen of respondent also furnish to purchasers of said plan, for distribution among their customers, gift catalogs consisting of one sheet of paper illustrating the knives, forks, and spoons purported to be given away free of charge, and showing the number of gift cards required to redeem such "free" items. There is printed on such sheet the following statement:

Build up a complete silver service free.

Teaspoons packed in units of six items—75 cards each.

In truth and in fact such items are not given away free of charge. There is a charge of 1 cent for each gift card redeemed in silverware. In many instances the agents of respondent do not show the form of premium certificate or gift card to the retail merchants, who discover after the said premium certificates have been shipped to them by respondent that on the reverse side thereof there is the following statement:

This card is redeemable in Rogers Silverware as per schedule below, provided the holder has received this card in the regular course of trade and encloses one cent for each card. Shipping and packing charges fully prepaid.

PAR. 6. Wm. A. Rogers Silverware is now, and has been for many years, known by members of the purchasing public situated in various States of the United States as manufacturers of high-grade silverware. All silverware manufactured by said Wm. A. Rogers Silverware is branded "Oneida, Ltd., Oneida, N. Y." The Commission finds that salesmen of the respondent have falsely represented to prospective purchasers of respondent's sales plan that respondent is connected with or is a part of the manufacturer of Wm. A. Rogers Silverware. The Commission further finds that the use by the respondent of the term "Rogers" in his trade name "Rogers Redemption Bureau" and the aforesaid statement relative to the manufacturer of Wm. A. Rogers Silverware contained on the form of contract used by respondent in selling his sales plan have the tendency and capacity to cause members of the purchasing public, to have the erroneous and mistaken belief that respondent is connected with or is a part of the manufacturer of Wm. A. Rogers Silverware.

In truth and in fact, respondent is not directly or indirectly connected with Oneida, Ltd., manufacturers of Wm. A. Rogers Silverware, except as a purchaser of its products through a jobber located in Minneapolis, Minn.

PAR. 7. In truth and in fact, respondent has in many instances refused to furnish to retail dealers the 26-piece set of silverware after the purchase by the dealers from the respondent of the minimum quantity of 10,000 premium certificates or gift cards. Respondent has not refunded to the retail dealers the purchase price for said premium certificates or gift cards after 25 percent of the cards purchased by the dealer had been redeemed by customers of the merchants. The aforesaid statement and representation by respondent that customers of the retail merchants could build up a complete silver service free of charge is false and misleading for the reason that only teaspoons, tablespoons, dinner forks, and dinner knives are redeemable by said premium certificates or gift cards, all other articles having to be purchased outright from respondent. The aforesaid statement by respondent that "Teaspoons packed in units of six—75 cards each" is misleading and deceptive in that holders of said premium certificates or gift cards are and were thereby led to erroneously believe that 75 gift cards would be required to redeem 6 teaspoons, when in truth and in fact 75 gift cards were required to redeem 1 teaspoon, thus requiring 450 cards to redeem each unit of 6 teaspoons.

It appears from the record that many complaints were received by various Better Business Bureaus and that when such complaints were called to the attention of the respondent he found that in most cases the misrepresentations complained of were made by his salesmen. After repeated complaints had been made respondent, subsequent to the issuance of the complaint, rewrote and reformed his said sales contract on several different occasions within the space of 10 months eliminating certain objectionable features and clarifying the language of said contract.

PAR. 8. The aforesaid statements and representations by respondent, used and disseminated as aforesaid, have the capacity and tendency to, and do, mislead and deceive members of the purchasing public and retail dealers situated in various States of the United States into the erroneous and mistaken belief that respondent is connected with Oneida, Ltd., manufacturers of Wm. A. Rogers silverware, and that the aforesaid false and misleading statements and representations relative to respondent's sales promotional plan and premium certificates are true, and into purchasing quantities of respondent's products because of said erroneous and mistaken belief. As a result, trade has been diverted unfairly to the respondent from his competitors, in commerce among and between various States of the United States, who truthfully advertise and represent their

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respective products. 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.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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 the Federal Trade Commission Act.

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 Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission, and by Marvin Farrington, 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 the Federal Trade Commission Act.

It is ordered; That respondent, Matthew A. Willis, trading as Rogers Redemption Bureau, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of silverware or sales-promotional plans, including premium certificates, gift cards, or coupons, redeemable in silverware or other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through use of the word "Rogers," either alone or in connection with any other word or words, in a corporate or trade name, or through statements in advertising, or in any other manner, that respondent has an interest in, forms a part of, or has any connection with Onedia, Ltd., manufacturer of Wm. A. Rogers silverware; provided, however, that this order shall not be construed to prohibit the respondent from dealing in Wm. A. Rogers silverware.
2. Representing that certificates, gift cards, or other similar device can be redeemed in silverware or other merchandise unless and until all of the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connec-

tion or conjunction with such offer and there is no deception as to the services or other actions to be performed or the price to be paid in connection with obtaining such silverware or other articles of merchandise.

3. Representing that the purchase price for said certificates or gift cards will be refunded to the dealer purchasers thereof or that the respondent will supply to such dealer purchasers without charge display sets of silverware, to become the property of such dealers, unless and until such are the facts and unless all of the terms and conditions of such offer or offers are clearly and unequivocally stated in equal conspicuousness and immediate connection or conjunction with such offer or offers and there is no deception as to the services or other actions to be performed by the dealer purchasers in connection with obtaining such refund and display set of silverware.

4. Representing that a complete set of silverware or any specific item of silverware can be acquired through the redemption of such certificates, gift cards, or similar devices unless and until such is the fact.

5. Using any representations with respect to the number of certificates or gift cards required to be redeemed in order to obtain any specific merchandise, which representations do not clearly and accurately disclose the number of such certificates or gift cards actually required to obtain such merchandise.

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

AMBROSIA CANDY COMPANY, AND SAMUEL R. BLOCK,
INDIVIDUALLY, AND AS AN OFFICER OF AMBROSIA
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 3315. Complaint, Jan. 26, 1938—Decision, Mar. 1, 1939

Where a corporation and an individual engaged in manufacture and sale of candy, including bar and 5-cent candy but principally packaged or boxed chocolates in ½-pound, 2-pound, and 5-pound sizes, and in furnishing with about one-half their output on request and without additional charge, punchboards for distribution and sale of their product to consumer under plan by which selection of number which might entitle selector to a box of candy and whether charge for selection would cost customer 1 cent, 2 cents, 3 cents, 4 cents, 5 cents, or nothing at all, was wholly matter of chance, and in selling also number of assortments of packaged chocolates suitable for use in operation of such boards and some of which assortments had added thereto as a premium a lamp; and including—

(1) Boards having 300 holes, in sections of 100 each, for sale and distribution of candy under a plan and in accordance with board's invitation, 5 cent purchaser of chance received or failed to receive 1-pound box of chocolates in accordance with success or failure in selecting number ending with numeral 5, those securing number 50 and multiples of 50 received fancy 1-pound box of chocolates, and last sale in each of board's three sections entitled purchaser to one fancy 2-pound box of chocolates, and holders of other numbers received nothing; and

(2) Other boards of the same general nature having as many as 30 or 40 free numbers, and for which selectors paid nothing, and on some of which charge to members of public ranged from 1 cent to 5 cents for each number selected—

Sold to wholesalers and jobbers, along with punchboards thus furnished, their said candy for distribution by retail dealer buyers thereof to purchasing public through use of said boards as above set forth and wholly by lot or chance and under plan by which amount which members of public paid for chance to obtain one of prizes thus distributed by use of such boards or whether or not chance was free was determined wholly by lot or chance; and

Supplied thereby to and placed in the hands of such purchasers means by which lotteries and games of chance might be conducted in sale and distribution of candy as above set forth involving game of chance or sale of a chance to procure such candy without cost or for much less than price at which such candy is sold in usual course of retail trade, contrary to an established policy of the United States Government and in violation of the laws of several of the States, and in competition with many who sell candy of like or similar grade and quality and are unwilling to sell their said product by any method or sales plan which involves game of chance, gift enterprise, or lottery scheme, and refrain from use thereof;

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With result that many wholesale and retail dealers were attracted by element of chance involved in sales plan or method by which candy sold by them was distributed to public by use of punchboards and were thereby induced to purchase their said candy in preference to that of like or similar grade and quality sold by competitors who do not furnish with their product any punchboards or other devices by the use of which such product can be distributed to the consuming public by lot or chance, and their competitors aforesaid were placed at a disadvantage, and they sold substantial quantities of their said product, and trade was diverted unfairly to them from their competitors:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Mr. Walter C. Hughes, 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 Ambrosia Candy Co., a corporation, and Samuel R. Block, individually, and as an officer of Ambrosia Candy Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ambrosia Candy Co., is a corporation organized and doing business under the laws of the State of Illinois, with its offices and principal place of business at 1719 Federal Street, Chicago, Ill.

Respondent Samuel R. Block, secretary and treasurer, majority stockholder, and moving spirit of Ambrosia Candy Co., has his office at the same address and directs the activities and controls the business policy and affairs of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

Respondents are now, and for some time last past have been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers and jobbers. Respondents cause and have caused their products when sold to be transported from their principal place of business in the city of 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 some time last past, a course of trade and commerce by said respondents in such candy between and among the various States of the United States. In the course and conduct of their business respondents are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of candy and similar products, in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, respondents sell and have sold to wholesale and retail dealers 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 of said assortments consists of a number of 1-pound boxes of candy, a number of fancy 1-pound boxes of candy, and a number of 2-pound boxes of candy, together with a device commonly called a punchboard. Said boxes of candy are distributed to the purchasing public by means of said punchboard in the following manner:

Sales are 5 cents each and when a punch is made 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, and said numbers are arranged in three sections. The board bears statements informing purchasers and prospective purchasers that certain specified numbers entitle the purchasers thereof to receive a 1-pound box of candy, certain other specified numbers entitle the purchasers thereof to receive a fancy 1-pound box of candy, and the last punch in each section entitles the purchaser of same to a 2-pound box of candy. A customer who does not qualify by obtaining one of the specified numbers or the last punch in a section 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 a number calling for a box of candy receives the same for 5 cents. The numbers 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 1-pound boxes of candy are thus distributed to the purchasers of punches from the board wholly by lot or chance.

The respondents manufacture, sell, and distribute various assortments of candy involving the lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3 Retail dealers who purchase respondents' candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers thereof to purchase respondents' candy in preference to candy and similar products offered for sale and sold by their competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a box of candy. The use by respondents of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States. The use by respondents of said method has a tendency unduly to hinder competition or to create a monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same method or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery. Many persons, firms, and corporations who make and sell candy or similar products in competition with the respondents, as above alleged, are unwilling to offer for sale or to sell their products 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 any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, candy are attracted by respondents' said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondents in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents has a tendency and capacity, because of said game of chance, to divert to respondents trade and custom from their competitors who do not use the same or equivalent methods, to exclude from the 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 the candy trade, to tend to

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

PAR. 6. The aforementioned method, acts, and practices of respondents are all to the prejudice and injury 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 the Federal Trade Commission Act, the Federal Trade Commission on January 26, 1938, issued and thereafter served its complaint in this proceeding upon the respondents, Ambrosia Candy Co., and Samuel R. Block, individually and as an officer of the Ambrosia Candy 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 the complaint, and the filing of an answer by the respondent, Samuel R. Block, individually and as an officer of the respondent Ambrosia Candy Co. (no answer was filed by the respondent, Ambrosia Candy Co.), testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by Walter C. Hughes, attorney for the respondents, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission, on the said complaint, the answer thereto, testimony, and other evidence, brief in support of the complaint (respondents not having filed brief, and oral argument not having been requested); 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 Ambrosia Candy Co. is a corporation organized and doing business under the laws of the State of Illinois, with its offices and principal place of business at 1719 Federal Street, Chicago, Ill.

Respondent Samuel R. Block, secretary and treasurer, majority stockholder, and moving spirit of Ambrosia Candy Co., has his office at the same address and directs the activities and controls the business policy and affairs of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter found.

Respondents are now, and for some time last past have been, engaged in the manufacture of candy and in the sale and distribution of same to wholesale and retail dealers and jobbers. Respondents cause and have caused their products when sold to be transported from their principal place of business in the city of 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 some time last past, a course of trade by said respondents in such candy in commerce between and among various States of the United States. In the course and conduct of their business respondents are in active competition with other corporations and individuals and with partnerships engaged in the sale and distribution of candy and similar products, in commerce between and among various States of the United States.

PAR. 2. The respondents manufacture a small amount of bar candy, and 5-cent candy, but their principal product is packaged or boxed chocolates, the sizes of the packages being $\frac{1}{2}$ pound, 1 pound, 2 pounds, and 5 pounds; practically their entire output is sold to jobbers or wholesale dealers; their annual volume of sales is approximately \$250,000, and with about one-half of their output, when so requested by their customers, they furnish devices sometimes described as punchboards for which no additional charge is made; these boards are shipped with the candy. Some of the boards so furnished by respondents have 300 holes which are arranged in sections of 100 each, and each hole has inserted therein a rolled slip of paper upon which is printed a number. In the operation of the boards members of the public are solicited to punch from one or more of the holes the rolled slip of paper contained therein and to pay 5 cents for each number so obtained; the holders of 12 numbers so obtained which end with the numeral 5 each receive a 1-pound box of chocolates, and the holders of number 50 and multiples of 50, 6 in all,

each receive a fancy 1-pound box of chocolates, and the last sale in each of the 3 sections entitles the purchaser to receive 1 fancy 2-pound box of chocolates, but the holders of the other numbers, 278 in all, receive nothing. Other boards of the same general nature furnished by respondents have as many as 30 or 40 numbers designated as free and for which selectors pay nothing, and on some of the boards the charge to members of the public ranges from 1 cent to 5 cents for each number selected. With all the boards so furnished by respondents the selection of a number which might entitle the selector to a box of candy or whether the charge for each selection made will cost 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents, or will cost nothing at all, is wholly a matter of chance. Said respondents also sell a number of assortments of packaged chocolates suitable for use in the operation of said boards, some of which assortments have added thereto as a premium, a lamp.

PAR. 3. The Commission finds that candy sold by respondents to wholesale dealers and jobbers with which they furnished punchboards, as set out in paragraph 2 hereof, was resold by said wholesale dealers and jobbers to retail dealers who distributed same to the purchasing public by the use of such punchboards, wholly by lot or chance, and that the amount which members of the public paid for a chance to obtain one of the prizes distributed by the use of one of such boards, or whether such chance was free, was determined wholly by lot or chance. Respondents by furnishing such boards to purchasers of candy sold by them have supplied to such purchasers and placed in their hands, the means by which lotteries and games of chance may be conducted. The sale and distribution of candy in the manner, and by the method hereinbefore described, is a practice of the sort which is contrary to the established public policy of the Government of the United States, and is in violation of the laws of several of the States of the United States. Many competitors of respondents sell candy of like or similar grade and quality to that sold by respondents, in competition with respondents, which competitors are unwilling to sell such candy by any method or sales plan which involves a game of chance, gift enterprise, or lottery scheme, and refrain from the use of same, and as a result are placed at a disadvantage in competition.

PAR. 4. The sale and distribution of candy to the purchasing public in the manner, and by the method hereinbefore found, involves a game of chance or the sale of a chance to procure such candy without cost or for much less than the price at which such candy is sold in the usual course of retail trade. Many wholesale and retail dealers were attracted by the element of chance involved in the sales plan

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or method by which candy sold by respondents was distributed to the public by the use of punchboards, and said dealers were thereby induced to purchase candy sold by respondents in preference to candy of like or similar grade and quality sold by competitors of respondents who did not and do not furnish with candy sold by them, any punchboards or other devices, by the use of which such candy could be distributed to the consuming public by lot or chance, and as a result respondents have sold substantial quantities of candy, which has caused trade to be diverted unfairly to respondents from their competitors.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public, and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 Samuel R. Block (respondent Ambrosia Candy Co. having filed no answer), 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, brief by attorney for the Commission (respondents having filed no brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Ambrosia Candy Co., its officers, and Samuel R. Block, individually and as an officer of Ambrosia Candy Co., their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or other merchandise so packed and assembled that sales of such candy or other merchandise to the general public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others assortments of candy which are to be used or may be used to conduct a lottery,

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gaming device, or gift enterprise in the sale or distribution of candy or other merchandise to the public.

3. Supplying to or placing in the hands of others assortments of candy or other merchandise, together with a lottery device, which lottery device is to be used or may be used in selling and distributing such candy or other merchandise to the public.

4. Supplying to or placing in the hands of others a lottery device either with assortments of candy or other merchandise or separately, which lottery device is to be used or may be used in selling or distributing such candy or other merchandise to the public.

5. Selling or otherwise disposing of candy or other merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

ALFRED JOHNSON SMITH, PAUL SMITH AND ARTHUR SMITH, DOING BUSINESS AS JOHNSON-SMITH AND COMPANY

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

Docket 3647. Complaint, Nov. 7, 1938—Decision, Mar. 1, 1939

Where partners engaged in sale of a large number of articles of various sorts and kinds, including books of instruction in various arts and in other subjects, musical instruments, cutlery, watches, clocks, radio receiving sets, seeds for flowers, vegetables and medicinal plants, push cards, and others, to purchasers in other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of like and similar books, articles, and devices in commerce among the various States and in said District—

- (a) Represented, in catalogs descriptive of their wares distributed as aforesaid and in advertisements thereof in magazines and periodicals circulating through the various States, that purchasers of their "The Famous 5-Minute Courses" of books of instruction could, with the aid thereof and without taking lessons and with no knowledge of music necessary, learn to play, from the 15 different courses there offered, violin, guitar, saxophone, and the various others there enumerated, and that through said courses also, as the case might be, under such captions as "Crystal Gazing," "Polish Self Taught," and "Secrets of Cleopatra's Beauty Revealed," purchaser could, in effect, learn to foretell future events, rapidly acquire proficiency in the Polish language, and acquire a truly amazing beauty, facts being it is impossible, by mastering their said books, to gain the ability to play, in the generally accepted sense of the words, instruments to which they related, although it is possible to learn therefrom certain harmonic combinations or chords which may be mechanically repeated on the piano, guitar, etc., and it is also impossible therefrom rapidly to acquire proficiency in Polish, or to acquire beauty of eyes, complexion, hand, arm, or figure, and array of importunate suitors;
- (b) Represented, as aforesaid, in connection with description and offer of, and invitation to, "Play This Jazzy Saxophone Without Practice! No need to spend \$85 when you can own a Jazzy Sax," that said instrument was comparable in material, appearance, or performance to those costing said amount; and
- (c) Represented, as aforesaid, that close inspection showed that their "G-Man Pocket Knife" had "Blades of finest quality steel," and that their "Atlas Calendar Watch As an ordinary time-keeper" was "a watch of highest quality * * *," and that their "King Tut Lucky Ring" was "Made of green gold, antique finish," and referred to their "No. 8209—1 kt. Egyptian Diamond * * * Five-Year Guarantee," and represented that their "Genuine Diamond Ring for only \$3.25" was "A real genuine Diamond";
- Facts being their said "Jazzy Sax" was not, as thus represented, comparable in material, appearance, or performance to saxophones selling at \$85, blades

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of said knives were not of finest steel, nor were said watches of highest quality, nor settings of said rings of gold, nor said rings last referred to set with diamonds, and, while so-called "Genuine Diamond" ring was set with diamond "chip," neither it nor ring preceding were set with genuine diamonds;

- (d) Represented, as aforesaid, their "Elephant Ring" as "The lucky elephant that brings you luck," and set forth that their "World-Wide All-Wave Receivers * * * bring in Short Wave Stations in all parts of the world * * * as well as regular broadcast and ship stations on long waves," etc., and that their "Distributor Intensifier" "Gives your car added Power and Pep * * * with less gas," facts being their said ring last referred to would not cause purchaser or wearer to be more favored by fortune than otherwise, their said radio receiving set does not give satisfactory reception for ordinary long wave or commercial programs, and use of their said "Distributor Intensifier" would not accomplish results claimed in operation of an automobile;
- (e) Represented in false advertisements disseminated by them in commerce with respect to the properties and therapeutic values of various drugs and devices, that their "Professor Wingren's Voltaic Electric Insoles" would relieve aching and sweaty feet and rheumatism and pains in the hips, and that use of their "Home Medical Battery" would cure a large number and variety of diseases and ailments, including ulcers, cancers, and other malignant growths, enlarged tonsils, rheumatism, etc., and that their distemper preparation would cure distemper in dogs, and their "Corn Remover" eradicate corns, facts being said insoles are entirely lacking in therapeutic value, use of said battery does not constitute adequate or competent treatment for diseases and ailments for which recommended, there is no orally administered remedy for canine distemper which will in all cases, or even in many, result in cure of such malady, and corn remover would not eradicate corns;
- (f) Represented, through such statements as "Big Money Growing Medical Plants. Ginseng. Golden Seal. Two Big Money-Makers. A little space in your back yard will make you independent," etc., and "On one acre of land Elias Kettle succeeded in producing a crop of Ginseng which he has contracted to sell for \$50,000.00," that large earnings could be made by the culture of said plants, and that such culture was easy, and that any good well-drained soil was suitable for culture of latter, facts being profitable culture was dependent upon climatic and soil conditions found principally in northern portion of the United States, certain amount of shade for plants is necessary, and, raised from seed, approximately 7 years growth for Ginseng and 4 for Golden Seal are necessary before plants are of commercial value and profits can be realized therefrom; and
- (g) Represented, through such statements as "We Sell You a Regular Income! Big Profits in Peanut Vending Machines" and "These vendors pay for themselves in 30 days * * * In as short a time as one year you can build up a route of a hundred machines and have an independent income," that purchase of such a machine was a purchase of a regular income, and that such machines would in all cases repay their cost in 30 days, and that a chain of 100 machines from a small beginning could be built up by purchaser during a year, facts being such various representations were false, and there was no assurance that chains of 100 profitable machines could be developed as aforesaid;

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With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and, by reason thereof, into purchase of substantial quantities of their said wares, and of thereby diverting unfairly trade in commerce to them from competitors who truthfully advertise their goods; to the injury of competition in commerce; and

(h) Furnished various devices and plans for merchandising which involved operation of games of chance, gift enterprises, or lotteries for sale and distribution of their said merchandise to ultimate consumers wholly by lot or chance, and involved distribution to purchasing public of push cards and catalogs depicting such cards and merchandise and explanation of plan of selling same and allotting it as premiums or prizes through such sale of said products by means of said cards, and under a plan or scheme in accordance with his success or failure in selecting from list of feminine receive, the rotary clock or other merchandise being thus disposed of, in accordance with his success or failure in selecting from list of feminine names displayed that one corresponding to name concealed under card's master seal, and thereby supplied to and placed in the hands of others to whom they furnished said cards for use in purchase, sale, and distribution of their said merchandise, means of conducting lotteries in the sale thereof in accordance with aforesaid or similar plan involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the Government of the United States and in violation of the criminal laws, 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 lot, or other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by their said sales plan or method employed in sale and distribution of their said merchandise and element of chance involved therein, and were thereby induced to buy and sell such goods in preference to merchandise offered and sold by said competitors who do not use same or equivalent method, and with effect, by reason of their use of such method and said element of chance, of unfairly diverting trade to them from their competitors aforesaid who do not use such or equivalent method; to the substantial injury of competition in commerce:

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

Mr. Randolph W. Branch for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Alfred Johnson Smith, Paul Smith, and Arthur Smith, doing business as copartners under the name of Johnson-Smith & Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it

appearing to the 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. Respondents, Alfred Johnson Smith, Paul Smith, and Arthur Smith, as copartners, conduct their business under the name of Johnson-Smith & Co., with a principal place of business at 6615 East Jefferson Avenue, city of Detroit, State of Michigan.

PAR. 2. Respondents are now, and have been for more than 2 years last past, engaged in the business of selling books of instruction in various arts and in other subjects, musical instruments, cutlery, watches, clocks, therapeutic devices and preparations, optical goods, radio receiving sets, devices for attachment to automobiles, master keys, rings, seeds for flowers, vegetables and medicinal plants, push cards, and a large number of other articles of various sorts and kinds.

Respondents cause, and have caused, the said books and articles when sold to be transported from the place where their business is conducted in the State of Michigan to purchasers thereof located in States of the United States other than the State of Michigan and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been for more than 2 years last past, in substantial competition with other partnerships and with individuals, firms, and corporations engaged in the sale and distribution of like or similar books, articles, and devices 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 their said business and for the purpose of inducing the purchase of their said books of instruction, respondents have caused their catalogue, containing certain claims with respect thereto and to the proficiency and ability which will be acquired by purchasers who master the contents thereof, to be distributed between and among the various States of the United States and in the District of Columbia, and have caused certain advertisements with respect thereto to be inserted in magazines and periodicals having a circulation through the various States of the United States.

Included among and typical of such claims are the following:

LEARN TO VAMP * * * PLAY THE PIANO WITHOUT
LESSONS

Would you like to play the piano or organ without going through the drudgery of learning the scales and keys, and without tedious practice? The Vamping Tutor is a greatly simplified method which, after a little practice enables you to play the accompaniment to any tune or song written in any "time" in any "key". No knowledge of music is necessary. Once you have mastered the

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system, you will be able to play the accompaniment to songs, ballads, waltzes, the latest hits, etc., entirely by ear without any music.

THE FAMOUS 5-MINUTE COURSES

With the aid of these instruction books you can actually play tunes in a few minutes * * * no knowledge of music necessary. You need not know a note of music. You can learn to play any of the instruments named without taking lessons from a teacher * * * If you would like to be able to play without going through the usual drudgery of learning Scales and Keys and without tedious practicing, send at once for the one you are interested in. You will be agreeably surprised at results.

FIFTEEN DIFFERENT COURSES TO SELECT FROM

| | |
|--------------------------|--------------------------------------------------------------|
| Violin Course. | Banjo Course. |
| Guitar Course. | Hawaiian Guitar Course. |
| Saxophone Course. | Cornet and Trumpet Course. |
| Harmonica Course. | Tenor Guitar Course. |
| Trick Harmonica Methods. | Tiple Course. |
| Ukelele Course. | Melody Accompaniment on Ukelele, Banjo Ukelele and Tiple. |
| Tenor Banjo Course. | Flageolet and Flue Self-Instructor. |
| Mandolin Course. | |

LEARN TO HYPNOTIZE

See how easily you can master the secrets of Hypnotism. Master this strange power. Sway others at will. Learn to use this mysterious power to influence the thoughts of others, control their desires and make you master of every situation. Make others love you, strengthen your will-power, banish fear and worry, improve your memory, overcome bad habits, etc. Everything explained in this new book.

VENTRILOQUISM

A thoroughly reliable guide to the art of voice-throwing and vocal mimicry. Complete directions by which you can acquire this amusing art. Only 10¢—a 32-page book giving you full instructions how to become a ventriloquist.

MYSTERIES OF CLAIRVOYANCE

Do you want to know luck numbers in Lotteries; to see your future husband or wife; to detect what complaint troubles yourself or others; to read the inmost thoughts of woman or man; to discover thieves and find out where the plunder is hidden; to "lay on hands" in such a gentle yet powerful way as to cure all nervous complaints and to inspire most friendly feelings toward yourself; to see the issue of all "pools" whether in stocks; in short, to be Master or Mistress—the full controller—of motives and acts of all your friends and acquaintances, then buy this book.

THE GOLDEN ROD AND MARRIAGE GUIDE

A complete guide to health, happiness and wealth.

CRYSTAL GAZING

Learn about your future. Read the lives of those about you. Be able to reveal the facts of future existence. Become successful by developing the powers within you.

POLISH SELF TAUGHT

By this system any person can become proficient in the Polish language in a very short time.

SECRETS OF CLEOPATRA'S BEAUTY REVEALED

It teaches how to so improve the person in loveliness and beauty that you will drive admirers almost to madness * * * If you desire bright, melting eyes, a clear soft, rosy-tinted complexion, beautiful hands and graceful figure, well-developed and perfect, so that the world will seek your acquaintance and try to win you, get this book at once.

By the said statements, and others of like import and effect, in their said catalog and advertisements, respondents, directly and by implication, represent that by the purchase and mastery of the contents of the said books the purchaser can: Acquire the ability to play various musical instruments without personal instruction, tedious practice, or any knowledge of music; easily learn the art of hypnotism and thereby become able to sway, influence the thoughts, and control the desires of others, become master of every situation, cause others to love him, strengthen his will power, banish fear and worry, improve his memory, and overcome bad habits; read the minds and govern the actions of others; foretell future events; acquire health, happiness, and wealth; rapidly acquire proficiency in the Polish and other tongues; and acquire a truly amazing beauty.

PAR. 5. The representations made by respondents, directly and by implication, with respect to the results that may be obtained by a mastery of the contents of the said books are false, misleading, and untrue. In truth and in fact, it is impossible to gain from respondents' books the ability to "play," in the generally accepted sense of the word, the organ and piano, saxophone, trumpet, violin, cornet or flute, or the guitar, ukulele, banjo, or mandolin, although as to the latter instruments certain harmonic combinations or chords may be learned and mechanically repeated. The art of ventriloquism cannot be imparted otherwise than by personal instruction. The art and secrets of hypnotism cannot be learned from respondents' book, nor is the master of that art able to more than temporarily sway others, influence their thoughts, control their desires, or induce their love. The hypnotist is not master of every situation, and the practice of the art will not strengthen his will power, banish fear and worry, improve his memory, nor overcome bad habits. Ability to read the minds and govern the actions of others, heal nervous ailments, foretell future events, and acquire health, happiness, and wealth cannot be acquired by a mastery of respondents' books. Proficiency in foreign languages cannot be rapidly acquired by a mastery of respondents' books of self-instruction. Cleopatra's secrets of beauty,

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if any, are veiled in obscurity and the directions contained in the book in which they purport to be revealed will not, if followed, give to the user the bright and melting eye, the clear and roseate complexion, the beautiful hand and the well-rounded but lissom figure and will not cause her to be besieged by suitors half mad with admiration for her charms.

PAR. 6. In the said course and conduct of their business, for the purpose of inducing the purchase of certain of their wares, respondents have, in the manner aforesaid, made claims with respect to the quality of various of the articles which they sell.

Included among and typical of such claims are the following:

G-MAN POCKET KNIFE

Close inspection shows the G-Man Pocket Knife has blades of finest quality steel * * *

THE ATLAS CALENDAR WATCH

As an ordinary time-keeper, it is a watch of highest quality * * *

PLAY THIS JAZZY SAXOPHONE WITHOUT PRACTICE!

No need to spend \$85 when you can own a Jazzy Sax.

By the said statements, and others of like import and effect, in their said catalog and advertisements, respondents, directly and by implication represent: That the blades of the G-Man Pocket Knife are made of the finest steel; that the Atlas Watch is of the highest quality and that the Jazzy Sax is comparable in quality to saxophones selling for many times its price.

PAR. 7. The representations made by respondents, directly and by implication, with respect to the quality of the articles mentioned in paragraph 6 hereof, are false, misleading, and untrue. In truth and in fact, the blades of the G-Man Pocket Knife are not of finest quality steel; the Atlas Watch is not of the highest quality; and the Jazzy Sax is not comparable in material, appearance, or performance to saxophones selling at \$85.

PAR. 8. In the said course and conduct of their business, for the purpose of inducing the purchase of certain of their wares, respondents have, in the manner aforesaid, made claims with respect to the identity of various of the articles which they sell.

Included among and typical of such claims are the following:

KING TUT LUCKY RING

Made of green gold, antique finish.

No. 8209—1 kt. Egyptian Diamond * * * Five-Year Guarantee

Genuine Diamond Ring for only \$3.25 * * * A real genuine Diamond

By said statements, and others of like import, and effect, in their said catalog and advertisements, respondents, directly and by implication, represent that the King Tut Ring is made of gold, and that the ring cataloged as "No. 8209" and the "Genuine Diamond Ring" are set with genuine diamonds.

PAR. 9. The representations made by respondents, directly and by implication, as to the identity of the said articles mentioned in paragraph 8 hereof, are false, misleading, and untrue. In truth and in fact, the setting of the King Tut Ring is not made of gold; the ring cataloged as "No. 8209" is set with glass; and the diamond set in the "Genuine Diamond Ring" is not what is generally known as a "diamond," but what is generally known as a "diamond chip."

PAR. 10. In the course and conduct of their business, for the purpose of inducing the purchase of certain of their wares, respondents have in the manner aforesaid, made claims with respect to the effectiveness of various of the articles sold by them to accomplish the purposes for which they are recommended by respondents.

Included among and typical of such claims are the following:

NO. 8258—ELEPHANT RING

The lucky elephant that brings you luck

5 MASTER KEYS

They will open padlocks, night latches, door locks—in fact, practically all ordinary locks.

DISTRIBUTOR INTENSIFIER

Saves gas * * * Gives your car added Power and Pep. The "Sparkmaster" is a distributor intensifier that will give you more speed and power with less gas.

FIELD GLASSES—49¢

Real genuine field glasses, with six-power magnification—.

NEW POWERFUL LONG-DISTANCE FIELD GLASSES

It is not a cheap toy but a powerful field glass which brings objects miles away as though but a few feet distant.

WORLD-WIDE ALL-WAVE RECEIVERS

All wave * * * 15 to 600 meters, these modern receivers bring in Short Wave Stations in all parts of the world * * * as well as regular broadcast and ship stations on long waves. Ace receivers are ideal all-purpose sets.

By said statements, and others of like import, and effect, in their said catalog and advertisements, respondents, directly and by implication, represent: That good fortune will attend the purchaser of the Elephant Ring; that the 5 Master Keys will open practically all

ordinary locks; that the use of the Distributor Intensifier on an automobile will save gasoline and give additional speed, power, and life; that the 49-cent field glasses have six-power magnification; that the long-distance field glasses will render objects miles distant as clearly visible as though they were but a few feet from the user and that the World-Wide All-Wave Receiver will give satisfactory reception of all radio broadcasts, whether short wave or long wave.

PAR. 11. The representations made by the respondents, directly and by implication, as to the results which may be obtained by the use of the articles mentioned in paragraph 10 hereof, are false, misleading, and untrue. In truth and in fact, the Elephant Ring will not render the wearer more fortunate than would otherwise be the case; the master keys are effective only upon locks of the simplest and cheapest construction; the attachment of the distributor intensifier will not result in any saving of gas in the operation of an automobile, nor will it impart additional speed, power, and life; the 49-cent field glass is not a six-power glass; the long distance field glass will not render objects miles distant as clearly visible as they are at a few feet and the all-wave receiving set does not give satisfactory reception for ordinary or long-wave commercial programs.

PAR. 12. In the course and conduct of their business, for the purpose of inducing the purchase of certain of their wares, respondents have, in the manner aforesaid, caused false advertisements, containing representations and claims with respect to the properties and therapeutic value of various medicinal preparations and devices designed and intended for, and used, in the treatment of the ailments and conditions of the human and canine bodies, and the results which may be expected from the use thereof, to be disseminated in commerce, as defined in the Federal Trade Commission Act.

Included among and typical of such representations and claims are the following:

PROFESSOR WINGREN'S VOLTAIC ELECTRIC INSOLES

Aching Feet

? Rheumatism ?

Sweaty Feet

Try these electric insoles * * * today! If you suffer from cold, tired or sweaty feet, or if you have rheumatism and kindred ailments, you, too, should give them a trial.

HOME MEDICAL BATTERY

Get relief without drugs—in most diseases—its effect is almost certain to be beneficial—. A mild current may be used in cases of scrofula, ulcers, cancers, and other malignant growths, enlarged tonsils, granulated eyelids, swollen

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glands and similar complaints. A stronger current is necessary for treating nervous and inflammatory diseases such as, neuralgia, rheumatism, apoplexy, asthma, cramp, catarrh, deafness, dyspepsia, earache, headache, hysteria, insomnia, kidney and liver troubles, obesity, paralysis, brain fag, and "that tired feeling."

A DOG'S LIFE

Kit contains * * * distemper cures—

CORN REMOVER

Set consists of bottle corn remover—

By said statements, and others of like import and effect, in their said catalog and advertisements, respondents represent, directly and by implication: That Professor Wingren's Voltaic Electric Insoles will relieve aching and sweaty feet, rheumatism, and pains in the hips; that the use of the Home Medical Battery will cure a large number and variety of diseases and ailments; that the distemper cure will cure distemper in dogs; and that the corn remover will eradicate corns.

PAR. 13. The representations made by respondents, directly and by implication, used and disseminated by respondents in the manner described, with respect to the articles mentioned in paragraph 12 hereof, are exaggerated, misleading, and untrue and constitute false advertising. In truth and in fact, Professor Wingren's Voltaic Electric Insoles are entirely lacking in therapeutic value; the use of the Home Medical Battery does not constitute an adequate or competent treatment for the diseases and ailments for which it is recommended by respondents; there is no orally administered remedy for canine distemper, which will in all, or even in many, cases result in a cure of the malady; the corn remover will not eradicate corns.

PAR. 14. The use of the aforesaid false advertisements disseminated in the manner described induces, or is likely to induce, the purchase of a drug or device.

PAR. 15. In the course and conduct of their business, for the purpose of inducing the purchase of certain of their wares, respondents have, in the manner aforesaid, made claims relative to the purported profits or earnings of those who purchase certain of their articles for resale, for use for profit or for development or culture.

Included among and typical of such claims are the following:

BIG MONEY GROWING MEDICAL PLANTS

Ginseng Golden Seal

Two Big Money-Makers

A little space in your back yard will make you independent. Golden Seal roots are easy to grow. Any good well-drained soil is suitable for the growth

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of Golden Seal. At this rate an acre (of Golden Seal) would be worth \$12,960.00. Ginseng is another money-maker. On one acre of land Elias Kettle succeeded in producing a crop of Ginseng which he has contracted to sell for \$50,000.00.

WE SELL YOU A REGULAR INCOME! BIG PROFITS IN PEANUT VENDING MACHINES

These vendors pay for themselves in 30 days * * * all the money you make after that is profit for you!—In as short a time as one year you can build up a route of a hundred machines and have an independent income.

By said statements, and others of like import and effect, in their catalog and advertisements, respondents, directly and by implication, represent: That large earnings can be made by the culture of Ginseng and Golden Seal on small tracts of land; that their culture is easy; and that any good, well-drained soil is suitable for the culture of Golden Seal; that the purchase of a peanut-vending machine is the purchase of a regular income; that such machines will, in all cases, return profits equal to their cost in 30 days and that from a small beginning the purchaser can during a year, build up a chain of 100 machines.

PAR. 16. The representations made by respondents, directly and by implication, with respect to the advantages to be gained from the purchase of the articles mentioned in paragraph 15 hereof, are misleading. In truth and in fact, the profitable culture of Ginseng and Golden Seal is dependent upon climatic and soil conditions which are found principally in the northern portion of the United States. A certain amount of shade for the plants is necessary. When raised from seed it requires approximately 7 years' growth for Ginseng and 4 years for Golden Seal before the plants are of commercial value and profits can be realized. The purchase of a peanut-vending machine is not the purchase of a regular income. Machines will not in all cases pay for themselves in 30 days or a few weeks, and there is no assurance that chains of 100 profitable machines can be developed from small beginnings within a year.

PAR. 17. The use by respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, with respect to their books of instruction, the proficiency and ability which will be acquired by purchasers who master the contents thereof and the quality, identity, effectiveness in use, curative and therapeutic value, and financial advantage, to be gained from the purchase of certain of its wares, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false state-

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ments, representations, and advertisements are true and, because of said erroneous and mistaken belief, to purchase substantial quantities of respondents' said wares.

As a result, trade has been diverted unfairly to the respondents from their competitors in said commerce who truthfully advertise their wares. In consequence thereof, injury has been, and is now being, done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 18. In the course and conduct of their business, as hereinbefore described, respondents, in soliciting the sale of and in selling and distributing certain of their merchandise in commerce, furnish and have furnished various devices and plans for merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondents was and is substantially as follows:

Respondents distribute and have distributed to the purchasing public in commerce, both push cards and their catalog containing illustrations of the said push cards and merchandise and an explanation of respondents' plan of selling merchandise and of allotting it as premiums or prizes. One of respondents' push cards has 100 small, partially perforated disks on the left side, and on the face of each of said disks is printed a feminine name. On the right side of the card the same feminine names are set forth in ruled columns. The customer selects a name, punches out the disk, and inserts his name in the ruled column opposite the name of his selection. The push card also has a large master seal, within which is one of the feminine names appearing upon the perforated disks and in the ruled column. The push card bears legends or instructions as follows:

(Simulation of a rotary clock)

WIN THIS ROTARY CLOCK

New Distinctive Beautiful Dependable

ONLY 10¢ PER PUNCH

Pay a Dime—Take Home a Clock—If You Win

WINNING NAME UNDER SEAL (SEAL)

Fill in your name opposite the girl's name
you select

Sales of respondents' products by means of said push cards are made, and the said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondents furnish and have furnished various push cards and catalogs for use in the sale and distribution of their merchandise by means of games of chance, gift enterprises, or lottery schemes. The sales plan or method involved in connection with the sale of all of said merchandise by means of the said push cards is the same as that hereinabove described, varying only in detail.

PAR. 19. The persons to whom respondents furnish the said push cards use the same in purchasing, selling, and distributing respondents merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice of a sort which is contrary to an established public policy of the Government of the United States, and is in violation of the criminal laws.

PAR. 20. 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 an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondents, 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 lot, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to 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 method by respondents because of said element of chance has a tendency and capacity to, and does, unfairly divert trade to respondents from their said competitors who do not use the same or an equivalent method, and as a result thereof, substantial injury is being, and has been, done by respondents to competition in commerce between and

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

PAR. 21. The aforesaid acts and practices of respondents as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 7, 1938, issued, and on November 9, 1938, served its complaint in this proceeding upon respondents Alfred Johnson Smith, Paul Smith, and Arthur Smith, copartners doing business under the name of Johnson-Smith & Co., charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On December 19, 1938, respondents filed their answer, in which they admitted all the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to the facts. 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 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 respondents Alfred Johnson Smith, Paul Smith, and Arthur Smith, as copartners, conduct their business under the name of Johnson-Smith & Co., with a principal place of business at 6615 East Jefferson Avenue, Detroit, Mich.

They are now, and have been for more than 2 years last past, engaged in the business of selling a large number of articles of various sorts and kinds, including books of instruction in various arts and in other subjects, musical instruments, cutlery, watches, clocks, therapeutic devices and preparations, optical goods, radio receiving sets, devices for attachment to automobiles, master keys, rings, seeds for flowers, vegetables and medicinal plants, and push cards, and in transporting and causing said articles to be transported from its place of business in the city of Detroit, State of Michigan, to purchasers thereof located in various States of the United States, other than the State of Michigan and in the District of Columbia.

PAR. 2. In the course and conduct of their business respondents now are, and have been, in substantial competition with other partnerships, and with individuals, firms, and corporations who likewise sell and distribute like or similar books, articles, and devices 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 their said business as herein described, and for the purpose of inducing the purchase of their wares, respondents have caused their catalog, descriptive thereof, to be distributed between and among the various States of the United States and in the District of Columbia and have caused certain advertisements of the said wares to be inserted in magazines and periodicals having a circulation through the various States of the United States. In the said catalog and advertisements, disseminated as aforesaid, respondents make various statements and claims relative to the proficiencies and abilities which will be acquired by the persons mastering the contents of respondents' books of instruction, and relative to the quality, identity, and effectiveness in use of the merchandise which respondents sell and distribute as aforesaid.

Typical examples of the statements and claims made as stated above are given below.

(With respect to the claims of the proficiencies and abilities which will be acquired by persons who master the contents of respondents' books of instruction).

THE FAMOUS 5-MINUTE COURSES

With the aid of these instruction books you can actually play tunes in a few minutes * * * no knowledge of music necessary. You need not know a note of music. You can learn to play any of the instruments named without taking lessons from a teacher * * * If you would like to be able to play without going through the usual drudgery of learning Scales and Keys and without tedious practicing, send at once for the one you are interested in. You will be agreeably surprised at results.

FIFTEEN DIFFERENT COURSES TO SELECT FROM

Violin Course.
Guitar Course.
Saxophone Course.
Harmonica Course.
Trick Harmonica Methods.
Ukelele Course.
Tenor Banjo Course.
Mandolin Course.
Banjo Course

Hawaiian Guitar Course.
Cornet and Trumpet Course.
Tenor Guitar Course.
Tiple Course.
Melody Accompaniment on
Ukelele, Banjo Ukele and Tiple.
Flageolet and Flute.
Self-Instructor.

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Findings

CRYSTAL GAZING

Learn about your future. Read the lives of those about you. Be able to reveal the facts of future existence. Become successful by developing the powers within you.

POLISH SELF TAUGHT

By this system any person can become proficient in the Polish language in a very short time.

SECRETS OF CLEOPATRA'S BEAUTY REVEALED

It teaches how to so improve the person in loveliness and beauty that you will drive admirers almost to madness * * * If you desire bright, melting eyes, a clear soft, rosey-tinted complexion, beautiful hands and graceful figure, well-developed and perfect, so that the world will seek your acquaintance and try to win you, get this book at once.

(With respect to the quality of their merchandise)

G-MAN POCKET KNIFE

Close inspection shows the G-Man Pocket Knife has blades of finest quality steel * * *

THE ATLAS CALENDAR WATCH

As an ordinary time-keeper, it is a watch of highest quality * * *

PLAY THIS JAZZY SAXOPHONE WITHOUT PRACTICE!

No need to spend \$85 when you can own a Jazzy Sax.

(With respect to the identity of its articles.)

KING TUT LUCKY RING

Made of green gold, antique finish.

No. 8209—1 kt. EGYPTIAN DIAMOND * * * FIVE-YEAR

GUARANTEE

GENUINE DIAMOND RING for only \$3.25 * * *

A real genuine Diamond

(With respect to the effectiveness of their merchandise to accomplish the purposes for which they are recommended.)

NO. 8258—ELEPHANT RING

The lucky elephant that brings you luck.

WORLD-WIDE ALL-WAVE RECEIVERS

All wave * * * 15 to 600 meters, these modern receivers bring in Short Wave Stations in all parts of the world * * * as well as regular broadcast and ship stations on long waves. Ace receivers are ideal all-purpose sets.

DISTRIBUTOR INTENSIFIER

Saves gas * * * Gives your car added Power and Pep. The "Sparkmaster" is a distributor intensifier that will give you more speed and power with less gas.

PAR. 4. By said statements and claims respondents, directly and by implication, represent: That by the purchase and mastery of certain of its said books, the purchaser can acquire the ability to play various musical instruments without personal instruction, tedious practice, or any knowledge of music; foretell future events; rapidly acquire proficiency in the Polish language, acquire a truly amazing beauty; that the "G-Man" pocket knife has blades of finest steel; that the "Atlas" watch is of the highest quality; that the "Jazzy Sax" is comparable to saxophones selling at many times its price; that the "King Tut" ring is made of gold; that the ring cataloged as "No. 8209" and the "Genuine Diamond" ring are set with genuine diamonds; that the "Elephant" ring will bring good fortune to the purchaser; that the "World-Wide All-Wave" radio receiver will give satisfactory reception of all radio broadcasts, whether long wave or short wave, and that the use of the "Distributor Intensifier" on an automobile will save gasoline and give additional speed, power, and life.

In truth and in fact, it is impossible by mastering respondents' books to gain the ability to "play," in the generally accepted sense of the word, the instruments to which the said books relate, although it is possible to learn from them certain harmonic combinations or chords which may be mechanically repeated on the piano, guitar, ukelele, banjo, or mandolin. Neither is it possible, from said books, to rapidly acquire proficiency in the Polish tongue or acquire beauty of eye, complexion, hand, arm, or figure, and in addition an array of importunate suitors. The "G-Man" knife blades are not of finest steel, the "Atlas" watch is not of highest quality, nor is the "Jazzy Sax" comparable in material, appearance, or performance to saxophones selling at \$85. The setting of the "King Tut" ring is not made of gold; the rings cataloged as "No. 8209" and "Genuine Diamond" are not set with genuine diamonds, although the latter is set with a diamond "chip." The "Elephant" ring will not cause the purchaser or wearer to be more favored by fortune than would otherwise be the case. The "World-Wide All-Wave" radio receiving set does not give satisfactory reception for ordinary long wave or commercial programs. The use of the "Distributor Intensifier" will not result in any saving of gas in the operation of an automobile, nor will it impart additional speed, power, or life.

PAR. 5. In the manner and for the purposes previously described, respondents have caused false advertisements, containing representations and claims with respect to the properties and therapeutic value of various drugs and devices, as the same are defined in the Federal Trade Commission Act, and the results which may be expected from the use thereof, to be disseminated in commerce, as defined in the said act.

Typical of these representations are the following:

PROFESSOR WINGREN'S VOLTAIC ELECTRIC INSOLES

Aching Feet

? Rheumatism ?

Sweaty Feet

Try these electric insoles * * * today! If you suffer from cold, tired or sweaty feet, or if you have rheumatism and kindred ailments, you, too, should give them a trial.

HOME MEDICAL BATTERY

Get relief without drugs—in most diseases—its effect is almost certain to be beneficial—. A mild current may be used in cases of scrofula, ulcers, cancers and other malignant growths, enlarged tonsils, granulated eyelids, swollen glands and similar complaints. A stronger current is necessary for treating nervous and inflammatory diseases such as, neuralgia, rheumatism, apoplexy, asthma, cramp, catarrh, deafness, dyspepsia, earache, headache, hysteria, insomnia, kidney and liver troubles, obesity, paralysis, brain fag, and "that tired feeling".

A DOG'S LIFE

Kit contains * * * distemper cures—

CORN REMOVER

Set consists of bottle corn remover —

PAR. 6. By such statements and claims respondents represent, directly and by implication: That Professor Wingren's Voltaic Electric Insoles will relieve aching and sweaty feet, rheumatism, and pains in the hips; that the use of the Home Medical Battery will cure a large number and variety of diseases and ailments; that the distemper cure will cure distemper in dogs; and that the corn remover will eradicate corns.

The representations made by respondents, directly and by implication, used and disseminated by respondents in the manner described, with respect to the articles mentioned in paragraph 5 hereof, are exaggerated, misleading, and untrue and constitute false advertising.

In truth and in fact, Professor Wingren's Voltaic Electric Insoles are entirely lacking in therapeutic value; the use of the Home Medical Battery does not constitute an adequate or competent treatment for the diseases and ailments for which it is recommended by respondents; there is no orally administered remedy for canine distemper, which will in all, or even in many, cases result in a cure of the malady; the corn remover will not eradicate corns.

PAR. 7. In the manner and for the purposes aforesaid respondents have made claims with respect to the purported profits of those who purchase certain of their wares for resale, for use for profit, or for development or culture, and representations as to the factors necessary for the successful culture of certain of its seeds.

Typical of these claims and representations are the following:

BIG MONEY GROWING MEDICAL PLANTS

Ginseng Golden Seal

Two Big Money-Makers

A little space in your back yard will make you independent. Golden Seal roots are easy to grow. Any good well-drained soil is suitable for the growth of Golden Seal. At this rate an acre (of Golden Seal) would be worth \$12,960.00. Ginseng is another money-maker. On one acre of land Elias Kettle succeeded in producing a crop of Ginseng which he has contracted to sell for \$50,000.00.

WE SELL YOU A REGULAR INCOME! BIG PROFITS IN PEANUT VENDING MACHINES

These vendors pay for themselves in 30 days * * * all the money you make after that is profit for you!—In as short a time as one year you can build up a route of a hundred machines and have an independent income.

By said statements, and others of like import and effect, in their catalog and advertisements, respondents, directly and by implication, represent: That large earnings can be made by the culture of Ginseng and Golden Seal on small tracts of lands; that their culture is easy; and that any good, well-drained soil is suitable for the culture of Golden Seal; that the purchase of a peanut-vending machine is the purchase of a regular income; that such machines will, in all cases, return profits equal to their cost in 30 days and that from a small beginning the purchaser can during a year, build up a chain of 100 machines.

The representations made by respondents, directly and by implication, with respect to the advantages to be gained from the purchase of the articles mentioned in paragraph 7 hereof, are misleading. In truth and in fact, the profitable culture of Ginseng and Golden Seal is dependent upon climatic and soil conditions which are found prin-

cipally in the northern portion of the United States. A certain amount of shade for the plants is necessary. When raised from seed it requires approximately 7 years' growth for Ginseng and 4 years for Golden Seal before the plants are of commercial value and profits can be realized. The purchase of a peanut-vending machine is not the purchase of a regular income. Machines will not in all cases pay for themselves in 30 days or a few weeks, and there is no assurance that chains of 100 profitable machines can be developed from small beginnings within a year.

PAR. 8. The use by respondents of the foregoing false, deceptive, and misleading statements, representations, and advertisements, with respect to their books of instruction, the proficiency and ability which will be acquired by purchasers who master the contents thereof and the quality, identity, effectiveness in use, curative and therapeutic value, and financial advantage, to be gained from the purchase of certain of its wares, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and, because of said erroneous and mistaken belief, to purchase substantial quantities of respondents' said wares.

As a result, trade has been diverted unfairly to the respondents from their competitors in said commerce who truthfully advertise their wares. In consequence thereof, injury has been, and is now being, done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. In the course and conduct of their business, as hereinbefore described, respondents, in soliciting the sale of and in selling and distributing certain of their merchandise in commerce, furnish and have furnished various devices and plans for merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondents was and is substantially as follows:

Respondents distribute and have distributed to the purchasing public in commerce, both push cards and their catalog containing illustrations of the said push cards and merchandise and an explanation of respondents' plan of selling merchandise and of allotting it as premiums or prizes. One of respondents' push cards has 100 small, partially perforated discs on the left side, and on the face of each of said discs is printed a feminine name. On the right side

of the card the same feminine names are set forth in ruled columns. The customer selects a name, punches out the disc, and inserts his name in the ruled column opposite the name of his selection. The push card also has a large master seal, within which is one of the feminine names appearing upon the perforated discs and in the ruled column. The push card bears legends or instructions as follows:

(Simulation of a rotary clock.)

WIN THIS ROTARY CLOCK

New Distinctive Beautiful Dependable

ONLY 10¢ PER PUNCH

Pay a Dime—Take Home a Clock—If You Win

WINNING NAME UNDER SEAL (SEAL)

Fill in your name opposite the girl's name you select

Sales of respondents' products by means of said push cards are made, and the said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondents furnish and have furnished various push cards and catalogs for use in the sale and distribution of their merchandise by means of games of chance, gift enterprises, or lottery schemes. The sales plan or method involved in connection with the sale of all of said merchandise by means of the said push cards is the same as that hereinabove described, varying only in detail.

PAR. 10. The persons to whom respondents furnish the said push cards use the same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise, and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method, is a practice of a sort which is contrary to an established public policy of the Government of the United States, and is in violation of the criminal laws.

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 an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who

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Order

sell or distribute merchandise in competition with the respondents, 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 lot, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to 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 method by respondents because of said element of chance has a tendency and capacity to, and does, unfairly divert trade to respondents from their said competitors who do not use the same or an equivalent method, and as a result thereof, substantial injury is being, and has been, done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 respondents, in which answer respondents admit all of the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Alfred Johnson Smith, Paul Smith, and Arthur Smith, individually and as copartners trading as Johnson-Smith & Co. or under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly that persons can acquire proficiency in, or mastery of, any art, science, or language, or any ability, power, or quality, through or by means of any course of instruction, book, or other literature of respondents, when such is not the fact.

2. Representing directly or indirectly that purchasers of respondents' merchandise will obtain, by reason of such purchase, a financial profit or advantage greater than the financial profit or advantage which is in fact obtained by purchasers of such merchandise under normal conditions and circumstances.

3. Representing directly or indirectly that purchases of such merchandise are certain to obtain financial profit or advantage by reason of the purchase of such merchandise.

4. Supplying to, or placing in the hands of, others punchboards, push or pull cards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

5. Mailing, shipping, or transporting to agents or to distributors or members of the public punchboards, push or pull cards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

6. Selling or otherwise disposing of any merchandise by the use of punchboards, push or pull cards, or other lottery devices.

It is further ordered, That said respondents, Alfred Johnson Smith, Paul Smith, and Arthur Smith, individually and as copartners trading as Johnson-Smith & Co., or under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, either the purchase of certain devices now designated by the names of "Professor Wingren's Voltaic Electric Insoles" and "Home Medical Battery" or any other devices of substantially similar composition or construction whether sold under those names, or any other names, or the purchase of certain medicines now designated as distemper cures and corn remover, or any other medicines composed of similar ingredients or possessing substantially similar therapeutic qualities, whether sold under those designations or any other designations, or disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said

devices or medicines which advertisements represent directly or through implication: That the said insoles will relieve aching or sweaty feet, rheumatism, or pains in the hips; that the said electric battery constitutes an adequate or competent treatment for scrofula, ulcers, cancers, or other malignant growths, enlarged tonsils, granulated eyelids, swollen glands, and similar complaints, nervous and inflammatory diseases such as neuralgia, rheumatism, apoplexy, asthma, cramp, catarrh, deafness, dyspepsia, earache, headache, hysteria, insomnia, kidney and liver troubles, obesity, paralysis, and brain fag; that the so-called distemper cures will cure distemper in dogs, or that the so-called corn remover will eradicate corns.

It is further ordered, That 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.

IN THE MATTER OF
**MUTUAL PRINTING COMPANY, IN ITS OWN NAME AND
RIGHT, AND TRADING AS MUTUAL SALES PROMOTION
SERVICE**

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

Docket 3166. Complaint, June 29, 1937—Decision, Mar. 2, 1939

Where a corporation engaged in selling its sales stimulator or sales-promotion plan or trade-promotion cards, which were so designed and arranged that their use constituted lottery scheme or gift enterprise when used by retail merchants in promoting and increasing sales of merchandise of such merchants to consuming public, and which included (1) groups of cards arranged for punching out \$5 in trade, or \$10 in trade, as case might be, and which had enclosed or concealed within their so-called secret panels, for disclosure when total amount provided for on cards had been punched out, legends entitling chance holder of card to amounts ranging, in trade, from 20 cents to \$5 for the \$5 cards, and from 40 cents to \$10 for the \$10 cards, and (2) other groups intended for use by proprietors of service stations in sales of oil and gas aggregating \$17, and providing for awards ranging from 1 quart of oil to 25 quarts thereof, or for equivalent—

Sold to retail customers assortments of such sales promotion or trade cards, together with a variety of display posters and advertising matter for use of such retailer customers in use and distribution of said cards, and together with punch for canceling numbers arranged around the border thereof to indicate amount of sale made in each instance, and with suggestion for use of such cards by its retail merchant customers, who distributed same to their own customers and prospective customers and honored awards shown under secret panels thereof, and thereby knowingly supplied to and placed in the hands of others means of operating lotteries, games of chance, or gift enterprises, contrary to public policy, and in competition with those who are opposed to such methods and refrain therefrom;

With result that many of the consuming public, by reason of lot or chance feature connected with its said cards, were induced to deal with or purchase merchandise from retailers using said cards in preference to purchasing from merchants using sales-booster schemes or plans or devices of competitors which had connected with them no element of lot or chance, and with further result, by reason of such last-mentioned fact, that many of such merchants, who cannot use more than one type of sales-promotion or price-concession card or coupon at the same time, were induced to purchase its said cards in preference to devices or plans of competitors, and trade was thereby diverted from them to it, competitors aforesaid who refrain from use of such methods were put to competitive disadvantage, and sales of competing sales plans or promotion schemes or premium cards or coupons by competitors were injuriously affected; to the prejudice and injury of the public and competitors, and in restraint upon, and to the detriment of, freedom of fair and legitimate competition;

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Mr. Norman Asher and *Mr. Lester Asher*, 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 Mutual Printing, Inc., a corporation in its own name and right, and trading as Mutual Printing Co., Inc., and Mutual Sales Promotion Service, 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 is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 751 East Sixty-fourth Street, Chicago, Ill. The respondent, trading as Mutual Printing Co., Inc., and as Mutual Sales Promotion Service, is now, and for some time last past has been engaged in the manufacture of sales-promotion cards and in the sale and distribution thereof to retail merchants, 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 Chicago, State of Illinois, 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 1 year last past, a course of trade and commerce by said respondent in such sales-promotion cards 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 with individuals engaged in the manufacture of sales-promotion cards, trade cards, discount cards, premium cards, coupons and trading stamps, 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 cards so designed and arranged as to involve the use of a lottery scheme or gift enter-

prise when used by retail merchants in promoting and increasing sales of their merchandise to the consuming public.

The respondent manufactures and distributes several groups of sales-promotion cards, but they all involve the same lottery scheme or gift enterprise and vary only in detail. The sales-promotion cards in one such group are herein described for the purpose of showing arrangement, design, and principle involved. On the front, such cards are as follows:

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Under the secret panel is the following:

When Properly Punched, Good for
20 Cents
IN TRADE

The secret panel referred to on the said card is partially perforated to indicate where it may be opened, but until the said panel is opened, the legend thereunder is effectively concealed from the holder of the said card. The said legends under the secret panel vary in amount from 20 cents to \$5. The legend under the secret panel is effectively concealed until the panel has been opened and the amount which the holder of said card will receive in trade is thus determined wholly by lot or chance. On the reverse or back of the said sales promotion cards is the following language:

NO BLANKS—AWARDS UP TO \$5.00

These awards are given in appreciation of your patronage. When this card is fully punched, present same to us intact. We will then open the Secret Panel. You will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THE SECRET PANEL, THIS CARD BECOMES VOID.

BUY ALL YOUR NEEDS FROM US—YOU MAY BE A BIG WINNER
(MERCHANT'S ADVERTISEMENT)

Other cards manufactured and distributed by the respondent provide for recording the sale of \$10 worth of merchandise by the numbers arranged around the border of the card and provide for the winning of amounts up to \$10 by the legends under the secret panel. In some groups, the legends begin with 20 cents and go to \$10, and in other groups, they begin with 40 cents and go to \$10.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 3. The retail merchants to whom respondent sells assortments of said sales-promotion cards, distribute the same to their customers and prospective customers and honor the awards as shown under the secret panel of said cards. One method advocated or suggested by respondent and used by a substantial number of retail merchant customers is as follows: The cards are distributed free to customers and prospective customers of said retail merchants and when purchases are made, punches corresponding to the amount of such purchases are made around the margin of said card and when all the numbers around the margin of said card are punched, the secret panel is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the said secret panel, free of charge.

PAR. 4. There are in competition with respondent, various manufacturers, and distributors of sales-promotion cards, premium cards, price-concession cards, coupons and trading stamps, which when used by retail merchants do not involve a lottery scheme or gift enterprise. By reason of the lottery scheme or gift enterprise connected with the distribution and use of the respondent's said cards, many retail merchants are induced to purchase respondent's said cards in preference to the devices manufactured and distributed by respondent's competitors and trade is thus diverted to respondent from its said competitors.

PAR. 5. The consuming public are induced to deal with or purchase merchandise from retail merchants, using respondent's cards in preference to retail merchants using the devices of respondent's competitors, because of the lottery scheme or gift enterprise connected with respondent's said cards. By reason thereof, retail merchants are induced to purchase respondent's said cards in preference to devices of respondent's competitors and trade is thus diverted to respondent from its said competitors.

PAR. 6. The use by the respondent of said method in designing and arranging its said cards is a practice of the sort which the com-

mon law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has a dangerous tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude 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, lottery scheme, or gift enterprise.

Many persons, firms, and corporations who make and sell various cards or devices for promoting or increasing sales of retail merchants are unwilling to offer for sale or sell cards or devices so designed and arranged as above alleged or otherwise designed and arranged as to involve a game of chance, lottery scheme, or gift enterprise and such competitors therefrom.

PAR. 7. The respondent, in shipping the said cards to its customers, assorts and packs them so that such customers know the amount of award stated under the secret panel, thus the retail merchants to whom respondent sells its cards are enabled to perpetrate a fraud on their customers. This practice has the capacity and tendency to induce and does induce retail merchants to purchase respondent's said cards in preference to card or devices of respondent's competitors.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 29, 1937, issued its complaint in the above-entitled proceeding and caused same to be served upon the respondent, Mutual Printing Co., a corporation, trading in its own name and right and trading as Mutual Sales Promotion Service (named in the complaint herein as Mutual Printing, Inc., a corporation in its own name and right, and trading as Mutual Printing Co., Inc., and Mutual Sales Promotion Service), charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent entered its appearance

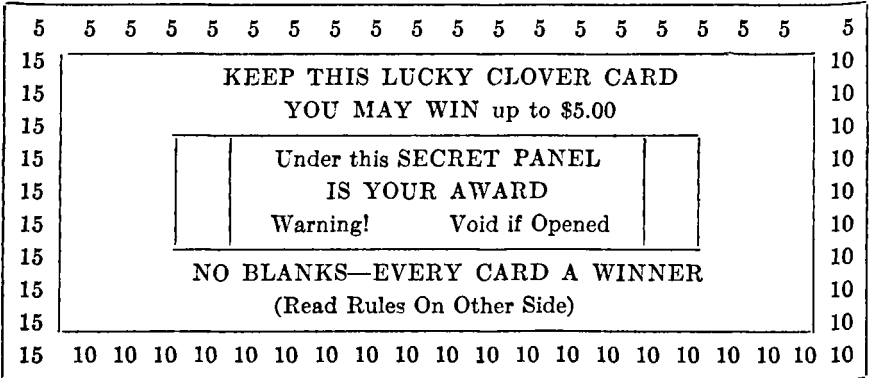
herein on August 20, 1937, and filed an answer to said complaint. Testimony was taken and evidence received at Chicago, Ill., on May 13, 1938, in support of the charges stated in the complaint, at the instance of Henry C. Lank, and D. C. Daniel, counsel for the Commission, and testimony was taken and evidence received on May 18, 1938, on behalf of said respondent at the instance of its counsel, Norman Asher, before William C. Reeves, an examiner for said Commission, all of which testimony has been reduced to writing and filed in the office of the Commission together with numerous pieces of documentary evidence received as exhibits. Briefs were filed by counsel for the Commission and counsel for the respondent. Counsel for the respondent waived oral argument. Thereafter, this proceeding came on for final hearing before the Commission upon the complaint herein and the answer thereto, the testimony taken and evidence received, and the briefs of counsel for the Commission and the respondent, and the Commission having duly considered the same and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The corporate name of the respondent is Mutual Printing Co. It has carried on business under its own corporate name and also under the name and style of Mutual Sales Promotion Service. It was organized in 1929 under the laws of the State of Illinois, with principal place of business at Chicago in said State. Since its organization it has been engaged in the business of selling what it terms a sales stimulator or sales-promotion plan which has been sold by it to retail merchants in various States of the United States and respondent has caused the printed matter intended for use in the operation of said plan to be transmitted from its place of business in Chicago, Ill., through and into or into various other States of the United States, to the respective purchasers thereof, and in the course and conduct of its said business has been and is now in active competition with various persons and partnerships and other corporations also engaged in the sale of various types of sales stimulators or sales-promotion plans, in commerce among several of the 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 cards so designed and arranged that their use constitutes a lottery scheme or gift enterprise when used by retail merchants in promoting and increasing

sales of the merchandise of such merchants to the consuming public. One type of the cards so sold by respondent is substantially as follows:



Under the secret panel is the following :

When properly Punched, Good For
20 Cents
IN TRADE

The secret panel referred to on the said card was partially perforated to indicate where it might be opened, but until said panel was opened, the legend thereunder was effectively concealed from the holder of said card. The said legends under the secret panel varied in amount from 20 cents to \$5. Thus, the amount which the holder of said card would receive in trade was determined wholly by lot or chance.

On the reverse or back of said sales-promotion cards was the following:

NO BLANKS—AWARDS UP TO \$5.00

These awards are given in appreciation of patronage. When this card is fully punched, present same to us intact. We will then open the secret panel. You will receive the award printed thereon **ABSOLUTELY FREE. SHOULD YOU OPEN THE SECRET PANEL, THIS CARD BECOMES VOID. BUY ALL YOUR NEEDS FROM US—YOU MAY BE A BIG WINNER.**

(MERCHANT'S ADVERTISEMENT)

PAR. 3. Each of the cards included in one of the groups sold by respondent is intended for use in sales of merchandise aggregating \$5 and the cards in such group provide for awards ranging from 20 cents in trade to \$5 in trade; the cards in other groups sold by respondent are intended for use in sales of merchandise aggregating

\$10 and provide for awards ranging from 40 cents in trade to \$10 in trade. Other groups sold by respondent are intended for use by proprietors of service stations in sales of oil and gas aggregating \$17 and provide for awards ranging from 1 quart of oil to 25 quarts of oil, or their equivalent. Respondent furnishes its customers with a variety of display posters and advertising matter to be used by such customers in the use and distribution of such cards, also furnishes such customers with a punch for canceling the numbers arranged around the border of such cards to indicate the amount of the sale made in each instance.

The retail merchants to whom respondent sells, and has sold, assortments of said sales-promotion cards or trade cards, distribute the same to their customers and prospective customers, and honor the awards as shown under the secret panel of said cards. One method advocated or suggested by respondent and used by a substantial number of retail merchant customers of respondent is as follows: The cards are distributed free to customers and prospective customers of said retail merchants and when purchases are made numbers corresponding to the amount of such purchase are punched from the margin of said card and when all the numbers around the margin of said card are punched the secret panel is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the secret panel, without additional charge.

PAR. 4. Employees or officers of concerns manufacturing and distributing trading stamps and other trade booster cards not involving a lot or chance feature were called as witnesses and testified in this matter. The Commission finds that manufacturers and distributors of trading stamps, 99 cents and other price-concession cards, and premium coupons are in competition with the respondent and the business of such concerns is competitive with the business of the respondent. Retail merchants desiring to install some plan by which to boost sales of their merchandise cannot use more than one type of sales-promotion or price-concession card or coupon at the same time and retail merchants purchasing respondent's merchandise are not then in the market for other trade-booster schemes or plans which do not involve a lot or chance feature.

The lot or chance feature connected with respondent's cards has the capacity to and does induce many of the consuming public to deal with or purchase merchandise from retail merchants using respondent's cards in preference to retail merchants using the sales-booster schemes or plans or devices of respondent's competitors which have connected with them no element of lot or chance and by reason of this last-mentioned fact many retail merchants are induced to purchase

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respondent's said cards in preference to devices or plans of respondent's competitors, and trade is thus diverted to respondent from its said competitors.

PAR. 5. The use of respondent's cards by retail merchants by the methods described herein constitutes a lottery, game of chance, or gift enterprise, and the sale of such cards by respondent and their use by customers of respondent, as described, is contrary to public policy. The Commission finds that competitors of respondent are opposed to such methods and refrain therefrom. Such competitors are thereby put to a competitive disadvantage.

PAR. 6. The respondent, in selling and distributing said cards, has knowledge that they are, and will be, used by its customers in the operation of a lottery, game of chance, or gift enterprise. The respondent thus supplies to and places in the hands of others the means of operating lotteries, games of chance, and gift enterprises. The sale and distribution of such cards by the respondent injuriously affects the sale of competing sales plans or sales-promotion schemes or premium cards or coupons by competitors of respondent, and the use of such methods by the respondent in the sale and distribution of its merchandise is prejudicial and injurious to the public and to respondent's competitors, and is a restraint upon, and a detriment to, the freedom of fair and legitimate competition.

PAR. 7. In the latter part of 1936 and the early part of 1937 respondent received and filled each month from 400 to 750 orders for groups of the Lucky Clover cards. Respondent has thus sold and distributed substantial quantities of said sales promotion cards in commerce between and among various States of the United States.

CONCLUSION

The acts and practices of the respondent as set forth in the foregoing findings are all to the prejudice and injury of the public and to competitors of the respondent and constitute unfair methods of competition in commerce within the intent and meaning of the provisions of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, testimony, and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the said complaint and in opposition thereto, briefs filed herein (respondent 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Mutual Printing Co., a corporation in its own name and right and trading as Mutual Sales Promotion Service (named in the complaint herein as Mutual Printing, Inc., a corporation in its own name and right, and trading as Mutual Printing Co., Inc., and Mutual Sales Promotion Service), its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of sales promotion cards or any other sales promotion plans or schemes in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing sales promotion cards or any other articles of merchandise so designed that their use by retail merchants constitutes or may constitute the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others sales promotion cards or sales promotion plans or schemes or any other articles of merchandise which are used or which may be used without alteration or rearrangement thereof to conduct a lottery, game of chance or gift enterprise, when distributed to the consuming public.

3. Furnishing or supplying to dealers display posters or circulars or other advertising literature bearing legends or statements informing the public as to the manner in which said sales promotion cards or other lottery devices are to be or may be distributed and used.

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

DR. W. B. CALDWELL, INC.

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

Docket 2957. Complaint, May 1, 1937¹—Decision, Mar. 8, 1939

Where a corporation engaged in manufacturing a liquid laxative medicinal preparation which it designated as "Dr. Caldwell's Syrup Pepsin," "Syrup Pepsin," and "Syrup of Pepsin," and which included as ingredients syrup and pepsin as vehicle for senna and cascara sagrada, active ingredients therein and long used singly or in combination as laxatives and long in common use as such, and in selling and distributing its said preparation to wholesale and retail dealers in the various States and in the District of Columbia for resale to purchasing public, and in distributing also to the public in various States and in said District sample bottles in substantial quantity, in response to invitations in its advertising to send for such samples, and, as aforesaid engaged, in substantial competition with others engaged in sale and distribution of medicinal and other preparations designed, intended, and used in treatment of ailments and conditions for which it recommended use of its said product—

- (a) Represented, in advertisements thereof which it caused to be disseminated in commerce through newspapers and other publications circulated throughout the United States, and in continuities broadcast from radio stations of extrastate audience, that its said preparation was a liquid laxative and that physicians and hospitals preferred such laxatives, facts being constipation is not a disease or ailment, but symptom thereof, there are numerous drugs having laxative and cathartic properties prescribed by doctors in treatment of such condition, dependent upon age and condition of patient and reaction thereof to drug or drugs used, and physicians do not prefer such laxatives because of their liquidity, but use or prescribe type of laxative depending solely on diagnosis of patient and do not use a liquid unless thus indicated ;.
- (b) Represented, as aforesaid, that patients returning from hospitals do so with their systems functioning properly and normally for the reason that liquid laxatives are used in such institutions, facts being patients do not always return from confinement therein with their systems thus functioning and for aforesaid reason, many patients suffering from constipation return from hospital confinement with their systems continuing to function improperly and abnormally, and successful treatment of patients suffering from such condition in hospitals is not dependent upon use of liquid laxative solely because of liquidity thereof ;
- (c) Represented that liquid laxative generally used was its said product, and that it was not a habit-forming laxative but, on the contrary, would correct laxative habit caused by use of other such products, facts being its said preparation was not the liquid laxative generally used or prescribed by hospitals and physicians and used by members of the public, it was habit-forming in sense that continued use of any laxative is habit-forming, and use thereof in place of other laxatives did not correct habit of taking such products ;

¹ Amended.

Syllabus

- (d) Represented, as aforesaid, that use of said preparation restored and maintained health by regulating the system and causing it to function properly and normally, facts being, while use thereof would produce laxative or cathartic effect, depending on amount of dosage, the system was not, because of such effect, restored to normal working order or to functioning properly, use thereof did not cure cause of constipation, but relieved such condition as symptom of the ailment, and there are many conditions of the body in which constipation, result of many factors including lack of exercise, diet, patients' habits, general condition, and resistance toward disease, and occupation, is not a factor or symptom which disturbs the normal working order of the system and for the treatment of which its said preparation has no therapeutic value;
- (e) Designated and described such preparation in its statements and representations as "Dr. W. B. Caldwell's Syrup of Pepsin" and "Syrup of Pepsin" without qualification, and caused to be placed on containers thereof, sold and distributed by it as above set forth, in large type, words "Syrup Pepsin" and, in smaller type, words "Combined With" and "Laxative Senna Compound," facts being pepsin is without therapeutic value as laxative or relief from constipation, is administered alone in abnormal cases in which there is deficiency thereof in amount of such substance secreted in the stomach, is very rarely prescribed by physicians, as having, according to concensus of medical profession, very little, if any, therapeutic value, and is not ingredient of preparation upon which such value of said preparation depends, which, by reason of the small amount thereof, has very little, if any, value as method of administering such substance to the system;

With capacity and tendency—

(1) To cause members of the purchasing public who are uninformed as to therapeutic value of pepsin to have erroneous and mistaken belief that pepsin contained in said product, which is not a syrup of pepsin, pepsin syrup, essence of pepsin, or any other type of pepsin, due to the fact that physiological effects thereof are due to senna and cascara sagrada ingredients and not other, has therapeutic value in treatment of conditions for which it recommended use of its said preparation or as laxative or cathartic and constipation treatment;

(2) To cause such members as are informed as to value and purpose of pepsin to have erroneous and mistaken belief that said substance is principal active ingredient therein and that it is a pepsin preparation designed, intended, and used for purposes for which product in which it is principal active ingredient would be used, and that use of said preparation is competent and effective method of administering pepsin to the system; and

(3) To mislead and deceive members of purchasing public as to identity of very powerful and active senna and cascara sagrada ingredients in said preparation which, by reason of presence therein, cannot be taken in volume or at frequent intervals, and to conceal presence thereof; and

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that its said preparation was as represented and possessed properties claimed and represented, and would accomplish results indicated, and of thereby diverting trade unfairly to it

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from its competitors in such commerce who truthfully advertise their respective preparations and their effectiveness; to the injury of competition in commerce:

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

Before *Mr. John L. Hornor* and *Mr. Robert S. Hall*, trial examiners.
Mr. W. L. Taggart for the Commission.

Rogers, Ramsey & Hoge, of New York City, 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 Dr. W. B. Caldwell, Inc., a corporation, 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 thereto would be in the public interest, hereby issues its amended complaint stating the charges in that respect as follows:

PARAGRAPH 1. Respondent is now, and at all material times hereinafter mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business at Monticello, in said State. Up to about the year 1933, respondent was named and did business under the name of Pepsin Syrup Co., but on or about the year 1933, respondent's name was changed to Dr. W. B. Caldwell, Inc., and since said time it has done business in that name. It has been and is engaged in the manufacture and sale of a medicinal preparation, a laxative, liquid in form, called "Dr. Caldwell's Syrup Pepsin."

PAR. 2. Respondent's method of distribution of its medicinal preparation has been and is through the sale to wholesalers and retailers, pursuant to which sales, and as a part thereof, shipment has been and is made from respondent's place of business into and through the various States of the United States. From time to time it also sells and ships direct to the consuming public throughout the United States a so-called trial-sized bottle of its said product. Also in its advertising it invites the public to send for samples of its medicinal preparation, and in response to requests, ships a substantial quantity of its preparation from its place of business to such members of the public, resident in States other than the State of the origin of such shipments.

PAR. 3. In the sale and distribution of its product, and to create consumer demand therefor, and to induce wholesalers and retailers to purchase the same for resale to the public, respondent advertises said preparation in newspapers, magazines, periodicals, and other mediums, and by radio broadcast.

PAR. 4. In the course of said advertising respondent has made and makes statements and representations of and concerning its said preparation in substance as follows:

1. That Dr. Caldwell's Syrup Pepsin is a doctor's prescription. This representation is and has been made in the following words:

Syrup pepsin is not just another product on the market, it is the personal prescription of a practicing physician.

It is a doctor's prescription, now so widely known that you can get it all ready for use at any drug store, anywhere.

Be sure you take a doctor's prescription. There is a world-famous one for you at your druggists, Dr. Caldwell's Syrup Pepsin.

Why should you ever allow yourself to fall victim to the habit of taking ordinary machine-made laxatives? No doctor would think of prescribing that kind, and there is no reason why you should have to take anything except a doctor's prescription when one is ready for you always at your drug store. It's Caldwell's Syrup Pepsin.

and other similar statements and representations.

2. That it is a liquid laxative and that physicians and hospitals prefer a liquid laxative. This representation is made in the following words:

Syrup pepsin is the kind (of laxative) your own doctor would approve of—a liquid and that's the kind they use in hospitals.

Doctors use liquid laxatives, hospitals use the liquid form. If it is best for their use, it is best for home use. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

Why do people come home from a hospital with bowels working like a well-regulated watch? The answer is simple, and it's the answer to all your bowel worries if you will only realize it; many doctors and hospitals use liquid laxatives. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

Do what the doctors do to relieve this condition (constipation). Doctors use liquid laxatives, and keep reducing the dose until the bowels need no help at all. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

The reason doctors prescribe liquid laxative is that only a liquid can be measured to suit your own particular need.

It's a *liquid* so that you can take just what you need—not too much and not too little as might happen if you'd take an automatically decided amount of some other laxative.

and other similar statements and representations.

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3. That it is not a habit-forming laxative, but on the contrary will correct the laxative habit caused by taking other laxatives. This representation is made in the following words:

To keep well you've got to have a well-regulated system, one that doesn't depend on medicines constantly to keep in good order. Keep away from these habit laxatives. Take syrup Pepsin instead.

You can reduce the amount as your system gets back to work. Notice that I said "your system gets back to work." That's the best thing about Dr. Caldwell's Syrup Pepsin, it does not get you into the habit of taking medicine regularly, but instead it encourages normal bodily functions.

Of course everyone needs a good laxative occasionally, but you must be very careful to use the kind that won't trick you into becoming a slave of medicine. Take a doctor's advice, take a liquid laxative, take Dr. Caldwell's Syrup Pepsin.

Syrup Pepsin not only does not get you into the medicine taking habit, but often has rescued people from that very dangerous habit.

Don't be discouraged if you have the medicine taking habit, let Syrup Pepsin help you become independent again.

Syrup Pepsin, the mild, natural, liquid laxative has freed many people of the medicine habit.

Syrup Pepsin has helped many and many a person to get over the medicine taking habit.

No matter how much of a habit you have gotten into, Syrup Pepsin will help you to become independent of that medicine taking habit.

Get a bottle at your druggist's and know you are safe from the risk of forming a dangerous habit.

and other similar statements and representations.

4. That it restores and maintains health by regulating and putting and maintaining the system in normal working condition. This representation is made in the following words:

Its chief function is to train your system to get back to work for itself.

One that will get you well, and safely and surely.

You need Syrup Pepsin to keep your system in good normal working order, so that it will be easier for you to conquer a cold.

Any mother knows the reason when her child stops playing, eats little, is hard to manage, *Constipation*. But what a pity so few know the sensible way to set things right. * * * A liquid laxative is the answer, mothers. The answer to all your worries over constipation. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

If he's got a cold, it's mighty important that he get some Syrup Pepsin right away. If all mothers realized that, there'd be fewer cases of bad colds, it's the clean system that's the healthy one.

When you feel dopey and sluggish after too much heavy food, it's well to remember that Dr. Caldwell's Syrup Pepsin will restore normal working order in your system very quickly, easily, gently.

The usually rich food (of the holidays) and the general festivity, is liable to put even the most regular system just a little out of kilter. * * * And all it takes to put you right with the world again is just a spoonful of Syrup Pepsin.

It brings relief so naturally no one should ever need to suffer the handicap of a badly regulated system.

A danger sign you should never neglect is a condition of sluggishness in your system. To protect your good health, keep your system regular. * * * Syrup Pepsin helps you get well, it encourages your system to get back to normal working order.

Syrup Pepsin will clear away that dull, listless feeling. There's no need to go around feeling only half fit when you can so easily regain energy and good spirits.

and other similar statements and representations.

PAR. 5. The representations concerning the said preparation, as set out in preceding paragraph 4 hereof, are false and misleading in the following particulars: As to subparagraph 1, the assertion and representation that respondent's preparation is a doctor's prescription is misleading and deceptive in that, in fact and in general public understanding, a doctor's prescription is his treatment for a diagnosed condition. Constipation is not an ailment in itself but is a symptom of an ailment, and may arise from any one or more of a number of ailments. There are a number of classes of laxatives and purgatives, some of which are suitable in certain cases and would be unsuitable in other cases. In some cases some classes would be positively harmful. A physician doesn't prescribe a laxative without regard to the physical condition of the patient, his age, the ailment which gave rise to the constipation, and other considerations. Dr. W. B. Caldwell did not prescribe or administer Syrup Pepsin in all cases of constipation, under all conditions, or to patients of all ages.

In regard to subparagraph 2, the assertion and representation that doctors and hospitals prefer the liquid laxative, because of its liquidity, is false. A laxative is not chosen by a physician or hospital because it is liquid, or rejected because it is not liquid, but the considerations set out in the preceding subparagraph of this paragraph are the determining factors. The assertion and representation that persons come home from the hospital in normal working order is false in fact, and whether or not such is the case depends upon what condition or ailment gave rise to the constipation, and whether that condition or ailment was successfully treated at the hospital. Syrup Pepsin is not the liquid laxative generally used by physicians, hospitals, or members of the public.

As to subparagraph 3, the assertion and representation that respondent's said preparation will not cause the patient to form the laxative habit but will on the contrary relieve such habit, if already formed from taking other laxatives, is untrue in fact. All laxatives are habit-forming, including the ingredients contained in respondent's

medicine, in that the use of a laxative tends to cause the intestines to depend upon such stimulants and to continue to bring about action of the bowels an increasing dose is required. The change from another laxative to respondent's preparation would not and does not work a change in the dependence of the bowels upon the laxative, but will and can only continue the tendency, the bowels depending on the new laxative instead of the old.

As to subparagraph 4, it is not the function or effect of respondent's product or of any laxative to bring about a return to normal conditions or restore normal working order in the bowels or system, or relieve from the effects of overeating, or in any manner regulate the bowels or system. The function and effect of a laxative is only to give temporary relief while treatment to correct the condition that brought about the constipation is proceeding.

PAR. 6. Said product is referred to in said advertising literature and on the labels of its containers and otherwise as Dr. W. B. Caldwell's Syrup of Pepsin. The respondent directly and through implication represents by the use of the designation and name, Dr. W. B. Caldwell's Syrup of Pepsin, that said product contains pepsin in an active state as an enzyme, and that the product is either a composition of pepsin, of syrup of pepsin, pepsin syrup, or essence of pepsin, and that the product is composed of a major element of pepsin so as to have the effect of a pepsin compound.

In truth and in fact said product is composed of only 4 grains of pepsin which is merely a dusting of pepsin. The product is not and does not act as an enzyme. It is not a syrup of pepsin, pepsin syrup, essence of pepsin, or any other type of pepsin.

The product does not contain a sufficient amount of pepsin to justify the trade name "Syrup of Pepsin," and the reference to the product under this name is misleading as to the composition of the preparation.

PAR. 7. There are in the United States other persons, partnerships, and corporations who manufacture and sell and ship to the wholesale and retail drug trade and to members of the public, in interstate commerce, laxative preparations, who correctly advertise and represent and who have correctly advertised and represented their preparations and their functions and effects. With these other persons, partnerships, and corporations, respondent has been and is in direct and substantial competition. Respondent's misrepresentations of and concerning its product, as hereinabove set forth, has had and has the capacity and tendency to lead the public to erroneously believe that respondent's preparation is more than a mere laxative, that it is a regulator of the bowels and system, that it is a doctor's

prescription for the cure of constipation from whatever cause it may arise, and that it has not the effect of forming the so-called laxative habit as have other competing preparations; that it contains pepsin as an enzyme and that the product is either a composition of pepsin, syrup of pepsin, pepsin syrup, or essence of pepsin, and further, that the product is composed of a major element of pepsin so as to have the effect of a pepsin compound. Such misrepresentations and such erroneous belief has the capacity and tendency to cause the public to prefer respondent's product, and thus to divert business from respondent's said competitors to respondent, to the substantial injury of said competitors.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 1st day of May 1937, issued and thereafter served its amended complaint in this proceeding upon respondent, Dr. W. B. Caldwell, 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 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 W. L. Taggart, attorney for the Commission, and in opposition to the allegations of the complaint by Rogers, Ramsey and Hoge, attorneys for respondent, before John L. Hornor and Robert S. Hall, 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 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 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, Dr. W. B. Caldwell, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, and having its office and principal place of business at Monticello, in the State of Illinois. Respondent, prior to the year 1933, conducted its business under the name of Pepsin Syrup Co. On or about the year 1933 respondent's name was changed to Dr. W. B. Caldwell, Inc.

PAR. 2. Respondent is now and has been during all the times mentioned herein engaged in the business of manufacturing, selling, and distributing a laxative medicinal preparation, liquid in form, designated as "Dr. Caldwell's Syrup Pepsin," "Syrup Pepsin," and "Syrup of Pepsin." Respondent sells said preparation to wholesale and retail dealers situated in the various States of the United States and in the District of Columbia for resale to the purchasing public, and causes the said preparation when sold by it to be transported from its aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois and in the District of Columbia. Respondent also distributes to members of the public situated in various States of the United States and in the District of Columbia a sample bottle of its said preparation. Respondent in its advertising, disseminated as hereinafter described, invites members of the public to send for samples of its preparation and in response to such requests distributes a substantial quantity of its preparation from its aforesaid place of business in the State of Illinois to said members of the public situated in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other corporations and with partnerships, firms, and individuals selling and distributing medicinal and other preparations designed and intended for, and used in, the treatment of the ailments and conditions of the human body for which respondent recommends the use of its said preparation.

PAR. 4. The ingredients contained in respondent's said preparation are pepsin, syrup, senna, cascara sagrada, and peppermint oil aromatics. The respondent uses the syrup and pepsin in the preparation as a vehicle for the senna and cascara sagrada, which are the active

ingredients contained in the preparation. Pepsin has no therapeutic value as a laxative. Senna and cascara sagrada, when used singly or in combination in formulas such as respondent's preparation, are laxatives and such drugs have been in common use as laxatives for many years.

Respondent's preparation is sold and distributed by the respondent in bottles of different sizes. Each bottle of such preparation is placed in a carton wrapper and pamphlets containing statements and representations relative to the preparation are wrapped around the bottle and also placed in the carton. On the front of each carton is printed and on one side of each bottle there is also pasted a label with a picture depicting a bearded man. Above such picture in large letters are printed the words, "Dr. W. B. Caldwell's" and underneath such words, also in large letters, there are the words "Syrup Pepsin," and in smaller letters the words "Combined With," and then in larger letters the words "Laxative Senna Compound." In smaller letters on such label are also the words "Alcohol 4½ Percent," and in smaller letters the words "Syrup Pepsin, Composed of Pepsin: 4 gr. Syrup: 1 oz. Senna Compound Composed of Senna, Cascara Sagrada, Peppermint Oil Aromatics, No Mercurials or Narcotics." There are also printed on such labels the words "A Laxative For Constipation." There are also printed on the side of such packages the words "*Dr. Caldwell's Syrup Pepsin Combined With Laxative Senna Compound.*"

PAR. 5. In the course and conduct of its said business and for the purpose of inducing the purchase of its said preparation, respondent has caused advertisements containing representations and claims with respect to said preparation, the therapeutic properties thereof, and the results that may be expected to be obtained from the use thereof, to be disseminated in commerce among and between the various States of the United States and in the District of Columbia. The respondent has caused such advertisements to be inserted in newspapers and other publications having a circulation throughout the various States of the United States and in the District of Columbia and in continuities broadcast from radio stations which have power to and do convey the programs emanating therefrom to the listeners thereto situated in various States of the United States and in the District of Columbia, and has caused such advertisements to be published and circulated by other means among and between the various States of the United States and in the District of Columbia. Among and typical of the representations contained in said advertisements, so used and disseminated, are the following:

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Syrup Pepsin is the kind (of laxative) your own doctor would approve of—a liquid and that's the kind they use in hospitals.

Doctors use liquid laxatives, hospitals use the liquid form. If it is best for their use, it is best for home use. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

Why do people come home from a hospital with bowels working like a well-regulated watch? The answer is simple, and it's the answer to all your bowel worries if you will only realize it; many doctors and hospitals use liquid laxatives. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

Do what the doctors do to relieve this condition (constipation). Doctors use liquid laxatives, and keep reducing the dose until the bowels need no help at all. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

The reason doctors prescribe liquid laxative is that only a liquid can be measured to suit your own particular need.

It's a *liquid* so that you can take just what you need—not too much and not too little as might happen if you'd take an automatically decided amount of some other laxative.

To keep well you've got to have a well-regulated system, one that doesn't depend on medicines constantly to keep in good order. Keep away from these habit laxatives. Take Syrup Pepsin instead.

You can reduce the amount as your system gets back to work. Notice that I said "your system gets back to work." That's the best thing about Dr. Caldwell's Syrup Pepsin, it does not get you into the habit of taking medicine regularly but instead it encourages normal bodily functions.

Of course everyone needs a good laxative occasionally but you must be very careful to use the kind that won't trick you into becoming a slave of medicine. Take a doctor's advice, take a liquid laxative, take Dr. Caldwell's Syrup Pepsin.

Syrup Pepsin not only does not get you into the medicine taking habit, but often has rescued people from that very dangerous habit.

Don't be discouraged if you have the medicine taking habit, let Syrup Pepsin help you become independent again.

Syrup Pepsin, the mild, natural, liquid laxative has freed many people of the medicine habit.

Syrup Pepsin has helped many and many a person to get over the medicine taking habit.

No matter how much of a habit you have gotten into, Syrup Pepsin will help you to become independent of that medicine taking habit.

Get a bottle at your druggist's and know you are safe from the risk of forming a dangerous habit.

Its chief function is to train your system to get back to work for itself.

One that will get you well, and safely and surely.

You need Syrup Pepsin to keep your system in good normal working order, so that it will be easier for you to conquer a cold.

Any mother knows the reason when her child stops playing, eats little, is hard to manage, *Constipation*. But what a pity so few know the sensible way to set things right. * * * a liquid laxative is the answer, mothers. The answer to all your worries over constipation. * * * The liquid laxative generally used is Dr. Caldwell's Syrup Pepsin.

If he's got a cold, it's mighty important that he get some Syrup Pepsin right away. If all mothers realized that, there'd be fewer cases of bad colds, it's the clean system that's the healthy one.

When you feel dopey and sluggish after too much heavy food, it's well to remember that Dr. Caldwell's Syrup Pepsin will restore normal working order in your system very quickly, easily, gently.

The usually rich food (of the holidays) and the general festivity, is liable to put even the most regular system just a little out of kilter. * * * And all it takes to put you right with the world again is just a spoonful of Syrup Pepsin.

It brings relief so naturally no one should ever need to suffer the handicap of a badly regulated system.

A danger sign you should never neglect is a condition of sluggishness in your system. To protect your good health, keep your system regular * * * Syrup Pepsin helps you get well, it encourages your system to get back to normal working order.

Syrup Pepsin will clear away that dull, listless feeling. There's no need to go around feeling only half fit when you can so easily regain energy and good spirits.

PAR. 6. Through the use of the statements and representations hereinbefore set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in the treatment of the ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented directly and by implication, among other things, that such preparation is a liquid laxative and that physicians and hospitals prefer a liquid laxative; that patients returning from hospitals do so with their systems functioning properly and normally for the reason that liquid laxatives are used in hospitals; that the liquid laxative generally used is Dr. Caldwell's Syrup Pepsin; that such preparation is not a habit-forming laxative but on the contrary will correct the laxative habit caused by the use of other laxatives; and that the use of such preparation restores and maintains health by regulating the system and causing the system to function properly and normally.

PAR. 7. The aforesaid representations by the respondent, used and disseminated in the manner above described, are grossly exaggerated, misleading, deceptive, and untrue, and constitute false advertisements.

The respondent represents to the purchasing public situated in various States of the United States and in the District of Columbia by means of the advertisements disseminated as aforesaid, that such preparation is a competent and effective laxative and cathartic and is a competent and effective treatment for constipation. Constipation is not a disease or an ailment in itself but is the symptom of a disease or ailment. There are numerous drugs having laxative and

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cathartic properties which are prescribed by medical doctors in the treatment of constipation. The particular drug or drugs which are prescribed by medical doctors in the course of such treatment depend upon the age and condition of the patient and the reaction of the patient to the drug or drugs used. The respondent's preparation is merely a formula containing the ingredients, senna and cascara sagrada, which have laxative properties.

PAR. 8. In truth and in fact physicians and hospitals do not prefer liquid laxatives because of their liquidity. The type of laxative used or prescribed by hospitals and physicians depends solely on their diagnosis of the patient. A liquid laxative is not used or prescribed by hospitals and physicians unless a diagnosis of the patient indicates a liquid laxative should be used.

PAR. 9. In truth and in fact patients do not always return from confinement in hospitals with their systems functioning properly and normally for the reason that a liquid laxative was used by the patient in the hospital. Many patients suffering from constipation return from confinement in hospitals with their systems continuing to function improperly and abnormally. The successful treatment of patients suffering from constipation in hospitals is not dependent upon the use of a liquid laxative solely because of its liquidity.

In truth and in fact respondent's said preparation is not the liquid laxative generally used or prescribed by hospitals and physicians and used by members of the public.

PAR. 10. The aforesaid statement and representation by the respondent that the use of such preparation is not habit-forming but on the contrary will correct the laxative habit caused by the use of other laxatives, is false and misleading. In truth and in fact the use of such preparation is habit-forming in the sense that the continued use of any laxative is habit-forming. The use of respondent's preparation in place of the use of other laxatives does not correct the habit of taking laxatives.

PAR. 11. The aforesaid statement and representation by the respondent that the use of such preparation will restore and maintain health by regulating and maintaining the human system and causing the system to function properly and normally is false and misleading. The use of such preparation will produce a laxative or cathartic effect depending on the amount of the dosage, but the human system is not, because of such laxative or cathartic effect, restored to normal working order or to functioning properly. The use of such preparation does not cure the cause of the constipation but it relieves the symptom of the ailment which is the constipation. Constipation is the result of many factors, including lack of exercise, diet, the habits

of the patient, his general condition, and resistance toward disease, and his occupation. There are many conditions of the human body, in which constipation is not a factor or a symptom, which disturb the normal working order of the system, and for the treatment of which respondent's preparation has no therapeutic value.

PAR. 12. Respondent in the aforesaid statements and representations, disseminated as aforesaid, designates and describes such preparation as "Dr. W. B. Caldwell's Syrup of Pepsin" and "Syrup Pepsin," without qualification. Respondent also causes to be placed on the containers of such preparation, sold and distributed as aforesaid, labels bearing the legend "Syrup Pepsin," in large type, and in smaller type the words "Combined with Laxative Senna Compound."

The designation by the respondent of such preparation as "Syrup of Pepsin" and "Syrup Pepsin" is deceptive and misleading. Pepsin has no therapeutic value as a laxative or as a relief from constipation. Pepsin is secreted normally in the stomach for the digestion of proteins and is commonly used as a vehicle in medicinal preparations for other drugs. The use by the respondent of the pepsin and syrup in said preparation is as a purported vehicle for the senna and cascara sagrada contained in said preparation. In abnormal cases in which there is a deficiency in the amount of pepsin secreted in the stomach, a treatment for such condition is to administer pepsin alone and not in a preparation with other drugs, especially with laxatives, as in respondent's preparation. Physicians very rarely prescribe pepsin, however, for it is the consensus of the medical profession that pepsin has very little, if any, therapeutic value.

Respondent sells and distributes its preparation as a laxative and a cathartic and for the treatment of constipation. Pepsin is not one of the ingredients of the preparation upon which the therapeutic value of the preparation depends. Neither the Pharmacopoeia nor the National Formulary recognizes the title "Syrup of Pepsin" or the title "Syrup Pepsin" or the title "Syrup of Pepsin Combined with Laxative Senna Compound" as descriptive of any preparation. Such preparation is not a syrup of pepsin, pepsin syrup, essence of pepsin, or any other type of pepsin for the reason that the physiological effects of the preparation are not due to its content of pepsin but to the ingredients senna and cascara sagrada.

The use by the respondent of the words "Syrup Pepsin" and "Syrup of Pepsin" to describe and designate such preparation in which the active ingredients are senna and cascara sagrada is a misleading and deceptive designation and description of such preparation and has the capacity and tendency to cause members of the

purchasing public who are uninformed as to the therapeutic value of pepsin to have the erroneous and mistaken belief that the pepsin contained in such preparation has therapeutic value in the treatment of the conditions for which respondent recommends the use of such preparation, to wit: as a laxative or cathartic and for the treatment of constipation.

The use by the respondent of the aforesaid terms to describe and designate such preparation has the capacity and tendency to cause members of the purchasing public who are informed as to the value and purpose of the use of pepsin to have the erroneous and mistaken belief that pepsin is the principal active ingredient in such preparation—that such preparation is a pepsin preparation—that such preparation is designed, intended, and used for the purposes for which a preparation in which pepsin is the principal active ingredient would be used, and that the use of such preparation is a competent and effective method of administering pepsin to the human system. In truth and in fact the use of such preparation has very little, if any, value as a method of administering pepsin to the human system. The maximum dosage of such preparation recommended by the respondent is two tablespoonfuls. The average dose of pepsin recommended by the Pharmacopoeia of the United States is 8 grains. Respondent's preparation contains from $2\frac{1}{4}$ to 4 grains of pepsin per ounce of fluid. The maximum amount of pepsin contained in the maximum dosage of such preparation is 4 grains of pepsin, which is one-half of the pepsin contained in the average dosage of pepsin recommended by the United States Pharmacopoeia. Such preparation cannot be taken in volume or at frequent intervals because of the cathartic properties, senna and cascara sagrada, contained in such preparation.

Senna and cascara sagrada are very powerful drugs and the use of respondent's said preparation in a sufficient dosage will produce a cathartic effect. The use of the aforesaid terms to describe a preparation in which the pepsin serves as a purported vehicle for the senna and cascara sagrada is misleading and deceptive as to the composition of such preparation and the use of such term or terms, in the manner aforesaid, has the capacity and tendency to mislead and deceive members of the purchasing public as to the identity of the active ingredients contained in such preparation and to conceal the presence of the powerful drugs contained in such preparation, to wit: senna and cascara sagrada.

PAR. 13. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparation has had,

and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's said preparation is as represented and possesses the properties claimed and represented and will accomplish the results indicated. As a result trade has been diverted unfairly to respondent from its competitors in said commerce who truthfully advertise their respective preparations and the effectiveness in use of their respective preparations. 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 and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondent, testimony, and other evidence taken before John L. Hornor and Robert S. Hall, 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 W. L. Taggart, counsel for the Commission, and by Edward S. Rogers of Rogers, Ramsey & Hoge, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Dr. W. B. Caldwell, Inc., its officers, representatives, agents, and employees, directly or through any other corporate device, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of a liquid laxative medicinal preparation now designated as "Syrup Pepsin," "Dr. Caldwell's Syrup Pepsin," and "Syrup of Pepsin," or any other preparation containing substantially similar ingredients or possessing similar therapeutic properties, whether sold under those names or any other names, do forthwith cease and desist from:

1. Representing that doctors and hospitals prefer liquid laxatives unless such representation is qualified by an equally conspicuous statement that any such preference is limited to those cases where diagnosis of the disorder and the patient's reaction to various types of laxatives indicate that the use of a liquid laxative is preferable.

2. Representing that the use of liquid laxative causes systems to function properly and normally unless such representation is qualified by an equally conspicuous statement that any such result obtained will be limited to those cases where the individual user's reaction to laxatives indicates that the use of a liquid laxative is preferable.

3. Representing that the use of said preparation restores or maintains health or regulates the system or causes the system to function properly and normally other than to the extent which such results may be accomplished by a laxative or cathartic temporarily relieving constipation.

4. Representing through the use of the word "pepsin" alone or in association with any other word or words in the designation or description of such preparation or in any other manner or through any other means or device, that said preparation owes its laxative and cathartic properties to its pepsin content.

5. Using the word "pepsin" alone or in association with any other word or words to designate, describe, or refer to any preparation which does not contain a sufficient quantity of pepsin, as an active ingredient, to possess substantial therapeutic value by reason of such pepsin content.

6. Using any term or name to describe, designate, or refer to such preparation containing senna and cascara sagrada as its active ingredients, which name or term conceals or deceptively minimizes the presence of such ingredients.

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

W. J. BUSH & 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 3339. Complaint, Feb. 18, 1938—Decision, Mar. 8, 1939

Where a corporation engaged in manufacture and sale of two lines of perfumes, colognes, and other toilet preparations—

- (a) Affixed tags on the straw-covered bottles containing its "Mitcham Lavender," on which was printed trade name "Potter & Moore's Mitcham Lavender, London," and, in less conspicuous type, words "Printed in England," and attached to straw at bottom of bottle container thereof metal tag bearing label "Made in England," and set forth words, on stopper of bottle, "Potter & Moore, England," and made similar representations with reference to place of manufacture in connection with sale of its "Potter & Moore's Lavender Smelling Salts"; and
- (b) Set forth words, on paper labels on outside cardboard containers of its "Grenoville" perfume, "Extrait Oelliet Fane, Petit Model," followed by words "Grenoville, Paris, Made in France," and caused words "Oelliet Fane, Grenoville, Paris" to appear on side of smaller carton enclosed within large cardboard container, on which said matter first above referred to was set forth, and displayed same words on label affixed to glass container within said last-mentioned carton, and impressed on the glass at the bottom of the bottle the words "Grenoville, Made in France";

Notwithstanding fact said domestic preparations or products were respectively neither made by London firm of Potter & Moore, or Paris firm of Grenoville, long possessed of enviable reputations for excellence of their respective products, and were not made in England or France and imported into the United States, for which more costly products particularly, as for imported goods, wares, and merchandise, there is preference on part of substantial portion of members of buying public;

With effect of misleading customers and prospective customers into erroneous belief that its said perfumes and products, as aforesaid, were made by Potter & Moore of London and Grenoville of Paris, and with result that trade was unfairly diverted to it from its competitors who actually import into the United States from foreign countries perfumes and similar compounds there made, or who make, in this country, perfumes and similar products for sale to buying public and truthfully represent and advertise place of manufacture and quality thereof:

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

Before *Mr. Edward E. Reardon*, trial examiner.

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

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Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that W. J. Bush & 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, W. J. Bush & 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 place of business located at Linden, in the State of New Jersey.

Respondent is now, and for some time last past has been, engaged in the manufacture, sale, and distribution of two certain lines of perfumes, colognes, and other toilet preparations, one being known as the Grenoville line of perfumes, and the other as the Potter & Moore line of Mitcham Lavender perfumes or toilet waters.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said products, when sold, to be transported from its principal place of business in New Jersey to purchasers located in States other than the State of New Jersey, and respondent now maintains a constant current of trade in commerce in said products' manufactured, distributed, and sold by it between and among the various States of the United States and in the District of Columbia.

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

PAR. 4. In the course and conduct of its business as described in paragraph 1 hereof, certain of respondent's perfume products so sold bear labels, tags, and markings purporting to describe and refer to the place of origin or manufacture of said products in the following manner:

On the straw-covered bottle containing Mitcham Lavender respondent has affixed tags on which are printed the trade name "Potter & Moore's Mitcham Lavender, London" and in less conspicuous type, the words "Printed in England." Respondent also causes to be attached to the straw at the bottom of said bottle container a metal tag bearing the legend "Made in England," and on the stopper of said bottle is printed the words "Potter & Moore, England." Similar representations with reference to the origin of respondent's products are made

by tags, markings, and labels by respondent in connection with the sale of Potter & Moore's Lavender Smelling Salts.

On the paper label affixed by respondent to the outside cardboard container of Grenoville Perfume appears the legend "Extrait Oelliet Fane, Petit Model," followed by the words "Grenoville, Paris, Made in France." Enclosed in this cardboard container respondent places its perfume encased in a cylindrical carton. On the side of the carton respondent has caused the words "Oelliet Fane, Grenoville, Paris" to be printed. The same words also appear on a label affixed to the glass container within the cylindrical carton, and impressed in the glass at the bottom of the bottle are the words, "Grenoville, Made in France."

The use of such statements as hereinabove set forth serve as representations that said products were, and are, manufactured or compounded in England and France, respectively, and imported into this country.

The use of the above representations on the cartons and containers of respondent's products has the capacity and tendency to and does mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that the products of respondent are manufactured or compounded in France and England and imported into the United States. In truth and in fact none of the above referred to products of respondent are manufactured or compounded in France or England, but are manufactured or compounded in the United States.

PAR. 5. There is a preference on the part of certain of the buying public for goods, wares, and merchandise which are manufactured in foreign countries and imported into the United States; this is particularly true regarding perfumes, colognes, and other toilet preparations manufactured in France and such goods so manufactured and imported command from that said part of the purchasing public a higher price in the market of the United States than do domestic perfumes, colognes, and other toilet preparations of the same nature and description.

PAR. 6. For many years the English firm of Potter & Moore of Tysson Street, Dalston, London, and the French firm of Grenoville, 42 Rue de Paradis, Paris, France, have enjoyed enviable reputations for the excellence of their products. Among the products of the aforesaid Potter & Moore is Potter & Moore's Mitcham Lavender, and among the products of the aforesaid Grenoville is Grenoville's Perfumes. The above representations made by respondent have the capacity and tendency to, and do, mislead customers and prospective customers into the erroneous belief that the products of respondent

as described by the tags, labels, and markings affixed to said products are manufactured by Potter & Moore of London and Grenoville of Paris. In truth and in fact said products are not manufactured by Potter & Moore of London and by Grenoville of Paris, but are compounded by respondent corporation.

As a result of the use of the aforesaid labels, tags, and markings, trade has been unfairly diverted to respondent from its competitors who actually import into the United States from foreign countries perfumes and similar products manufactured in foreign countries, or who manufacture or compound perfumes and similar products in this country for sale to the buying public and who truthfully represent and advertise the place of origin and quality of their products.

PAR. 7. The acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, 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 the Federal Trade Commission Act, the Federal Trade Commission, on the 18th day of February 1938, issued and served its complaint in this proceeding upon said respondent, W. J. Bush & Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a stipulation of facts, signed and executed by the respondent through R. R. Webb, its treasurer, and W. T. Kelly, 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 charges stated in the complaint, or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts, its conclusion based hereon, 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, accepted, and filed, and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, W. J. Bush & Co., Inc., is a corporation, organized, existing, and doing business by virtue of the laws of the State of New York, which has its principal place of business located at New York, N. Y., and a factory located at Linden, N. J.

Until June 15, 1938, and for more than 1 year prior to that date, respondent has been engaged in the manufacture and sale of two lines of perfumes, colognes, and other toilet preparations, one being known as the Grenoville line of perfumes and the other as the Potter and Moore line of Mitcham Lavender perfumes or toilet waters.

PAR. 2. The respondent caused its products when sold to be transported from its factory in Linden, N. J., to purchasers located in States other than the State of New Jersey and respondent maintained a constant course of trade in commerce in its products manufactured and sold by it between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the conduct of its business the respondent has been in substantial competition with other corporations and with individuals and firms likewise engaged in the business of manufacturing and selling perfumes, colognes, and other toilet preparations in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the conduct of its business, as herein set out, certain of respondent's perfume products bear labels, tags, and markings purporting to describe and refer to the place of manufacture of said products in the following manner:

On the straw-covered bottle containing Mitcham Lavender, the respondent has affixed tags on which are printed the trade name "Potter & Moore's Mitcham Lavender, London," and in less conspicuous type the words "Printed in England." The respondent has also caused to be attached to the straw at the bottom of the bottle container a metal tag bearing the label "Made in England," and on the stopper of the bottle are printed the words "Potter & Moore, England." Similar representations with reference to the place of manufacture of respondent's products are made by tag markings and labels by respondent in connection with the sale of Potter & Moore's Lavender Smelling Salts.

On the paper label attached by respondent to the outside cardboard container of Grenoville perfume appears the label "Extrait Oelliet Fane, Petit Model," followed by the words "Grenoville, Paris, Made in France." Enclosed in this cardboard container respondent places its perfume encased in a carton on the side of which respondent has caused the words "Oelliet Fane, Grenoville, Paris" to be printed.

The same words also appear on a label affixed to the glass container within the carton and impressed in the glass at the bottom of the bottle are the words "Grenoville, Made in France."

The use of such statements as herein set out serve as representations that respondent's products were and are manufactured in England or France and imported to the United States.

The use of the above representations by the respondent has the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that the products of respondent are manufactured in France and England and are imported into the United States. In truth and in fact none of the respondent's products are manufactured in France or England but are manufactured in the United States.

PAR. 5. There is a preference on the part of certain members of the buying public for goods, wares, and merchandise which are manufactured in foreign countries and imported into the United States. This is particularly true regarding perfumes, colognes, and other toilet preparations manufactured in France and imported into the United States. Such goods so manufactured and imported command from the purchasing public a higher price on the markets in the United States than do those perfumes, colognes, and other toilet preparations of the same nature and description.

PAR. 6. For many years the English firm, Potter & Moore of Tysson Street, Dalston, London, and the French firm of Grenoville, 42 Rue de Paradis, Paris, France, have enjoyed enviable reputations for the excellence of their products.

The representations herein set-out and used by respondent have the capacity and tendency to, and do, mislead customers and prospective customers into the erroneous belief that respondent's perfumes, herein described, are manufactured by Potter & Moore of London and Grenoville of Paris. In truth and in fact the products of the respondent are not manufactured by Potter & Moore of London and Grenoville of Paris but are manufactured by the respondent in the United States.

As a result of the use by respondent of the representations herein set out, trade has been unfairly diverted to respondent from its competitors who actually import into the United States from foreign countries perfumes and similar compounds manufactured in foreign countries or who manufacture perfumes and similar products in this country for sale to the buying public and who truthfully represent and advertise the place of manufacture and the quality of their products.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and a stipulation as to the facts entered into between the respondent herein and W. T. Kelly, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, W. J. Bush & Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of its perfumes, colognes, and other toilet preparations, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the words "Made in England," or any other word or words indicating English origin, on the labels, cartons, or containers of perfumes, colognes, and other toilet preparations made or compounded in the United States.

2. Using the words or names "Potter & Moore's Mitcham Lavender of London," or "Potter & Moore, England," or any other word, words, or names which may indicate English origin on the labels, cartons, or containers of perfumes, colognes, and other toilet preparations made or compounded in the United States without clearly and conspicuously stating in immediate connection or conjunction therewith that such products are made or compounded in the United States.

3. Using the words "Made in France" or any other word or words indicating French origin on the labels, cartons, or containers of perfumes, colognes, and other toilet preparations, made or compounded in the United States.

4. Using the words or names "Extrait Oelliet Fane" or "Grenoville, Paris," or any other word, words, or names which may indicate French origin on the labels, cartons, or containers of perfumes,

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colognes, and other toilet preparations, made or compounded in the United States without clearly and conspicuously stating in immediate connection or conjunction therewith that such products are made or compounded in the United States.

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

STAR TOBACCO COMPANY, SPERLING TOBACCO COMPANY, KEY STORES, 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 3412. Complaint, May 9, 1938—Decision, Mar. 8, 1939

Where three corporations and two individuals (1) engaged as jobbers, distributors, and wholesalers in selling tobacco and confectionery products to retailers in the Wilkes-Barre trading area, and in purchasing such products, which are made in many different States and some of which include certain widely known, nationally advertised articles in constant demand by consuming public and necessary largely or entirely to tobacco and confectionery retail business, from manufacturers located, for the most part, in States other than Pennsylvania, and (2) constituting a large and important part of jobbers, distributors, and wholesalers of such products in said large and important outlet and market therefor to manufacturers, producers, and distributors located therein, and to those located in other States, and particularly in the eastern half of the United States, and constituting (3) in said area, a group sufficiently influential in the trade as to be able to control and influence flow of trade and commerce within, to and from such area, and (4) naturally and normally in competition with each other in the conduct of their respective businesses, and in actual and potential competition with others engaged in purchase of such products from manufacturers in other States and in resale thereof in Pennsylvania and neighboring States; and four individuals who held responsible executive positions in such concerns or businesses and directed policies and practices thereof—

Entered into and carried out an agreement, combination, understanding, and conspiracy among themselves to prevent competing dealers in such products in said area from obtaining the same directly from the manufacturers thereof, and, incident thereto and as a part thereof, to fix and establish uniform prices at which aforesaid concerns should sell their products, and prevent others from selling at lower prices, and thus suppress, hinder, and lessen competition in substantial interstate commerce in sale and distribution of such products in said territory; and for the accomplishment of said purposes—

- (a) Exacted and procured pledges and other promises and agreements from their said concerns and from manufacturers and producers of such products serving said area, to the effect that such dealers, manufacturers, and producers would support, adhere to, and enforce program above set forth;
- (b) Used, in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats thereof, and other united action against confectionery manufacturers, dealers, and others to induce and require them, and to attempt to induce and require them, to agree and conform to and support and enforce their program and refrain from selling such products to other dealers, jobbers, distributors, and wholesalers not parties thereto; and

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(c) Engaged in other acts, cooperative and concerted action, and coercive methods and practices in promoting, establishing, and carrying out the program of their said agreement, combination, conspiracy, and undertaking, as above set forth;

With result that the capacity, tendency, and effect of such agreement, combination, confederation, etc., as above set forth, and said acts and practices in said trade area and other related or connected territory, were—

(1) To close and curtail sundry outlets within said State for direct and immediate sale by manufacturers located in other States of goods shipped by them into said State, and to monopolize in said concerns business of dealing in and distributing tobacco and confectionery products;

(2) To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said tobacco and confectionery industry in such State, and deprive 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 operate as a restraint upon and detriment to the freedom of fair and legitimate competition therein; and

(3) To obstruct the natural flow of commerce in the channels of interstate trade and oppress, eliminate, and discriminate against small business enterprises which were or had been engaged in selling tobacco and confectionery products, and to prejudice and injure the public and manufacturers, producers, dealers, jobbers, distributors, and wholesalers and others who did not conform to their said program:

Held, That such acts and practices in entering into and carrying out said agreement, understanding, combination, and conspiracy, and in doing the acts and things done thereunder, and in furtherance thereof as above set-out, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. P. C. Kolinski for the Commission.

Mr. Andrew Hourigan, of Wilkes-Barre, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Star Tobacco Co., Sperling Tobacco Co., Key Stores, Inc., Frank Klein, an individual, trading under the firm name and style of Klein Candy Co., Meyer H. Abelson, an individual, trading under the firm name and style of Wilkes-Barre Cigar & Tobacco Co., Edward A. Stroud, Sr., William Smulyan, Haskell Ginsburgh, and Robert Jaffee, hereinafter referred to as respondents, have violated the provisions of the 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. Five of the respondents named in the caption hereof are corporations or individuals engaged as jobbers, distributors, and

wholesalers in selling tobacco and confectionery products to retail dealers in that portion of the State of Pennsylvania known as the Wilkes-Barre trading area. These respondents are all located in the city of Wilkes-Barre, in the State of Pennsylvania and are the following: Respondent Star Tobacco Co., is a corporation organized under the laws of the State of New Jersey, with its office and principal place of business located at 39 South Pennsylvania Avenue in said city; respondent Sperling Tobacco Co. is a corporation organized under the laws of the State of Pennsylvania, with its office and principal place of business located at 47 South Pennsylvania Avenue in said city; respondent Key Stores, Inc., is a corporation organized under the laws of the State of Delaware, with its office and principal place of business located at 80 East Northampton Street in said city; respondent Frank Klein, is an individual trading under the firm name and style of Klein Candy Co., with his principal place of business located at 254 East Market Street in said city; respondent Meyer H. Abelson, is an individual trading under the firm name and style of Wilkes-Barre Cigar & Tobacco Co., with his principal place of business located at 192 East Northampton Street in said city.

The remaining four respondents named in the caption hereof are individuals who are employed by and hold responsible offices with the trade respondents named herein, and in such capacities direct the policies of the above-named trade respondents, and engage in organization and trade association activities concerning the tobacco and confectionery industry; said individual respondents are: Edward A. Stroud, Sr., president and treasurer of respondent Star Tobacco Co., and located at 39 South Pennsylvania Avenue, in said city; William Smulyan, president of respondent Sperling Tobacco Co., and located at 47 South Pennsylvania Avenue in said city; Haskell Ginsburgh, vice president of respondent Key Stores, Inc., and located at 80 East Northampton Street in said city; and respondent Robert Jaffee, employee of respondent Meyer H. Abelson, and located at 192 East Northampton Street in said city.

PAR. 2. The said tobacco and confectionery products industry includes among its products certain widely known nationally advertised articles for which the consuming public maintains a consistent demand. These nationally advertised tobacco and confectionery products are manufactured in many different States of the United States and the conduct of the aforesaid business requires the dealing in all or most of such products.

The trade respondents hereinbefore named purchase the aforesaid tobacco and confectionery products, in which they deal, directly and

immediately from manufacturers thereof located for the most part in States other than the State of Pennsylvania, and the manufacturers ship said products, when so purchased, from their respective places of business in such other States to said trade respondents in the State of Pennsylvania.

In the course and conduct of their aforesaid respective businesses, said trade respondents, but for the matters and things hereinafter set out, would be naturally and normally in competition with each other, and otherwise are in such competition with other individuals, partnerships, and corporations also engaged in the purchase of tobacco and confectionery products from aforesaid manufacturers located in States other than the State of Pennsylvania, and the resale thereof in the State of Pennsylvania and neighboring States.

The said trade respondents constitute a large and important part of the jobbers, distributors, and wholesalers in tobacco and confectionery products in the Wilkes-Barre trade area; and such trade respondents constitute a group so influential in the trade as to be able to control and influence the flow of trade and commerce in such products within, to and from said trade area. The volume of consumption of tobacco and confectionery products in said Wilkes-Barre trade area, and the volume of trade and commerce dealt in by said trade respondents in such products in, to and from said area constitute a substantial part of the trade and commerce of the United States in the tobacco and confectionery products industry. Said trade area is a large and important outlet and market for the sale of tobacco and confectionery products by manufacturers, producers, and distributors within said trade area and also by those in various other States, particularly those of the eastern half of the United States.

PAR. 3. In August 1937, or thereabouts, respondents named in paragraph 1 hereof, entered into, have since carried out, and are still carrying out an agreement, combination, understanding, and conspiracy among themselves, to prevent said competing dealers in tobacco and confectionery products, mentioned in paragraph 2 hereof, from obtaining tobacco and confectionery products directly from aforesaid manufacturers thereof; to fix and establish uniform prices at which said trade respondents should sell said products and to prevent others from selling at less prices and by and through the aforesaid means to suppress, hinder, and lessen competition in substantial interstate commerce in the sale and distribution of said products in the aforesaid territory served by respondents. To carry out the aforesaid purposes the respondents have done, among others, the following acts and things:

(a) Exacted and procured pledges and other promises and agreements from each such trade respondent and from manufacturers and producers of tobacco and confectionery products to the effect that such dealers, manufacturers, and producers would support, adhere to, and enforce the foregoing program of respondents set forth in paragraph 3 hereof.

(b) Used in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats of boycott, and other united action against confectionery manufacturers, dealers, and others to induce and require them, and to attempt so to induce and require them, to agree and conform to and to support and enforce the said program of respondents, and to refrain from selling said products to other dealers, jobbers, distributors, and wholesalers who were not parties to such program of respondents.

(c) Used and engaged in other acts, cooperative, and concerted action, and coercive methods and practices in promoting, establishing, and carrying out the foregoing program and agreement, combination, conspiracy, confederation, and undertaking hereinabove set forth.

PAR. 4. The capacity, tendency, and effect of said agreement, combination, conspiracy, confederation, and undertaking, and the said acts and practices of respondents set forth in paragraph 3 hereof are and have been in aforesaid Wilkes-Barre trade area and other related or connected territory, to close and curtail sundry outlets within the State of Pennsylvania for the direct and immediate sale by manufacturers located in other States of goods shipped by such manufacturers into the State of Pennsylvania; to monopolize, in said trade respondents, the business of dealing in and distributing tobacco and confectionery products; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said tobacco and confectionery industry in the State of Pennsylvania, 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; to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade; to oppress, eliminate, and discriminate against small business enterprises which were or had been engaged in selling and distributing tobacco and confectionery products; and to prejudice and injure the public and manufacturers, producers, dealers, jobbers, distributors, and wholesalers and others who did not conform to respondents' program.

PAR. 5. The acts and practices of the respondents as herein alleged are all to the prejudice of competitors of respondent as herein alleged public; have a dangerous tendency to and have actually hindered and prevented competition in the sale of tobacco and confectionery products in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained interstate commerce in tobacco and confectionery products, and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 9, 1938, issued, and on May 10, 1938, served, its complaint in this proceeding upon respondents Star Tobacco Co., Sperling Tobacco Co., Key Stores, Inc., Frank Klein, an individual trading under the firm name and style of Klein Candy Co., Meyer H. Abelson, an individual trading under the firm name and style of Wilkes-Barre Cigar & Tobacco Co., Edward A. Stroud, Sr., William Smulyan, Haskell Ginsburgh, and Robert Jaffee, 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 herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the 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, Star Tobacco Co., is a corporation organized under the laws of the State of New Jersey, with its office and principal place of business at 39 South Pennsylvania Avenue, Wilkes-Barre, Pa.

Respondent, Sperling Tobacco Co., is a corporation organized under the laws of the State of Pennsylvania, with its office and principal place of business at 47 South Pennsylvania Avenue, Wilkes-Barre, Pa.

Respondent, Key Stores, Inc., is a corporation organized under the laws of the State of Delaware, with its office and principal place of business at 80 East Northampton Street, Wilkes-Barre, Pa.

Respondent, Frank Klein, is an individual trading under the firm name and style of Klein Candy Co., with his principal place of business at 254 East Market Street, Wilkes-Barre, Pa.

Respondent, Meyer H. Abelson, is an individual trading under the firm name and style of Wilkes-Barre Cigar & Tobacco Co., with his principal place of business at 192 East Northampton Street, Wilkes-Barre, Pa.

The five above-named respondents are all engaged as jobbers, distributors, and wholesalers in selling tobacco and confectionery products to retail dealers in that portion of the State of Pennsylvania known as the Wilkes-Barre trading area. These five respondents will hereinafter be referred to as the trade respondents.

Respondent, Edward A. Stroud, Sr., president and treasurer of respondent Star Tobacco Co., is located at 39 South Pennsylvania Avenue, Wilkes-Barre, Pa.

Respondent, William Smulyan, president of respondent Sperling Tobacco Co., is located at 47 South Pennsylvania Avenue, Wilkes-Barre, Pa.

Respondent, Haskell Ginsburgh, vice president of respondent Key Stores, Inc., is located at 80 East Northampton Street, Wilkes-Barre, Pa.

Respondent, Robert Jaffee, employee of respondent Meyer H. Abelson, is located at 192 East Northampton Street, Wilkes-Barre, Pa.

The four respondents last above named are individuals employed by, and holding responsible executive positions with, the five trade respondents, and in such capacities these individuals direct the policies and practices of the trade respondents and represent such trade respondents in organization and trade association activities concerning the tobacco and confectionery industry.

PAR. 2. Tobacco and confectionery products are manufactured in many different States of the United States. Some of such products include certain widely known, nationally advertised articles for which the consuming public maintains a constant demand. The business of selling tobacco and confectionery products to retail dealers requires the dealing in all or most of such nationally advertised articles.

The above-named trade respondents purchase the tobacco and confectionery products in which they deal, directly from manufacturers located, for the most part, in States other than the State of Pennsylvania, and such products, when so purchased, are shipped from the

place of manufacture in other States, to said trade respondents in the State of Pennsylvania.

The trade respondents herein, in the conduct of their respective businesses, but for the matters and things hereinafter set-out, would be naturally and normally in competition with each other, and are in actual and potential competition with other corporations, partnerships, and individuals who are also engaged in the purchase of tobacco and confectionery products from manufacturers located in States other than the State of Pennsylvania, and the resale of such products in the State of Pennsylvania and neighboring States.

The five trade respondents herein constitute a large and important part of the jobbers, distributors, and wholesalers of tobacco and confectionery products in the Wilkes-Barre trade area, and they constitute a group sufficiently influential in the trade as thereby to control and influence the flow of trade and commerce in such products within, to and from such trade area. The volume of consumption of tobacco and confectionery products in the Wilkes-Barre trade area, and the volume of trade and commerce of the trade respondents in such products in, to, and from such trade area constitutes a substantial part of the trade and commerce of the United States in such industry. The Wilkes-Barre trade is a large and important outlet and market for the sale of tobacco and confectionery products by manufacturers, producers, and distributors located within the trade area, and also by those located in other States, particularly those of the eastern half of the United States.

PAR. 3. The respondents herein, during the month of August 1937, or thereabouts, entered into, carried out, and are still carrying out an agreement, combination, understanding, and conspiracy among themselves to prevent competing dealers in tobacco and confectionery products in the Wilkes-Barre trade area from obtaining such products directly from the manufacturers thereof. A part of such agreement was the fixing and establishing of uniform prices at which trade respondents in the Wilkes-Barre trade area should sell such products, and the prevention of other dealers from selling at less prices, and through this means to suppress, hinder, and lessen competition in substantial interstate commerce in the sale and distribution of such products in this territory. For the accomplishment of these purposes respondents have done the following acts:

Respondents exacted and procured pledges and other promises and agreements from trade respondents in the Wilkes-Barre trade area, and from manufacturers and producers of tobacco and confectionery products serving such area, to the effect that such dealers, manufac-

turers, and producers would support, adhere to, and enforce the program set forth in the above agreement.

Respondents used in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats of boycott, and other united action against confectionery manufacturers, dealers, and others to induce and require them, and to attempt to induce and require them to agree and conform to, and to support and enforce the program of respondents, and to refrain from selling such products to other dealers, jobbers, distributors, and wholesalers who were not parties to such program of respondents.

Respondents engaged in other acts, cooperative, and concerted action, and coercive methods and practices in promoting, establishing, and carrying out the program of the agreement, combination, conspiracy, confederation, and undertaking above set forth.

PAR. 4. The capacity, tendency, and effect of said agreement, combination, conspiracy, confederation, and undertaking, and the said acts and practices of respondents above set forth are and have been in aforesaid Wilkes-Barre trade area and other related or connected territory, to close and curtail sundry outlets within the State of Pennsylvania for the direct and immediate sale by manufacturers located in other States of goods shipped by such manufacturers into the State of Pennsylvania; to monopolize, in said trade respondents, the business of dealing in and distributing tobacco and confectionery products; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said tobacco and confectionery industry in the State of Pennsylvania, 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; to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade; to oppress, eliminate, and discriminate against small business enterprises which were or had been engaged in selling and distributing tobacco and confectionery products; and to prejudice and injure the public and manufacturers, producers, dealers, jobbers, distributors, and wholesalers and others who did not conform to respondent's program.

CONCLUSION

The acts and practices of the respondent in entering into and carrying out the agreement, understanding, combination, and conspiracy and in doing the acts and things done thereunder and in fur-

therance thereof as above set out are to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Star Tobacco Co.; Sperling Tobacco Co.; Key Stores, Inc., Frank Klein, an individual trading under the firm name and style of Klein Candy Co.; Meyer H. Abelson, an individual, trading under the firm name and style of Wilkes-Barre Cigar & Tobacco Co.; Edward A. Stroud, Sr.; William Smulyan, Haskell Ginsburgh, and Robert Jaffee, their officers, representatives, agents, and employees, do forthwith cease and desist from entering into and carrying out any understanding, agreement, combination, and conspiracy among themselves or with others for the purpose or with the effect of restricting, restraining, or monopolizing, or eliminating competition in the purchase and sale in interstate commerce or in the District of Columbia of tobacco and confectionery products, and as a part of such understanding, agreement, combination, or conspiracy from doing any of the following acts and things:

1. Fixing or establishing uniform prices at which respondents should sell tobacco, and confectionery products.

2. Using boycott, threats of boycott, either with or without other coercive methods, to persuade, induce, or compel manufacturers and dealers to refrain from selling confectionery products to competing dealers.

3. Employing other cooperative or coercive acts and methods in promoting and carrying out the aforesaid programs and policies, or similar programs and policies.

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

Docket 3590. Complaint, Sept. 15, 1938—Decision, Mar. 8, 1939

Where an individual engaged in sale and distribution of hosiery, watches, and other articles of merchandise; in soliciting the sale of and selling his said merchandise—

Distributed to public certain literature and instructions including push cards, order blanks, and circulars explaining plan of selling his said merchandise and of allotting it and other articles as premiums or prizes to operators of said push cards for use in distribution of his said products to the purchasing public, wholly by lot or chance, under a plan and in accordance with said card's explanatory legends by which amount paid was dependent upon number pushed by chance, as was customer's success or failure in securing article being thus disposed of or nothing other than chance, through selecting from list of feminine names displayed on card name, concealed number of which entitled selector to such article, or hosiery, as was maker of last sale; and

Supplied thereby and placed in hands of others means of conducting lotteries in sale of his said merchandise in accordance with aforesaid or similar sales plan involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance, or sale of chance to win by chance, or any other method contrary to public policy and in violation of criminal laws, and refrain therefrom;

With result that many persons were attracted by his said methods in sale and distribution of his merchandise, and element of chance involved therein, and were thereby induced to buy and sell his said products in preference to merchandise offered and sold by said competitors who do not use same or equivalent method and with effect of unfairly diverting trade to him from his said competitors; to the substantial injury of competition in commerce;

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

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Cyril J. Conrad,

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hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Cyril J. Conrad, is an individual with his principal office and place of business located at 2301 Sixth Avenue, Altoona, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of hosiery, watches, and other articles of merchandise to dealers. Respondent causes and has caused his products when sold to be transported from his aforesaid place of business in the State of Pennsylvania to purchasers thereof located in the various other States of the United States and in the District of Columbia at their respective points of location.

There is now and has been for some time last past a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent in soliciting the sale of and selling his merchandise in said commerce has adopted and pursued the following methods and practices:

Respondent distributes to the public certain literature and instructions including, among other things, push cards, order blanks, and circulars explaining respondent's plan of selling said merchandise and of allotting it and other articles of merchandise as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 81 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the name of the feminine name selected. Said push card has 81 small partially perforated disks marked "push" and immediately beneath each of said disks is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each of said disks is a number which is disclosed when the disk is pushed or separated from the card. The push card bears printed legends or instructions as follows:

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Pay Only 1¢ to 10¢ for
 SILK HOSE— No Higher
 Nos. 5—16—27—38 get Silk Hose

LAST SALE gets Silk Hose

| | |
|-------------------------------|--------------------|
| 1 to 10 pay what you draw | This card contains |
| Nos. ending in 1 pay 1¢ | 8 1¢ numbers |
| Nos. ending in 2 pay 2¢, etc. | 7 2¢ numbers |
| Nos. ending in 0 pay 10¢ | 7 3¢ numbers |
| | 7 each up to 10¢ |

NO WAITING

Only 1¢ to 10¢
 All-American-made
 Guaranteed Silk Hose

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends or instructions. Said merchandise prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. Persons who are not successful in selecting a disk containing one of the said numbers or the last number on said card receive nothing for their money other than the privilege of pushing a disk from said card. The said hosiery is thus distributed to the purchasing public wholly by lot or chance.

Respondent distributes and has distributed various push cards for use in the sale of his said products by means of a game of chance, gift enterprise, or lottery scheme but all of said push cards are similar to the card hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 sales plan in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan is a practice of the sort which is contrary to an established public policy of the Government of the United States and is in violation of the criminal laws.

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 an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and cor-

porations who sell and distribute merchandise in competition with respondent as above alleged are unwilling to adopt and use said methods or any methods involving a game of chance or the sale of a chance to win something by chance or any other methods that are contrary to public policy and in violation of the criminal laws and such competitors refrain therefrom. Many persons are attracted by said methods employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or equivalent methods, and, as a result thereof, substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 15, 1938, issued and thereafter served its complaint in this proceeding upon respondent, Cyril J. Conrad, 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission

having duly considered the 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 Cyril J. Conrad, is an individual with his principal office and place of business located at 2301 Sixth Avenue, Altoona, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of hosiery, watches, and other articles of merchandise to dealers. Respondent causes and has caused his products when sold to be transported from his aforesaid place of business in the State of Pennsylvania to purchasers thereof located in the various other States of the United States and in the District of Columbia at their respective points of location.

There is now and has been for some time last past a course of trade by respondent in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is in competition with other individuals and partnerships and with corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent in soliciting the sale of and selling his merchandise in said commerce has adopted and pursued the following methods and practices:

Respondent distributes to the public certain literature and instructions including, among other things, push cards, order blanks, and circulars explaining respondent's plan of selling said merchandise and of allotting it and other articles of merchandise as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 81 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the name of the feminine name selected. Said push card has 81 small partially perforated disks marked "push" and immediately beneath each of said disks is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each of said disks is a number which is disclosed when the disk is pushed

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or separated from the card. The push card bears printed legends or instructions as follows:

| | |
|------------------------|-----------|
| Pay Only 1¢ to 10¢ for | |
| SILK HOSE— | No Higher |
| Nos. 5—16—27—38 get | Silk Hose |

LAST SALE gets Silk Hose

| | |
|-------------------------------|--------------------|
| 1 to 10 pay what you draw | This card contains |
| Nos. ending in 1 pay 1¢ | 8 1¢ numbers |
| Nos. ending in 2 pay 2¢, etc. | 7 2¢ numbers |
| Nos. ending in 0 pay 10¢ | 7 3¢ numbers |
| | 7 each up to 10¢ |

NO WAITING

Only 1¢ to 10¢
All-American-made
Guaranteed Silk Hose

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends or instructions. Said merchandise prizes or premiums are allotted to the customers or purchasers in accordance with the above legends. Persons who are not successful in selecting a disk containing one of the said numbers or the last number on said card receive nothing for their money other than the privilege of pushing a disk from said card. The said hosiery is thus distributed to the purchasing public wholly by lot or chance.

Respondent distributes and has distributed various push cards for use in the sale of his said products by means of a game of chance, gift enterprise, or lottery scheme but all of said push cards are similar to the card hereinabove described and vary only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 sales plan in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan is a practice of the sort which is contrary to an established public policy of the Government of the United States and is in violation of the criminal laws.

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 an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations

who sell and distribute merchandise in competition with respondent as above found are unwilling to adopt and use said methods or any methods involving a game of chance or the sale of a chance to win something by chance or any other methods that are contrary to public policy and in violation of the criminal laws and such competitors refrain therefrom. Many persons are attracted by said methods employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or equivalent methods, and, as a result thereof, substantial injury is being, and has been, 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 aforesaid acts and practices of respondent as herein found 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 the Federal Trade Commission Act.

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 fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Cyril J. Conrad, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of hosiery, watches, or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of, others push or pull cards, punchboards, or other lottery devices for the purpose of enabling

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such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to agents or to distributors or members of the public push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards or punchboards, or other lottery devices.

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

W. M. JACOBSON DOING BUSINESS AS WONDER WOOD-
TEX COMPANY

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

Docket 3675. Complaint, Dec. 23, 1938—Decision, Mar. 8, 1939

Where an individual engaged in sale and distribution of wood pulp articles to retail dealers and operators of gift shops in the various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar articles in commerce and in said District, and including many who do not misrepresent their respective products, sales policies, or methods of doing business—

- (a) Represented, in statements which he caused to be disseminated in commerce among the various States and in said District, that his father was a wealthy retired citizen now engaged, as a hobby, in manufacture of said wood pulp articles sold and distributed by him, and that he was permitted by his father, and as latter's sole sales representative, to sell such articles with and on the understanding that he would not make any misrepresentations relative thereto and would not overcharge purchasers thereof, and invited prospective purchasers to visit his father's large Long Island estate, and gift show conducted by said individual in the Palmer House in Chicago, with all expenses paid by such individual;

Facts being said individual's father had been dead for many years prior to times mentioned, neither he nor his father ever made said articles, and his father did not have Long Island estate, nor did individual in question conduct gift shop, as aforesaid, at the Palmer House or elsewhere, and said statements and representations disseminated as above set forth were false, misleading, and untrue;

- (b) Represented that the prices for which purchasers from him could resell the articles which they thus bought were 50 to 100 percent more than the prices they paid therefor, and that such articles were similar to samples displayed to prospective purchasers, and that said individual had been referred to such prospects by satisfied customers of said individual;

Facts being purchasers could not thus resell such articles, but found it necessary to resell same at the prices paid therefor, articles shipped to purchasers were inferior to samples displayed prior to shipment, and said individual had not been referred to prospective purchasers by satisfied customers as above set forth; and

- (c) Represented that he exchanged articles purchased from him which were not sold readily for other articles which would thus sell, and that purchasers received from him exclusive territory for sale and distribution of his said articles, and that payment therefor could be made by deferred purchase plan whereby time of payment for articles not readily salable would be extended to conform to retail sales thereof, and that promissory notes signed by purchasers were merely evidence of the debt and in no case would be used by him as collateral for a loan or sold to third party;

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Facts being purchasers making such exchanges received back articles inferior in quality and quantity to those exchanged, did not receive exclusive territory for resale and distribution of his said articles, and he did not extend them time for payment of accounts as above set forth, and promissory notes signed by purchasers were resold to finance companies which immediately notified maker of note that same must be paid in full on due date; With effect of misleading and deceiving members of purchasing public in various States and in said District into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchasing substantial quantities of his said wood-pulp articles because of such belief, and with result that trade was diverted unfairly to him from his competitors in commerce as aforesaid, who truthfully advertise their respective products, sales policies, and methods of doing business, to the injury of competition in commerce:

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

Mr. Clark Nichols for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that W. M. Jacobson, an individual, trading and doing business as Wonder Wood-Tex Co., and hereinafter referred to as respondent, has violated the provisions of 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, W. M. Jacobson, an individual, is the sole owner and operator of Wonder Wood-Tex Co., with his business address at 308 East Fifty-first Street, Chicago, Ill.

PAR. 2. Respondent is now, and has been, since about the year 1933, engaged in the business of selling wood-pulp articles to retail dealers and operators of gift shops.

PAR. 3. Said respondent, being engaged in business as aforesaid, causes, and has caused, said merchandise, when sold, to be shipped to purchasers thereof located at various points in the States of the United States other than the State from which said shipments are made and in the District of Columbia. There is now, and has been during all the times herein mentioned, a constant current of trade in commerce in the aforementioned articles, sold by the respondent, between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his business as aforesaid, respondent is, and has been, in substantial competition with other

persons, and with corporations, firms, and partnerships, engaged in the sale and distribution of wood-pulp articles, similar to those sold and distributed by the respondent, among the various States of the United States and in the District of Columbia. Among said competitors are many who did not in any manner engage in the practices hereinafter alleged.

PAR. 5. In the course and conduct of his business as aforesaid, respondent has made, and is still making, certain representations in connection with the sale of the aforementioned articles in said commerce. Among said representations are, and have been, the following:

1. That the father of respondent is a wealthy, retired citizen who is now engaged, as a hobby, in the manufacture of the articles sold by respondent.

2. That respondent's father only permits respondent, as his sole sales representative, to sell said articles with the distinct understanding that respondent will not make any misrepresentations concerning them and will not overcharge the purchasers thereof.

3. That the prospective purchaser was invited to visit respondent's father's large Long Island estate and also the gift show conducted by respondent at the Palmer House in Chicago, with all expenses paid.

4. That the resale prices for which prospective purchasers could sell the articles, which they purchased from respondent, were 50 percent to 100 percent more than the prices at which respondent offered said articles to them.

5. That the articles which respondent would ship to purchasers would be similar to the samples displayed by respondent.

6. That respondent was referred to the prospective purchaser by some satisfied purchaser to whom respondent has previously sold.

7. That respondent would exchange slow-moving articles for other articles more susceptible to ready sale.

8. That the prospective purchaser would receive an exclusive territory for the neighborhood in which said purchaser resided.

9. That the payment for the articles purchased from respondent could be made by a deferred purchase plan, whereby, should said articles not prove readily saleable, the time of payment would be extended according to the retail sales of same.

10. That promissory judgment notes signed by purchasers, in which notes the due dates were not the same as those shown on the orders, were merely evidence of the debt, and in no case would be used as collateral for a loan or sold outright.

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PAR. 6. In truth and in fact:

1. Respondent's father had been dead for many years prior to the times mentioned herein.

2. Neither respondent nor his father has ever manufactured the articles sold by respondent.

3. Respondent's father never had a Long Island estate.

4. Respondent never conducted a gift show at the Palmer House in Chicago or anywhere else.

5. Purchasers from respondent were required to resell the articles which they thus purchased at approximately the same prices they paid respondent.

6. The articles which respondent shipped in filling orders from purchasers were decidedly inferior to the samples which respondent displayed in securing the orders.

7. Respondent was never referred to prospective purchasers by satisfied purchasers of respondent.

8. When purchasers exchanged articles, they received back merchandise inferior in quality and quantity to those which they exchanged.

9. Purchasers did not receive any exclusive territories, because respondent will sell to anyone, wherever located, who would purchase his articles.

10. The time for payments of accounts due by purchasers to respondent was not extended by respondent according to retail sales of respondent's specific articles by the purchasers.

11. When respondent secures the purchaser's signature on a promissory judgment note, respondent sells same at the very first opportunity to a finance company which presumably is an innocent purchaser for value and which immediately notifies the maker of the note, that same must be paid in full on its due date.

PAR. 7. Respondent's representations described in paragraph 5 hereof are false, deceptive, and misleading, were, and are, calculated to, and had, and have, a tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations are true. Further, as a true consequence of mistaken and erroneous beliefs induced by said representations of respondent, a substantial number of the consuming public has purchased a substantial volume of respondent's articles, with the result that trade has been unfairly diverted to the respondent from his competitors and substantial injury has been, and is now being, done by respondent to said competitors in the commerce hereinbefore described.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's com-

petitors, and constitute unfair methods of competition and unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 23d day of December 1938, issued and thereafter served its complaint in this proceeding upon respondent, W. M. Jacobson, an individual doing business under the trade name of Wonder Wood-Tex Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 16th day of January 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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 the conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, W. M. Jacobson, is an individual trading as the Wonder Wood-Tex Co., and having his office and principal place of business at 308 East Fifty-first Street, in the city of Chicago, State of Illinois. Respondent is the sole owner and operator of the business conducted under the trade name Wonder Wood-Tex Co.

PAR. 2. Respondent is now, and has been since the year 1933, engaged in the business of selling and distributing wood-pulp articles to retail dealers and operators of gift shops situated in the various States of the United States and in the District of Columbia. Respondent causes said wood-pulp articles, when sold by him, to be transported from his aforesaid place of business in the State of Illinois to the purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said wood-pulp articles among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition with other individuals and with corporations, firms, and partnerships, engaged

in the business of selling and distributing wood-pulp articles in commerce among and between various States of the United States and the District of Columbia. Among such competitors are many who do not misrepresent their respective products, sales policies, or methods of doing business.

PAR. 4. In the course and conduct of his business, as aforesaid, and in furtherance of the sale of his wood-pulp articles, respondent has caused to be disseminated in commerce among and between the various States of the United States and in the District of Columbia statements and representations relative to his wood-pulp articles, sales policies, and methods of doing business. Among and typical of the statements and representations, disseminated as aforesaid, are the following:

That the father of the respondent is a wealthy retired citizen, who is now engaged as a hobby, in the manufacture of the wood-pulp articles sold and distributed by the respondent;

That respondent's father permits respondent, as his sole sales representative, to sell said articles, but with the understanding that respondent will not make any misrepresentations relative to such articles and will not overcharge the purchasers thereof;

That prospective purchasers of respondent's articles are invited to visit the large Long Island estate of respondent's father and the gift show conducted by respondent at The Palmer House in Chicago, with all expenses paid by respondent;

That the prices for which purchasers from respondent can resell the articles purchased from respondent are 50 to 100 percent more than the prices they pay respondent for such articles;

That the articles which respondent ships to purchasers are similar to the samples of such articles displayed by respondent to prospective purchasers;

That the respondent has been referred to prospective purchasers by satisfied customers of respondent;

That respondent exchanges articles purchased from respondent which are not sold readily for other articles which will sell readily;

That purchasers receive from respondent an exclusive territory for the sale and distribution of respondent's articles;

That the payment to the respondent for the articles purchased from respondent can be made by a deferred purchase plan whereby the time of payment for the articles not readily salable will be extended by respondent to conform to the retail sales of the same; and

That the promissory judgment notes signed by purchasers of respondent's merchandise are merely an evidence of the debt and in no case will be used by respondent as a collateral for a loan, or sold to third parties.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondent, in the manner aforesaid, are false, misleading, and untrue.

In truth and in fact, the father of the respondent is not a wealthy retired citizen who is now engaged, as a hobby, in the manufacture of the articles sold and distributed by respondent.

In truth and in fact, the father of respondent had been dead for many years prior to the times mentioned herein. Neither the respondent nor his father has ever manufactured the articles sold and distributed by the respondent. The respondent's father does not and did not have an estate on Long Island. The respondent has not and did not conduct a gift shop at The Palmer House in Chicago, or at any other location.

The purchasers from respondent do not resell the articles they purchase from respondent at from 50 to 100 percent profit. In truth and in fact, such purchasers have found it necessary to resell such articles at the same prices they paid respondent.

The articles which respondent ships to purchasers are very inferior to the samples of such articles which respondent displays to such purchasers prior to such shipment.

Respondent has not been, and is not, referred to prospective purchasers by satisfied customers of respondent.

Purchasers from respondent exchanging articles with respondent receive back from respondent articles inferior in quality and quantity to those which they exchange with respondent.

Purchasers do not receive from respondent an exclusive territory for the resale and distribution of such articles.

The times for payment of accounts to respondent by purchasers of such articles are not extended in accordance with the resale of such articles by such purchasers. The promissory notes signed by purchasers of respondent's merchandise are resold to a finance company which immediately notifies the maker of the note that same must be paid in full on its due date.

PAR. 6. The aforesaid statements and representations by respondent, used and disseminated in the manner aforesaid, have the capacity and tendency to, and do, mislead and deceive members of the purchasing public situated in various States of the United States and in the District of Columbia, into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into purchasing substantial quantities of respondent's wood-pulp articles because of said erroneous and mistaken belief. As a result, trade has been diverted unfairly to respondent from his competitors in commerce among and between the various States of the

United States and in the District of Columbia, who truthfully advertise their respective products, sales policies, and methods of doing business. 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 and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 allegation of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, W. M. Jacobson, an individual, doing business under the trade name of Wonder Wood-Tex Company, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of wood-pulp articles or other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That either the respondent or his father is engaged in the manufacture or carving of wood-pulp articles.

2. That the respondent conducts a gift show at Chicago or elsewhere, unless and until the respondent does actually conduct such gift show at such place or places.

3. From representing that the price charged the customer by respondent is or will be such an amount that will permit the customer to resell each of the different articles in the list purchased, at a competitive retail price and a reasonable profit, when the price charged by respondent will not permit a resale for such a profit.

4. That respondent's products are similar in quality and quantity to samples displayed by respondent, unless and until such is the fact,

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or that respondent has been referred to prospective purchasers by satisfied customers, unless and until such is the fact.

5. That respondent will exchange merchandise more readily salable for other merchandise purchased from respondent.

6. That purchasers of respondent's merchandise receive an exclusive territory for the resale of such merchandise.

7. That the times for payment of accounts due respondent by purchasers are extended in accordance with the date of resale of such merchandise, unless and until such is the fact.

8. That promissory notes taken from purchasers will be extended beyond their due date, or will be otherwise modified, unless such promise of extension or modification is written in the face of the note.

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

GEORGE H. LEWIS, TRADING AS ASSOCIATED ARTS,
BLACKSTONE ACADEMY OF FINE ARTS, VAN DYKE
ART ASSOCIATION, AND STERLING ART ASSOCIATION

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

Docket 3681. Complaint, Dec. 30, 1938—Decision, Mar. 8, 1939

Where an individual engaged, under various fictitious trade names, and addresses, in selling and distributing tinted or colored enlargements of photographs and frames therefor, through the medium of salesmen, agents, or representatives who—

(1) Worked on a strictly commission basis in crews or groups and under supervision of crew manager or "verifier," in his employ, in visiting homes of prospective customers in the cities, towns, and rural communities of the various States; and

(2) Whom he furnished with identification card or card of credentials, and with cases containing samples of "paintings," and with printed order or contract forms bearing names and addresses of one of trade company names under which he was transacting business, and in which order it was variously certified that customer was entitled to a "Hand Painted" or "Polychrome" or "Colura" convex portrait, of specified size and unframed, for "special producing charge of \$2.95," or "for cost of production, \$2.95," or "for the special advertising price of \$2.95," with payment to be made upon presentation of proof at customer's residence, and with provision in such blank or "certificate" for agent's signature in his representative capacity; and

(3) Who gave purchasers of pictures to understand that they were contracting with duly constituted agent of one or the other of the trade-name companies indicated by trade names employed by said individual as aforesaid, and gave receipts similar in tenor to such printed order or contract form, for particular trade-name company making sale, and induced customer to sign paper promising payment of sum of \$2.95 when proof of portrait was shown to him at his home;

In selling said enlargements and frames therefor to customers in various States, in direct and substantial competition with others engaged in sale and distribution, in commerce among the various States and in the District of Columbia, of tinted or colored enlargements of photographs and frames therefor, and likewise with those engaged in sale of genuine original paintings, including oil paintings and water-color paintings, as aforesaid; through representations of his salesmen and other representatives, made with his knowledge, acquiescence, and active cooperation, and for the purpose of selling said products and inducing purchasers thereof to sign contracts without understanding the nature, terms, and conditions thereof—

(a) Exhibited to prospective purchasers samples of attractively colored specimens of said individual's purported work, with emphasis on its beauty, finish, natural color of hair, eyes, etc., and represented and referred to the pic-

tures as "paintings," "hand-painted portraits," "Colura portraits," or "Polychrome portraits," and informed prospect that said individual was offering similar portraits or paintings at a "special advertising price" of \$2.95, or at a "reduced price," or for a "special producing price," or for the "cost of production," and that such purported paintings or portraits were worth \$25 or some similar amount, and that completed "painting" furnished by said individual would be similar to sample exhibited;

- (b) Displayed, as above set forth, on its order blanks, contract forms, etc., and conducted his said business under, trade names including such words as "Academy of Fine Arts" and "Art Association," and represented to prospective purchaser that the company, concern, or organization soliciting his order was an art association or association of artists skilled in making portraits, paintings, and similar works of art, and was a member of the National Portrait Association, and induced him to sign order or contract in guise of certificate purporting to entitle him to receive a portrait or painting upon payment only of cost of production, and induced customer to loan agent or representative photograph or snapshot of relative or member of family whose portrait was to be painted, to be used, as represented, as model or guide, to the artist who was to paint the same, and to be returned to customer with completed picture;

Facts being alleged pictures or "paintings" made by said individual were different from and greatly inferior in quality, workmanship, and character to samples exhibited by his agents when soliciting and obtaining contracts for such alleged pictures or "paintings," which, in fact, were not portraits or paintings in any sense of the word, but merely cheap, quickly made, photographic enlargement costing about \$1.25 each, and tinted or colored by use of pastel or crayon, water color, or other powdered pigments sprayed, in solution and largely through use of an air brush and compressed air, upon the photographic enlargement, said alleged portraits or paintings were not sold at special advertising price or at reduced price, or for special reducing price, or for cost of production, but price of \$2.95 thus charged for the unframed photographic tinted enlargement was regular and customary price charged by him for such enlargements, and he or his said business did not operate any association of artists, give work to unemployed artists, employ artists, nor commercialize talents of any of America's foremost portrait artists, and were not, as represented through such trade names and otherwise, members of or sponsored by nationally recognized association of portrait painters, so-called portrait association was either fictitious or long dormant, if existing at all, business conducted by him through aforesaid trade names was merely business enterprise to sell to public for profit cheap, colored, or tinted photographic enlargements and frames therefor, and so-called "certificate" was, in truth and in fact, binding contract containing numerous provisions and representations of binding nature not explained to or understood by customers, and not evidence that he was to receive valuable portrait or painting; and

- (c) Sought to, and usually did, secure orders for frames at exorbitant prices, and usually \$15 or more, through practice, following the theretofore submission to the customer, by employee known as "proof passer" or "framer," of black and white print of original photograph in enlarged form, and collection of the \$2.95 called for by the certificate, and receipt of instructions

from customer as to shading, coloring, and other details for the supposed "painting," of delivering finished picture, fully framed in peculiar octagonal shape and size, by another salesman who made use of coercion, threats, abuse, and misrepresentation of various kinds in endeavoring to sell frame to customer at varying prices, and informed purchaser objecting to quality, design, or price of frame, and who had been previously advised that there was no obligation to buy frame, and from whom it had been concealed that so-called portrait would be delivered in such peculiar form, shape, and size, that it would be impossible for customer to obtain frame to fit it except from said individual and at prices exacted therefor, that said individual or business was the only company that furnished frames of such particular design, and that original order or certificate signed by customer obligated him to frame picture in a suitable manner, and, in many instances, refused to deliver completed picture, previously fully paid for, or original treasured family photograph borrowed from customer, until frame was ordered or claimed balance paid in full;

Facts being said individual's selling methods were directed primarily to accomplish sale of a frame at an exorbitant price, its activities in securing contracts for alleged "portraits" or "paintings," and in filling same were merely "bait" or a "come-on" to "hook the sucker" and enable said individual's high-pressure frame salesmen to contact purchaser and sell frames of cheap and inferior quality at prices which were exorbitant and far above value thereof, through sales accomplished, as aforesaid, by coercive and oppressive acts and practices and representations, including retention, without any such understanding, of original photograph submitted by customer, or of completed portrait, or both, until alleged balance due had been paid or frame was purchased by customer, who neither wished for, desired, nor ordered same;

With effect of misleading and deceiving public as to character of business actually conducted by said individual through use of such trade names and representations, and causing it to confuse business in question with various organizations similar in name or designation which were conducting, or might properly be designated as, art associations or academies of fine art, and with effect, through use of such various false and misleading representations and practices in sale and offer for sale of purported "portraits" and "paintings," of deceiving purchasing public concerning quality and value of his products sold as above set forth, and inducing public to purchase said products under erroneous belief that same were high-grade quality portraits or paintings and picture frames of exceptional merit and value, and of thereby unfairly diverting trade to him from competitors likewise engaged in sale and distribution of tinted or colored enlargements of photographs in commerce, and who truthfully represent their products; to the substantial injury of competition in commerce:

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

Mr. Merle P. Lyon for the Commission.

Sherriff, Lindsay, Weis & Hutchinson, of Pittsburgh, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that George H. Lewis, an individual, trading variously as Association Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, George H. Lewis, is an individual, residing at 909 Union Avenue, North Side, Pittsburgh, Pa. He does business under the trade names, Associated Arts, Box 843, Pittsburgh, Pa., and Associated Arts, 507 Fifth Avenue, New York City, N. Y.; Blackstone Academy of Fine Arts, 234 West Water Street, Syracuse, N. Y.; Van Dyke Art Association, 271 Erie Boulevard, West Syracuse, N. Y.; and Sterling Art Association, Suite 506, The Arcade, Cleveland, Ohio. The various trade names and addresses hereinabove set out are fictitious names and addresses used for mailing purposes only; the addresses 234 West Water Street and 271 Erie Boulevard West, Syracuse, N. Y., being the principal address of the Seails Copying Co., Inc., a corporation engaged in the business of jobbing picture frames, preparing printed enlargements of photographs, and painting photographs with water colors; the address Suite 506, The Arcade, Cleveland, Ohio, being the address of an art studio of one Frank Thompson, and the address 507 Fifth Avenue, New York City, N. Y., being used merely for lending prestige in the obtaining of business. All orders or correspondence received at said addresses are forwarded to respondent personally at his home address or post office box at Pittsburgh, Pa.

Respondent is the sole owner and operator of the business conducted by him through the medium of the aforementioned trade-name companies, and directs the activities and controls the business policies and practices of each, including the conduct of sales campaigns, character of sales representations made, and all business interviews and correspondence incident thereto.

PAR. 2. Respondent George H. Lewis, trading variously as Associated Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association, is now and for more than 1 year last past has been engaged in the business of selling and distributing tinted or colored enlargements of photographs, and

frames therefor. Respondent sells his products to customers located in various States of the United States through the medium of salesmen or representatives and causes said tinted or colored enlargements of photographs and frames when so sold by him to be transported from his place of business in Pittsburgh in the State of Pennsylvania to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent George H. Lewis has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise 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 tinted or colored enlargements of photographs and of frames therefor, and likewise with corporations, partnerships, and individuals engaged in the sale of genuine original paintings, including oil paintings and water-color paintings, 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 his said business, respondent causes agents and representatives employed by him to visit the homes of prospective customers in the cities, towns, and rural communities of the various States of the United States. Said agents or representatives, sometimes called "floaters" or "coxeys," work on a strictly commission basis, living in rooming houses and working from town to town in crews or groups under a crew manager or "verifier," who keeps in constant touch with the daily activities of the respective salesmen, and who is also employed by respondent. Purchasers of pictures are given to understand that they are contracting or dealing with a duly constituted agent of one or the other of respondent's trade-name companies, and each agent or salesman is furnished by respondent with an identification card or card of credentials to be presented or exhibited by him when interviewing prospective purchasers. Equipment, including sample cases containing samples of "paintings," is also furnished by respondent to his agents and representatives for use in soliciting orders in his behalf.

Respondent causes orders or contracts for pictures or paintings to be taken on printed forms provided by him bearing the name and address of one of the trade-name companies under which he is transacting business across the top thereof, and in such order it is variously "certified" that the customer is entitled to a "Hand Painted" or "Polychrome" or "colura" Convex Portrait, 10 by 16 inches in size, unframed, for the "special producing charge of \$2.95," or "for

cost of production, \$2.95," or "for the special advertising price of \$2.95," payment to be made upon presentation of proof at customer's residence. Said order blank or "certificate" is duly signed by respondent's agent in his representative capacity on a line provided therefor. Receipts similar in tenor are signed for the trade-name company by the agent making a sale, and the customer is induced to sign a paper promising to pay the sum of \$2.95 when the proof of the portrait is shown to him at his home.

The form of "certificate" used by respondent in his business under the trade name "Van Dyke Art Association," and used with minor variations under his other trade names, and therefore typical of respondent's usual order blank, is as follows:

Van Dyke Art Association (registered)

271 Erie Blvd. West, Syracuse, N. Y.

NPA National Portrait Association

Certificate for a Polychrome Portrait

All other orders \$25.00. This certificate Entitles the Bearer
----- to one, 10 x 16, Octagon, Convexed,
Polychrome Portrait (without frame) for cost of production, \$2.95.

In a few days, the proof of your portrait will be shown at your home and the cost of production must then be paid. Read this contract—this order cannot be countermanded.

An Association that has commercialized the talents of some of America's foremost portrait artists. We only ask that you appreciate this portrait and be kind enough to display it and recommend it at its value and not the amount you expended for it. All photographs returned with the finished work.

I agree to pay the cost of production, \$2.95, when the proof of portrait is shown at my home.

Signed-----

Address-----

PAR. 5. For the purpose of selling the respondent's colored enlargements of photographs and frames therefor, and inducing purchasers thereof to sign contracts without understanding the nature, terms, and conditions thereof, salesmen and other representatives of the respondent, with the knowledge, acquiescence, and active cooperation of the respondent, make false and misleading representations as follows:

Salesmen and other representatives of the respondent, when calling upon prospective purchasers, exhibit several samples of attractively colored specimens of respondent's purported work. The prospective purchaser is told that respondent is offering similar portraits or paintings at a "special advertising price" of \$2.95, or at a "reduced price," or for a "special producing price," or for the "cost of production."

Said salesman particularly calls the prospective purchaser's attention to the beauty of the work, its finish, and to the natural colors of the hair, eyes, complexion, and clothing. Invariably the pictures are represented and referred to by the said salesman as "paintings," "hand-painted portraits," "Colura portraits," or "Polychrome portraits," and are represented as being worth \$25 or some similar amount.

Said salesman then informs the prospective purchaser that the completed "painting" furnished by the respondent will be similar to the sample exhibited, that the respondent is an art association or association of artists skilled in making portraits, paintings, and similar works of art, and is a member of the National Portrait Association. The prospective purchaser is then induced to sign an order or contract in the guise of a "certificate" purporting to entitle the customer to receive a "portrait" or "painting" upon payment only of the cost of production.

Said salesman then induces the customer to loan him a photograph or kodak snapshot of the relative or member of the family whose portrait is to be painted, and represents that such photograph is to be used as a model or guide to the artist who is to paint the portrait, and will be returned to the customer with the completed picture.

The original order taker is followed a few days later by a high pressure salesman also employed by respondent, known as a "proof passer" or "framer." The "proof passer" submits to the customer a black and white print of the original photograph in enlarged form, and collects the \$2.95 called for by the "certificate" and receives instructions from the customer as to shading, coloring, and other details for the painting which is to be produced.

The delivery of the finished picture is made by still another salesman employed by respondent, who presents the picture fully framed in a peculiar octagonal shape and size, and by means of coercion, threats, abuse, and misrepresentations of various kinds endeavors to sell the frame to the customer at varying prices.

If the purchaser objects to the quality, design, or price of the frame, although previously advised that there is no obligation to buy a frame, he is now, and for the first time, informed that respondent is the only company that furnishes frames of this particular design, and that the original order or "certificate" signed by the customer obligates him to frame the picture in a suitable manner. As a result of such representations, the deliveryman usually succeeds in selling the frame for an exorbitant price, usually \$15 or more.

If the purchaser refuses to purchase a frame, the deliveryman in many instances refuses to deliver the completed picture, which has been previously fully paid for, or the original treasured family photo-

graph borrowed from the customer, until a frame is ordered or a claimed balance is paid in full.

PAR. 6. A crayon is a pencil-shaped piece of colored clay, chalk, or charcoal used for drawing upon paper. A crayon drawing is the act or art of drawing with crayons. A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil, or crayon. The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with a colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

A painting is a likeness, image, or scene depicted with paints without the aid of photography. A water color is a painting with pigments for which water, and not oil, is used as a solvent. A portrait, in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness, particularly in oil. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 7. In truth and in fact, the various statements and representations made by respondent and by his sales agents and representatives, and the acts and practices employed by them in the sale and offering for sale of their pictures in cities, towns, and communities of the various States of the United States, were and are false, deceptive, and misleading in the following, among other, particulars:

1. Associated Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association are not and never have been art associations or academies in the sense that such terms are known and accepted in the world of art. On the contrary, the business conducted by respondent, through the medium of the above-styled trade names, is and has been no more, in fact, than a business enterprise to sell to the public for profit cheap colored or tinted photographic enlargements and frames therefor. The use by respondent of the term "art association" or "academy of fine arts" has misled and deceived the public as to the character of the business actually conducted by respondent, and has caused the public to confuse respondent's business with various organizations similar in name or designation which are conducting, or which may properly be designated as art associations or academies of fine arts.

2. The so-called "paintings," "hand-painted portraits," "Colura Portraits," or "Polychrome portraits" as sold by respondent are not portraits or paintings in any sense of the word, but on the contrary, are merely cheap, quickly made photographic enlargements costing about \$1.25 each, and tinted or colored by the use of pastel or crayon,

Complaint

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water color, or other powdered pigments sprayed upon the photographic enlargement in solution, largely through the use of an air brush and compressed air. Said alleged "portraits" or "paintings" are not sold at a "special advertising price" or at a "reduced price," or for a "special producing price" or for the "cost of production." In truth and in fact the price of \$2.95 at which respondent sells the unframed photographic tinted enlargement is not a special or reduced price or the cost of production, but on the contrary, is the regular and customary price which respondent charges for such enlargements.

3. The alleged pictures or "portraits" made by respondent are different from and greatly inferior in quality, workmanship, and character to the samples exhibited by respondent's agents when endeavoring to obtain and in obtaining contracts for such alleged pictures or "portraits."

4. Customers do not understand and have not agreed, in connection with contracts, that treasured family photographs are to be retained by respondent until payment of any sum alleged by respondent to be due him.

5. Respondent does not operate any association of artists and does not give work to unemployed artists or employ any artists, nor has he commercialized the talents of any of America's foremost portrait artists.

6. Respondent conceals and has concealed from purchasers at the time the "portrait" is ordered that the portrait as ordered will be delivered in such a peculiar convexed form, shape, and size that it will be impossible for the customer thereafter to obtain a frame to fit said "portrait" except from the respondent and at prices exacted by respondent therefor.

7. Respondent's selling methods are directed primarily to accomplish the sale of a frame at an exorbitant price, and the respondent's activities in securing contracts for alleged "portraits" or "paintings" and fulfilling the same are merely "bait" or a "come-on" to "hook the sucker" and enable respondent's high pressure frame salesmen to contact the purchaser and sell frames of cheap and inferior quality at prices which are exorbitant and far above the value thereof.

8. Respondent's sales of frames are accomplished by coercive and oppressive acts, practices, and representations, including retention of the original photograph submitted by the customer or the completed "portrait," or both, until an alleged balance due respondent is paid, or until a frame is purchased by the customer who has neither wished for, desired nor ordered same.

9. There is no such organization as the National Portrait Association, or, if such organization actually exists, it is dormant and not actively functioning at the present time or in recent years, and the use by respondent in his order blanks or "certificates" of the name and symbol of such association, and reference thereto by respondent's agents is a representation to the public that respondent's various trade name companies are members of, or sponsored by, a nationally recognized association of portrait painters, when such is not the fact.

10. The use of the word "certificate" for the order blank or form used by respondent in the solicitation of orders is false and deceptive in that it is a representation to the public that it is a thing of value held by him to evidence and certify that he is to receive a valuable "portrait" or "painting" upon payment of a trifling sum of money. In truth and in fact the so-called "certificate" is a binding contract which the customer has been induced unfairly to sign and which contains numerous provisions and representations of a binding nature which are not explained to or understood by the customers.

PAR. 8. The use by the respondent of the aforesaid false and misleading representations and practices in the sale and offering for sale of purported portraits and paintings has had, and now has, the tendency and capacity to and does deceive the purchasing public concerning the quality and value of his products sold as hereinbefore described, and has thereby induced, and is inducing the public to purchase said products under the erroneous belief that the same were and are high-grade quality portraits or paintings, and picture frames of exceptional merit and value. The use by respondent of the aforesaid practices further tends to and does unfairly divert trade to respondent from his competitors, likewise engaged in the sale and distribution of tinted or colored enlargements of photographs in commerce between and among the various States of the United States and in the District of Columbia who truthfully represent their products. As a consequence 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. 9. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 30, 1938, issued, and subsequently served, its complaint in this proceeding upon the respondent, George H. Lewis, an individual, trading as Associated Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

Subsequently, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, George H. Lewis, is an individual, residing at 909 Union Avenue, North Side, Pittsburgh, Pa. He does business under the trade names, Associated Arts, Box 843, Pittsburgh, Pa., and Associated Arts, 507 Fifth Avenue, New York City, N. Y.; Blackstone Academy of Fine Arts, 234 West Water Street, Syracuse, N. Y.; Van Dyke Art Association, 271 Erie Boulevard, West, Syracuse, N. Y., and Sterling Art Association, Suite 506, The Arcade, Cleveland, Ohio. The various trade names and addresses hereinabove set out are fictitious names and addresses used for mailing purposes only; the addresses 234 West Water Street and 271 Erie Boulevard West, Syracuse, N. Y., being the principal address of the Seails Copying Co., Inc., a corporation engaged in the business of jobbing picture frames, preparing printed enlargements of photographs, and painting photographs with water colors; the address Suite 506, The Arcade, Cleveland, Ohio, being the address of an art studio of one Frank Thompson, and the address 507 Fifth Avenue, New York City, N. Y., being used merely for lending prestige in the obtaining of business. All orders or correspondence received at said addresses are forwarded to respondent personally at his home address or post-office box at Pittsburgh, Pa.

Respondent is the sole owner and operator of the business conducted by him through the medium of the aforementioned trade-name com-

panies, and directs the activities and controls the business policies and practices of each, including the conduct of sales campaigns, character of sales representations made, and all business interviews and correspondence incident thereto.

PAR. 2. Respondent, George H. Lewis, trading variously as Associated Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association, is now and for more than 1 year last past has been engaged in the business of selling and distributing tinted or colored enlargements of photographs, and frames therefor. Respondent sells his products to customers located in various States of the United States through the medium of salesmen or representatives and causes said tinted or colored enlargements of photographs and frames when so sold by him to be transported from his place of business in Pittsburgh in the State of Pennsylvania to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent George H. Lewis has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise 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 tinted or colored enlargements of photographs and of frames therefor, and likewise with corporations, partnerships, and individuals engaged in the sale of genuine original paintings, including oil paintings and water-color paintings, 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 his said business, respondent causes agents and representatives employed by him to visit the homes of prospective customers in the cities, towns, and rural communities of the various States of the United States. Said agents or representatives, sometimes called "floaters" or "coxeys," work on a strictly commission basis, living in rooming houses and working from town to town in crews or groups under a crew manager or "verifier," who keeps in constant touch with the daily activities of the respective salesmen, and who is also employed by respondent. Purchasers of pictures are given to understand that they are contracting or dealing with a duly constituted agent of one or the other of respondent's trade name companies, and each agent or salesman is furnished by respondent with an identification card or card of credentials to be presented or exhibited by him when interviewing prospective purchasers. Equipment, including sample cases containing samples of

"paintings," is also furnished by respondent to his agents and representatives for use in soliciting orders in his behalf.

Respondent causes orders or contracts for pictures or paintings to be taken on printed forms provided by him bearing the name and address of one of the trade name companies under which he is transacting business across the top thereof, and in such order it is variously "certified" that the customer is entitled to a "Hand Painted" or "Polychrome" or "Colura" Convex Portrait, 10 x 16 inches in size, unframed, for the "special producing charge of \$2.95," or "for cost of production, \$2.95," or "for the special advertising price of \$2.95," payment to be made upon presentation of proof at customer's residence. Said order blank or "certificate" is duly signed by respondent's agent in his representative capacity on a line provided therefor. Receipts similar in tenor are signed for the trade name company by the agent making a sale, and the customer is induced to sign a paper promising to pay the sum of \$2.95 when the proof of the portrait is shown to him at his home.

The form of "certificate" used by respondent in his business under the trade name "Van Dyke Art Association," and used with minor variations under his other trade names, and therefore typical of respondent's usual order blank, is as follows:

Van Dyke Art Association (registered)
271 Erie Blvd. West, Syracuse, N. Y.
NPA National Portrait Association
Certificate for a Polychrome Portrait

All other orders \$25.00. This certificate Entitles the Bearer
----- to one, 10 x 16, Octagon, Convexed,
Polychrome Portrait (without frame) for cost of production, \$2.95.

In a few days, the proof of your portrait will be shown at your home and the cost of production must then be paid. Read this contract—this order cannot be countermanded.

An Association that has commercialized the talents of some of America's foremost portrait artists. We only ask that you appreciate this portrait and be kind enough to display it and recommend it at its value and not the amount you expended for it. All photographs returned with the finished work.

I agree to pay the cost of production, \$2.95, when the proof of portrait is shown at my home.

Signed -----
Address -----

PAR. 5. For the purpose of selling the respondent's colored enlargements of photographs and frames therefor, and inducing purchasers thereof to sign contracts without understanding the nature, terms, and conditions thereof, salesmen and other representatives of the

respondent, with the knowledge, acquiescence, and active cooperation of the respondent, make false and misleading representations as follows:

Salesmen and other representatives of the respondent, when calling upon prospective purchasers, exhibit several samples of attractively colored specimens of respondent's purported work. The prospective purchaser is told that respondent is offering similar portraits or paintings as a "special advertising price" of \$2.95, or at a "reduced price," or for a "special producing price," or for the "cost of production."

Said salesman particularly calls the prospective purchaser's attention to the beauty of the work, its finish, and to the natural colors of the hair, eyes, complexion, and clothing. Invariably the pictures are represented and referred to by the said salesman as "paintings," "hand-painted portraits," "Colura portraits," or "Polychrome portraits," and are represented as being worth \$25 or some similar amount.

Said salesman then informs the prospective purchaser that the completed "painting" furnished by the respondent will be similar to the sample exhibited, that the respondent is an art association or association of artists skilled in making portraits, paintings, and similar works of art, and is a member of the National Portrait Association. The prospective purchaser is then induced to sign an order or contract in the guise of a "certificate" purporting to entitle the customer to receive a "portrait" or "painting" upon payment only of the cost of production.

Said salesman then induces the customer to loan him a photograph or kodak snapshot of the relative or member of the family whose portrait is to be painted, and represents that such photograph is to be used as a model or guide to the artist who is to paint the portrait, and will be returned to the customer with the completed picture.

The original order taker is followed a few days later by a high pressure salesman also employed by respondent, known as a "proof passer" or "framer." The "proof passer" submits to the customer a black and white print of the original photograph in enlarged form, and collects the \$2.95 called for by the "certificate" and receives instructions from the customers as to shading, coloring, and other details for the painting which is to be produced.

The delivery of the finished picture is made by still another salesman employed by respondent, who presents the picture fully framed in a peculiar octagonal shape and size, and by means of coercion, threats, abuse, and misrepresentations of various kinds endeavors to sell the frame to the customer at varying prices.

If the purchaser objects to the quality, design, or price of the frame, although previously advised that there is no obligation to buy a frame, he is now, and for the first time, informed that respondent is the only company that furnishes frames of this particular design, and that the original order or "certificate" signed by the customer obligates him to frame the picture in a suitable manner. As a result of such representations, the deliveryman usually succeeds in selling the frame for an exorbitant price, usually \$15 or more.

If the purchaser refuses to purchase a frame, the deliveryman in many instances refuses to deliver the completed picture, which has been previously fully paid for, or the original treasured family photograph borrowed from the customer, until a frame is ordered or a claimed balance is paid in full.

PAR. 6. A crayon is a pencil-shaped piece of colored clay, chalk, or charcoal used for drawing upon paper. A crayon drawing is the act or art of drawing with crayons. A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil, or crayon. The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with a colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

A painting is a likeness, image, or scene depicted with paints without the aid of photography. A water color is a painting with pigments for which water, and not oil, is used as a solvent. A portrait, in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness, particularly in oil. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 7. In truth and in fact, the various statements and representations made by respondent and by his sales agents and representatives, and the acts and practices employed by them in the sale and offering for sale of their pictures in cities, towns, and communities of the various States of the United States, were and are false, deceptive, and misleading in the following, among other, particulars:

1. Associated Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association are not and never have been art associations or academies in the sense that such terms are known and accepted in the world of art. On the contrary, the business conducted by respondent, through the medium of the above-styled trade names, is and has been no more, in fact, than a business enterprise to sell to the public for profit cheap, colored, or tinted

photographic enlargements and frames therefor. The use by respondent of the term "art association" or "academy of fine arts" has misled and deceived the public as to the character of the business actually conducted by respondent, and has caused the public to confuse respondent's business with various organizations similar in name or designation which are conducting, or which may properly be designated as art associations or academies of fine arts.

2. The so-called "paintings," "hand-painted portraits," "Colura portraits," or "Polychrome portraits" as sold by respondent are not portraits or paintings in any sense of the word, but on the contrary, are merely cheap, quickly made photographic enlargements costing about \$1.25 each, and tinted or colored by the use of pastel or crayon, water color, or other powdered pigments sprayed upon the photographic enlargement in solution, largely through the use of an air brush and compressed air. Said alleged "portraits" or "paintings" are not sold at a "special advertising price" or at a "reduced price," or for a "special producing price" or for the "cost of production." In truth and in fact the price of \$2.95 at which respondent sells the unframed photographic tinted enlargement is not a special or reduced price or the cost of production, but on the contrary, is the regular and customary price which respondent charges for such enlargements.

3. The alleged pictures or "portraits" made by respondent are different from and greatly inferior in quality, workmanship, and character to the samples exhibited by respondent's agents when endeavoring to obtain and in obtaining contracts for such alleged pictures or "portraits."

4. Customers do not understand and have not agreed, in connection with contracts, that treasured family photographs are to be retained by respondent until payment of any sum alleged by respondent to be due him.

5. Respondent does not operate any association of artists and does not give work to unemployed artists or employ any artists, nor has he commercialized the talents of any of America's foremost portrait artists.

6. Respondent conceals and has concealed from purchasers at the time the "portrait" is ordered that the portrait as ordered will be delivered in such a peculiar convexed form, shape, and size that it will be impossible for the customer thereafter to obtain a frame to fit said "portrait" except from the respondent and at prices exacted by respondent therefor.

7. Respondent's selling methods are directed primarily to accomplish the sale of a frame at an exorbitant price, and the respondent's

activities in securing contracts for alleged "portraits" or "paintings" and fulfilling the same are merely "bait" or a "come-on" to "hook the sucker" and enable respondent's high-pressure frame salesmen to contact the purchaser and sell frames of cheap and inferior quality at prices which are exorbitant and far above the value thereof.

8. Respondent's sales of frames are accomplished by coercive and oppressive acts, practices, and representations, including retention of the original photograph submitted by the customer or the completed "portrait," or both, until an alleged balance due respondent is paid, or until a frame is purchased by the customer who has neither wished for, desired, nor ordered same.

9. There is no such organization as the National Portrait Association, or, if such organization actually exists, it is dormant and not actively functioning at the present time or in recent years, and the use by respondent in his order blanks or "certificates" of the name and symbol of such association, and reference thereto by respondent's agents is a representation to the public that respondent's various trade-name companies are members of, or sponsored by, a nationally recognized association of portrait painters, when such is not the fact.

10. The use of the word "certificate" for the order blank or form used by respondent in the solicitation of orders is false and deceptive in that it is a representation to the public that it is a thing of value held by him to evidence and certify that he is to receive a valuable "portrait" or "painting" upon payment of a trifling sum of money. In truth and in fact the so-called "certificate" is a binding contract which the customer has been induced unfairly to sign and which contains numerous provisions and representations of a binding nature which are not explained to or understood by the customers.

PAR. 8. The use by the respondent of the aforesaid false and misleading representations and practices in the sale and offering for sale of purported portraits and paintings has had, and now has, the tendency and capacity to and does deceive the purchasing public concerning the quality and value of his products sold as hereinbefore described, and has thereby induced, and is inducing the public to purchase said products under the erroneous belief that the same were and are high-grade quality portraits or paintings, and picture frames of exceptional merit and value. The use by respondent of the aforesaid practices further tends to and does unfairly divert trade to respondent from his competitors, likewise engaged in the sale and distribution of tinted or colored enlargements of photographs in commerce between and among the various States of the

United States and in the District of Columbia who truthfully represent their products. As a consequence 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.

CONCLUSION

The aforesaid acts and practices of the respondent have been, and are, all to the prejudice and injury of the public and said respondent's competitors, and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered That the respondent George H. Lewis, an individual trading under the name and style of Associated Arts, Blackstone Academy of Fine Arts, Van Dyke Art Association, and Sterling Art Association, or trading under any other name, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce as commerce is defined in the Federal Trade Commission Act, of colored or tinted photographs or enlargements having a photographic base, and of frames therefor, do forthwith cease and desist from:

1. Representing, directly or in any manner, that colored or tinted pictures, photographs, or photographic enlargements are portraits or paintings, or are "hand-painted portraits," "colura portraits," or "polychrome portraits."

2. Using the terms "painting" or "portrait," either alone or in conjunction with the words "hand-painted," "colura," "polychrome," or any other terms or words in any way to designate, describe, or refer to colored or tinted pictures, photographs, or photographic enlarge-

ments, or other pictures produced from a photographic base or impression.

3. Misrepresenting that any specified sum is the actual cost of materials in a picture, or the "cost of production," or a "special advertising price," or a "reduced price," or a "special producing price," or otherwise misrepresenting the actual cost of either materials or production, or both.

4. Representing, by the use of the word "certificate" or any other word or words, that the order blank or form used by him in the solicitation of orders is anything other than a contract form for the purchase of a picture or pictures.

5. Representing that a picture similar to sample displayed will be delivered, unless in fact the picture delivered is of the same kind, quality, design, and workmanship.

6. Representing that frames can be purchased elsewhere unless the odd design used can in fact be purchased from other sources, or unless a standard design is furnished.

7. Concealing from or failing to disclose to customers that the finished picture when delivered will be so shaped and designed that it can only be used in a specially designed odd style of frame which can be procured only from the respondent, and generally at prices equal to, or in excess of, the prices already charged for pictures.

8. Representing, as the customary or regular prices or values for such pictures and frames, prices and values which are in fact fictitious and greatly in excess of the prices at which said pictures and frames are regularly and customarily offered for sale and sold in the normal and usual course of business.

9. Representing, by the use of the trade names Blackstone Academy of Fine Arts, Van Dyke Art Association, Sterling Art Association, or any other fictitious trade name of similar import, that respondent is an artist or conducts an art association or academy, or is connected with an association or academy of artists or similar groups or organizations.

10. Representing, by the use of the name and symbol of the National Portrait Association or other nonexistent or dormant association or organization, that respondent is a member of, or sponsored by, a nationally recognized association of portrait painters, when such is not the fact.

11. Representing that respondent gives work to unemployed artists or employs artists or that he has commercialized the talents of any of America's foremost portrait artists, when such is not the fact.

12. Using any coercive or oppressive acts, practices, or representations in the sale of pictures or the frames therefor, including retention of the original photograph submitted by the customer or the completed picture or both, until a frame is purchased from him.

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
EDUCATORS ASSOCIATION, 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 3139. Complaint, May 29, 1937—Decision, Mar. 9, 1939

Where a corporation engaged in publication of reference book designated as "The Volume Library," and in sale of entire output thereof to its president, and owner of 95 percent of its stock; said president, vice president, and second vice president; and various individuals engaged also, under trade name similar to that of said corporation, in sale of said reference book to ultimate consumers through agents or canvassers under contracts entered into with aforesaid corporate president, and required, in conduct of their said business, to make use of such name, registered with proper department of State in which representative was conducting such business, in course of which, in aggregate, millions of parents of school children had been solicited to buy said books at prices ranging from \$10 to \$17 a copy, and from one to two million copies had been thus sold; in variously soliciting sale of and selling said book as above indicated, in competition with others likewise engaged in selling and marketing reference books in commerce among the several States—

(a) Represented, through use of term "Educators Association" in the respective corporate and trade names employed in conduct of such business and displayed on corporate seal set forth on so-called certificate of membership furnished each purchaser and giving him privilege of consulting its so-called Bureau of Research and Service, and on the guarantee thus furnished, that they constituted a group of educators or teachers formed into an association;

Facts being neither said corporation nor similarly named purported association constituted an official organization or association of altruistic educators, but solely a business enterprise organized and existing for profits derived from the sale of said "Volume Library";

With result of misleading substantial portion of prospective purchasers into erroneous and false belief that such corporate and trade names meant that said corporation and association were organizations operated by a group of teachers or educators properly so-called, united for a common purpose other than financial gain, and with capacity and tendency to induce members of public, under such false and erroneous belief, to make purchases of said volume which they would not make except for such false and erroneous belief;

(b) Represented or implied to prospective purchasers, in some instances, that they came directly from the school which was attended by the child of the particular prospect, through their canvassers, who thus gained admission to such homes and who also, in accordance with their instruction, made sales talks so worded as to mislead prospective purchaser into erroneous and false belief that the canvasser was in some manner connected with school work, and that book itself was a necessary requirement of the school attended by the particular child;

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Facts being said "Volume Library" was not used as textbook by schools, and no school authorities required its purchase, and there was no connection whatever between sales persons and any school or other educational organization, but such book, on the contrary, was offered for sale by private business organization for profit;

With capacity and tendency to induce parents of school children to purchase book who would not make such purchase if they were truthfully informed of facts as aforesaid; and

(c) Falsely and misleadingly offered specific salary in advertisements for college students or teachers in "Help Wanted" columns of newspapers and periodicals circulating among the several States, and through which canvassers were secured; and

(d) Refused, on many occasions, and for a period of time, to return to canvassers amount deposited for equipment in accordance with requirements of contract required of canvasser, and which called for deposit of \$5.50 or other sum for sales equipment, returnable after 15 days or 120 hours of work, for the reason, as believed, that canvassers had failed to comply with such contracts by not making required number of calls or of required length, or for some other reason;

Notwithstanding fact canvassers thus secured were actually employed to sell such book to public on 30 percent commission basis, and payment of difference, if any, between commissions earned and salary thus offered, was conditioned upon canvassers fulfillment of certain requirements set forth in contract above referred to, which canvasser was required to sign before entering upon sale of book, and which included, among other things, making of deposit as aforesaid, memorizing of sales talk of 6,000 to 7,000 words, and the making of minimum of 10 calls a day lasting a minimum of 20 minutes, as shown by daily and weekly reports, and they failed and refused to pay difference aforesaid to many canvassers who failed to earn commissions aggregating amounts offered as salary, or to fulfill such requirements, including, in some instances, memorizing verbatim of said sales talk; and

Notwithstanding failure fully to advise canvasser at time of signing contract that such memorizing was necessary condition precedent to such payment; and in some instances, and for a time, representations to applicants that such contracts were mere matters of form, might be signed without full understanding of all terms thereof, and, in rare instances and contrary to instructions, managers' verbal representations to applicants differing from those in contracts, copies of which, for a time, were not given applicants at time of signing, and which, in certain instances, applicants were told they must hurry and sign if they wished to join study class being formed:

Held, That such acts, representations, and practices were to the prejudice and injury of the public, of competitors, and of applicants for places as canvassers for respondents, and constituted unfair methods of competition.

Before *Mr. John W. Addison* and *Mr. William C. Reeves*, trial examiners.

Mr. William L. Pencke for the Commission.

Townsend, Kindleberger & Campbell, of New York City, for respondents.

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COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Educators Association, Inc., a corporation, and Leo L. Tully, Oron E. Richards, Donald W. Henry, individually and as president, vice president, and second vice president of said corporation, respectively; and Miss Louise Sims, Miss Marian A. Miller, Miss C. L. MacDonald, Mrs. B. M. Gambert, Mrs. Marie C. Hostler, Mrs. V. B. Decker, Mr. J. E. Stronks, Mr. H. Lyle Goldsberry, Mr. J. R. Hostler, Mr. J. P. Tully, Mrs. M. W. Lees, Miss Sarah E. Atkinson, Mrs. Bessie Morrell, each individually trading and doing business under the trade name of Educators Association, 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, Educators Association, Inc., is a corporation, organized, existing, and doing business under the laws of the State of New York, with its principal offices at 307 Fifth Avenue, in the city and State of New York.

PAR. 2. Respondent, Leo L. Tully, is president of said Educators Association, Inc., and also trades and does business individually under the trade name of Educators Association. He maintains offices in both capacities at 307 Fifth Avenue, New York, N. Y.

Respondent, Oron E. Richards, is an individual, trading and doing business under the name of Educators Association, at 59 East Van Buren Street, Chicago, Ill. He also occupies the office of vice president of the aforesaid corporation.

Respondent, Donald W. Henry, is an individual, trading and doing business under the trade name of Educators Association, with offices at 517 Garland Building, Los Angeles, Calif. He also occupies the office of second vice president of said corporation.

The respondents, Louise Sims, 901 Wm. Oliver Building, Atlanta, Ga.; Marian A. Miller, 11 East Lexington Street, Baltimore, Md.; C. L. MacDonald, 41 Winter Street, Boston, Mass.; B. M. Gambert, 511 Burt Building, Dallas, Tex.; Marie C. Hostler, 451-452 Book Building, Detroit, Mich.; V. B. Decker, 503 Inland Building, Indianapolis, Ind.; J. E. Stronks, Johnson County Savings Bank Building,

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Iowa City, Iowa; H. Lyle Goldsberry, 506 Andrus Building, Minneapolis, Minn.; J. R. Hostler, 726 Canal Bank Building, New Orleans, La.; J. P. Tully, 1030 Real Estate Trust Building, Philadelphia, Pa.; Mrs. M. W. Lees, 335 Fifth Avenue, Pittsburgh, Pa.; Sarah E. Atkinson, 916 Title Guaranty Building, St. Louis, Mo.; and Bessie Morrell, 603 Nissen Building, Winston-Salem, N. C., all are individuals, each trading and doing business under the trade name of Educators Association, and each maintaining offices in the city and State hereinabove set forth in connection with each of said respondents named.

PAR. 3. In the course and conduct of its business, the respondent, Educators Association, Inc., for a number of years immediately last past has been and is now publishing a reference book which is designated by it as "The Volume Library," said respondent corporation causes said book to be printed and bound by a publishing firm in Chicago, Ill. Besides its main office in New York, N. Y., said corporation maintains shipping offices in the following cities: New York, N. Y.; Steubenville, Ohio; Chicago, Ill.; Minneapolis, Minn.; Los Angeles, Calif.; Dallas, Tex.; and Miami, Fla.

In the course and conduct of respondents' business, as hereinafter more fully shown, said books are shipped from the said respective shipping offices to purchasers thereof located in States other than those in which said shipping offices are located, and in the District of Columbia; and there now is and has been at all times hereinafter mentioned a constant current of trade in said books, flowing through and into the several States of the United States and the District of Columbia.

In the course and conduct of their business, the said respondents are, and were at all times herein referred to, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of similar commodities 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 his business, the respondent, Leo L. Tully, in his individual capacity, purchases the total output of the said Volume Library from said Educators Association, Inc. Leo L. Tully individually enters into contracts with persons who undertake to sell said Volume Library to the ultimate consumers in their respective territories through the means of agents or canvassers. At the present time, such contractual relations exist between said Leo L. Tully and the individuals named in the last subparagraph of paragraph 2. The number and personnel of said representatives vary

with the exigencies of respondent, Leo L. Tully's business. Likewise, the terms of the agreements between Leo L. Tully and his representatives vary. In some cases the books are sold outright to such representatives. In other cases, they are sold on a percentage basis. Each of said representatives is required to do business under the name of Educators Association, said name being registered with the proper department in the State in which such representative is doing business.

In connection with the selling, marketing, and distributing the said Volume Library, the respondent, Leo L. Tully, and all of the other individual respondents hereinbefore named, entered into, and thereafter carried out, and are still carrying out, an understanding, agreement, and conspiracy to employ the methods and means hereinafter more fully described. Said individual representatives, under the direction of the respondent, Leo L. Tully, secure agents or sales persons through the medium of newspaper and magazine advertisements. The copies of the Volume Library which are sold by the sales persons engaged as aforesaid are shipped to the purchasers thereof from the nearest respective shipping point heretofore named, and are paid for by such purchasers in cash on delivery.

The respondent, Educators Association, Inc., is likewise connected with and engaged in the common enterprise of selling, marketing, and distributing the said Volume Library, in that each purchaser of said book is furnished with a certificate of membership in Educators Association, Inc., which bears on its face a facsimile of the corporate seal of the respondent corporation. The receipt which is furnished by the sales person to the purchaser for the down payment contains a guarantee to the purchaser which is subscribed "Educators Association, Inc., capital stock \$250,000" and listing the names and addresses of all the officers of the corporation.

PAR. 5. The advertisements which are inserted in newspapers and in teachers' magazines by the respondents' representatives are composed and phrased by them, but in many instances such representatives will consult respondent, Leo L. Tully, with respect to such advertisements and receive his help and suggestions; and the said Leo L. Tully supervises and directs the policies under which the several branch offices are conducted by the respective managers.

PAR. 6. In the course and conduct of their respective businesses the several representatives insert advertisements in various newspapers as aforesaid, usually under the "Help Wanted" column.

The following are examples of such advertisements published as aforesaid:

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College student or teacher, travel for summer for healthful work, \$270 for ninety days.

Lady with ability and refinement, ex-teacher preferred, permanent advancement, four months trial \$300, Box —.

Vacation position for college student or teacher, splendid experience, pleasant work.

Persons who answer such advertisements receive a notification that their application has been favorably considered and they are invited to come to the office of the respective respondent for an interview. At that time such applicant is advised that a contract must be executed setting forth the terms of employment; also that a deposit of stipulated amount which varies but which usually is \$5.50, is required to cover the expense of the sales equipment, such as a sample book, order blanks, and similar material and the cost of training. A receipt is furnished for such deposit which recites that the deposit will be refunded after 15 days' of work. The contract provides, among other things, that the applicant must memorize a sales talk, consisting of several closely printed pages, must make a minimum of 10 calls per day on prospective purchasers, each call lasting a minimum of 20 minutes; that the applicant must work in the territory assigned by such respondent; that the applicant is entitled to a commission of 30 percent of the retail price of all orders taken by such agent; and that if such commissions do not amount to a certain specified minimum sum, said respondent will pay the difference between the commissions earned and such specified amount.

PAR. 7. By inserting said advertisement in the "Help Wanted" columns of newspapers, by stressing the fact that students or teachers are desired for the work, and by specifying a definite amount as salary, applicants are led into the erroneous belief that the work offered consists of a salaried position; that it is connected with teaching work and that substantial compensation will be paid therefor.

In truth and in fact, the work consists of canvassing and selling "The Volume Library" from house to house and cannot be entered upon without first making the required deposit as described in paragraph 6; and the terms of the contract as hereinabove described, are of such a difficult nature that persons engaging in the sale of said book find it a physical impossibility to comply therewith.

By reasons of such inability to comply with the terms of said contract, sales persons find that they have forfeited the said deposit for the reason that they have not worked 15 days as a working day is defined by said contract; for the same reason, payment of the difference between the commissions earned and the minimum amount contracted for is refused by respondents.

PAR. 8. The Volume Library contains a list of prominent scientists and educators who are alleged to have contributed to compiling articles and other editorial work in compiling the said book. In truth and in fact, a number of persons named as such contributors are either dead or have long since ceased to contribute to any revision of the book or never did contribute in any manner whatsoever.

The name, Educators Association, Inc., used by the corporation, and Educators Association used by the individual respondents, misleads the general public and purchasers into the belief that said Educators Association, Inc. or Educators Association, is an official organization or an association of teachers or educators. In truth and in fact, it is not an official organization nor an association of educators but solely a business enterprise organized and existing for the sale of the book "Volume Library." The sales talk which the sales persons are required to make to prospective purchasers is worded in such a fashion as to create the erroneous belief in the mind of the prospective purchaser of the book that the sales person is in some manner connected with school work and that the book itself is a necessary requirement of the school attended by children of prospective purchasers. Such representations are calculated to induce parents of school children, to purchase the book who would not make such purchases if they were truthfully informed of the fact that said Volume Library is not a book required in the school work of such child, and that there is no connection whatever between the sales person and any school or other educational organization, but that, on the contrary, it is offered for sale by a private business organization for profit.

PAR. 9. The practice of respondents to place advertisements in the "Help Wanted" columns of newspapers and teachers' magazines, the inferences contained in the advertisements that the remuneration is based on a definite salary rather than commissions, the failure to state in said advertisements that the payment of a deposit for supplies as a condition precedent to employment, the requirement, among others, of having to memorize many pages of sales material, the requirement to make a minimum of 10 calls per day, each lasting 20 minutes, the refusal to return deposits and to pay deficiency amounts under the pretext that the sales person has breached the contract, the use of the phrase "Educators Association," and the representations implying that said organization is connected with school or educational work, all have a tendency to, and do in fact, induce persons seeking work and salaried positions to apply therefor by answering respondents' said advertisements under the erroneous belief that the work offered is a position with a definite salary and is connected with teaching or similar work. Such representations further have a tendency to and

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do in fact induce prospective purchasers to buy said Volume Library under the erroneous belief that the said book is required in the school work of children or constitutes a necessary equipment in connection with schools; further, that the said book is edited by all of the individuals named in the book when such is not a fact.

All of said representations have a further tendency and capacity to and do in fact divert trade unfairly from competitors of respondents who are engaged in like business and otherwise to injure said competitors who do not engage in the unfair practices and methods of competition hereinabove described.

PAR. 10. The above acts and things done by respondents are all to the injury and prejudice of the public and accomplish substantial injury to substantial competitors of respondents 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 the Federal Trade Commission Act, the Federal Trade Commission, on May 29, 1937, issued and on June 1, 1937, served its complaint in this proceeding upon the respondents herein except Bessie Morrell, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter hearings were held and evidence was introduced before John W. Addison and William C. Reeves, trial examiners theretofore duly appointed by the Commission, by William L. Pencke, attorney for the Commission, and Townsend, Kindelberger & Campbell by E. Crosby Kindelberger, attorneys for respondents. Thereupon this proceeding regularly came on for final hearing before the Commission on said complaint, testimony, and evidence, briefs in support of the complaint and in opposition thereto and oral arguments of counsel on behalf of Commission and respondents, and the Commission having duly considered said complaint, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Educators Association, Inc., is a New York Corporation having its office and principal place of business at 307 Fifth Avenue, New York City. Respondents, Leo L. Tully, 307 Fifth Avenue, New York City; Oron E. Richards, 59 East Van Buren

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Street, Chicago, Ill., and Donald W. Henry, 517 Garland Building, Los Angeles, Calif., are individuals who are respectively president, vice president, and second vice president of the Educators Association, Inc. Each of these officers, as such, maintains an office at the address given after his name and at the same address each also trades and does business under the trade name Educators Association. All other respondents named in the complaint except Louise Sims, C. L. MacDonald, V. B. Decker, and Sarah E. Atkinson are individuals also severally trading and doing business at their respective addresses given in paragraph 2 of the complaint under the name Educators Association.

PAR. 2. Respondent, Educators Association, Inc., in the course and conduct of its business, is and for a number of years last past has been publishing a reference book designated by it as "The Volume Library." It causes said book to be printed and bound by a publishing firm in Chicago and sells the total output to respondent, Leo L. Tully who owns over 95 percent of its share capital.

PAR. 3. Respondent, Leo L. Tully, keeps a stock of said books in New York City and maintains shipping offices in Steubenville, Chicago, Minneapolis, Los Angeles, Dallas, and Miami. He individually enters into contracts with the other individual respondents and other persons who undertake to sell and sell said books to ultimate consumers in their respective territories through means of agents or canvassers. The number and personnel of these representatives vary with the needs of his business. About 1,500 are employed in summer and about 700 the rest of the year. In some cases they buy the books outright from said Tully and in others sell them for said Tully on a percentage basis. Each representative is required to do business under the name Educators Association registered with the proper department in the State in which the representative is doing business. They have solicited twelve to fifteen million parents of school children throughout the several States to buy said books at prices ranging from \$10 to \$17 a copy and have sold copies of the volume to from one to two million of such parents. The purchasers pay for the books in cash on or before delivery.

PAR. 4. As orders are taken by said representatives the books are distributed from the nearest shipping office in the territory where the respective orders are taken and are shipped to the buyers thereof located in States other than those in which said shipping offices are located and in the District of Columbia. There is and at all times herein mentioned has been a constant current in trade in said books among the several States.

PAR. 5. Respondents are and have been, in the course and conduct of their said business, in competition with other individuals, partnerships, and corporations likewise engaged in selling and marketing reference books in commerce among the several States.

PAR. 6. Respondents furnish each purchaser of said book a certificate of membership with the corporate seal of Educators Association, Inc., which gives him the privilege of consulting what it designated as its Bureau of Research and Service, and a guarantee subscribed "Educators Association, Inc." The corporate and trade names Educators Association, Inc., and Educators Association, as used by respondents, mislead a substantial portion of prospective purchasers into the erroneous and false belief that said corporate and trade names mean that Educators Association, Inc., and Educators Association are organizations operated by a group of teachers or educators properly so-called, united and for a common purpose other than financial gain and have the capacity and tendency to induce members of the public under such false and erroneous belief to make purchases of said volume which they would not make except for such erroneous and false belief. In truth and in fact neither Educators Association, Inc., nor Educators Association is an official organization nor an Association of altruistic educators but solely a business enterprise organized and existing for profits derived from the sale of said The Volume Library.

PAR. 7. The canvassers of respondents in some instances have gained admission to the homes of prospective purchasers by implying or stating directly that they came from the school which was attended by the child of such prospective purchasers and respondents require these canvassers to make to prospective purchasers a sales talk so worded as to mislead prospective purchasers into the erroneous and false belief that the canvassers are in some manner connected with school work and that the book itself is a necessary requirement of the school attended by children of prospective purchasers. The sales talk and the other representations made by canvassers have the capacity and tendency to induce parents of school children to purchase the book who would not make such purchases if they were truthfully informed of the fact that said Volume Library is not used as a textbook by schools and no school authorities require it to be purchased by pupils and that there is no connection whatever between the sales person and any school or other educational organization but that on the contrary it is offered for sale by a private business organization for profit.

PAR. 8. Respondents have secured canvassers through advertisements for college students or teachers in "help wanted" columns of

newspapers and magazines circulating among the several States offering them a specific salary. The advertisements showed neither the name nor the business of respondents. The canvassers so secured were actually employed to sell said book to the public on a commission of 30 percent of the sales price of books sold by them. If the commissions for the period named in the advertisement did not aggregate the amount of money offered therein as salary, the difference between the commissions earned and the amount offered as salary was paid by respondents to the canvasser only if he had fulfilled certain requirements set forth in a contract which he or she had been required to sign before entering upon the sale of said books, as follows: Deposit \$5.50 or other sum of money for sales equipment, returnable after 15 days or 120 hours of work, memorize a sales talk of 6,000 to 7,000 words and show by daily and weekly reports that she or he had made a minimum of 10 calls a day on prospective purchasers each call lasting a minimum of 20 minutes. Many canvassers failed to fulfill these requirements or to earn commissions aggregating the amounts offered as salary and respondents failed and refused to pay them the amounts of money necessary to cover the difference between salary offered and commissions earned. In some instances the payment was refused because the canvasser had not memorized verbatim the 6,000 to 7,000 word sales talk, although he had not at the time of signing the contract been fully advised that the memorizing of the sales talk verbatim was a necessary condition precedent to the payment. Respondents now always inform applicants before signing the contract that they must take a difficult course of training of at least 1 week of from 6 to 8 hours a day. Memorizing the sales talk is a part of the course.

PAR. 9. Respondents, on many occasions, refused to return to the canvassers the amount deposited for equipment, as aforesaid, when respondents believed the canvassers had failed to comply with the contract by not making the required number of calls, by not making the calls of the required length of time or for some other reason. This practice has been changed. Respondents now agree to and do refund this deposit to the canvasser after 120 hours of work without further condition.

PAR. 10. The terms of the contract of employment submitted by respondents to applicants for places as canvassers to sign, are of importance to both respondents and applicant and were customarily so represented to applicants by respondents. Respondents, in some instances, however, represented to the applicants that the contracts were mere matters of form and might be signed without a full understanding of all of its terms; and in rare instances, contrary to instructions of leading respondents, managers of respondents made

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verbal representations to applicants which differed from the statements contained in the contracts. Before 1933 applicants were not given copies of the contracts at the time of signing and in certain instances the managers told them they must hurry and sign the contracts if they wished to join the study class that was being formed. After 1933, copies of the contracts were given applicants at the time of signing.

CONCLUSION

The aforesaid acts, representations, and practices of respondents have been and are to the prejudice and injury of the public, of competitors of respondents, and of applicants for places as canvassers for respondents, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 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 William L. Pencke, counsel for the Commission, and by E. Crosby Kindelberger, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Educators Association, Inc., its officers, representatives, agents, and employees, and the respondents, Leo L. Tully, Oron E. Richards, and Donald W. Henry, individually and as officers of Educators Association, Inc., Miss Marion A. Miller, Mrs. B. M. Gambert, Mrs. Marie C. Hostler, Mr. J. E. Stronks, Mr. H. Lyle Goldsberry, Mr. J. R. Hostler, Mr. J. P. Tully, Mrs. M. W. Lees, each individually, and trading under the trade name and style of Educators Association, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a students' reference book entitled, The Volume Library, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist:

1. From representing through the use of the term "Educators Association" in any corporate or trade name or through any other means or device, that they, or any of them, constitute a group of

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educators or teachers formed into an association or that the business operated by them, or any of them, is anything other than a private business enterprise for profit.

2. Representing to prospective representatives that they will refund deposits or pay any specific sums of money or salaries to such representatives until and unless they fully and adequately disclose all of the terms and conditions upon which refunds or payments are actually made.

3. From representing or implying that they or their representatives, agents, or canvassers are connected in any manner with public schools or other educational institutions, or that said Volume Library, or any other and similar publication is prescribed as a textbook or required to be used in connection with school work.

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

CONSOLIDATED PORTRAIT & FRAME COMPANY, AND
BEN DIAL TRADING AS DE LUXE ART STUDIO, AND
DANIEL F. ORANGE AND CHARLES C. ORANGECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2548. Complaint, Sept. 11, 1935—Decision, Mar. 11, 1939*

Where corporation and certain officers and certain agent or employee thereof, as variously engaged in sale and distribution of pictures and frames, namely—

I. Corporation engaged in sale of such products through groups or crews of salesmen who (1) canvassed from house to house throughout the various States to procure orders therefor, and whom it (2) supplied with standard selling and operating supplies for their use as aforesaid, and including sample selling kits, order blanks, and envelopes, and selling paraphernalia such as "lucky envelopes," used to create impression in prospect's mind that, by reason of pretended lucky "draw" or other lure, he was to be recipient of special price advantage or free picture, and (3) with catalogs containing descriptions and prices of its merchandise and also instructions and method of approach to be employed by them in contacting prospective purchasers, and representations to be made by them in offering pictures and frames, and who (4) obtained and forwarded, with said orders, snapshot or other picture of customer or member of customer's family, as a rule, together with instructions pertaining to manner in which customer desired picture made;

II. The president and vice president of said corporation, who operated, controlled, and directed its corporate affairs and activities and managed, from the corporate address, the transaction of all the office business incident to offer and sale of their pictures as herein set forth, including keeping of files, correspondence with customers and others, and collection of delinquent accounts, including action in said respect under names of fictitious finance companies made use of by them in such connection; and

III. An individual who was engaged in sale of pictures made by said corporation and of frames purchased by it from manufacturers thereof, and who, in carrying on, under trade name "De Luxe Art Studio," such business, along with others similarly engaged and employed by it, through supervision of one of said groups or crews;

In soliciting and selling such pictures and frames, in substantial competition with others engaged in manufacture, sale, and distribution of such products and who do not sell the same through using "lucky envelopes" or misrepresenting terms and conditions of sale thereof, but truthfully represent value and quality of their products and terms and conditions of sale thereof—

(a) Represented to customers and prospective customers that the pictures which were made by said corporation were "paintings" or "finely finished paintings," through making use of latter characterization thereof in the

order blanks supplied such salesmen, and through describing and referring to same as "paintings" in the sales catalogs with which it supplied such salesmen;

Facts being pictures involved were neither paintings nor finely finished paintings, but enlarged colored photographs made through enlargement of small snapshots and other similar pictures and coloring thereof through application thereto of paint in color; and

- (b) Induced prospective purchasers solicited by their said salesmen and canvassers as aforesaid, to believe that, as a result of a lucky drawing they would or might procure two pictures of the value of \$40 each at a reduced price of \$20, as a result of their supposed good luck and the display of the pictures in a conspicuous place as a means, purportedly, of advertising the same to people living in the respective communities, and thus enabling the salesmen to sell such pictures to neighbors of the customer at the represented usual price of \$40, through manipulation by salesman of envelopes from which prospective customer was induced to draw, so that prospective customer invariably drew the "lucky envelope" containing so-called "Merchandise Discount Check" setting forth that if person whose name appeared thereon agreed "to assist us in advertising, we will accept this credit check as a \$20 payment on a \$40 painting and will deliver to such person one additional \$40 painting without additional cost"; and in a number of instances induced customers to participate in such drawings by representing that mere participation in such drawings, with no obligation on customer's part, would secure free premium;

Facts being such alleged drawing was a fraudulent scheme conceived for sole purpose of inducing prospective purchasers to believe that if they drew a "lucky envelope" they would procure, as above, two pictures of a value of \$40 each at a reduced price of \$20, pictures or so-called "paintings" sold by it had a value substantially less than such represented value, and customer, after participating in such draw, was informed that free "painting" would not be delivered until he had purchased "paintings" upon which he was entitled to credit for drawing, as above set forth, and they were not conducting advertising campaigns in communities where pictures were being sold, and their said pictures were sold to all customers at uniform prices;

With result that customers were deceived into belief that they had been lucky and won distinct advantage over other customers in same locality by entering into contracts for purchase of said pictures; and

Where said individual engaged, as above set forth, in sale of said corporation's pictures and frames under trade name employed by him, in common with others similarly supervising and working through groups or crews of salesmen, and his said salesmen, engaged as aforesaid—

- (c) Represented to prospective purchasers, whom they solicited to sign contracts, that orders signed by them were merely receipts for the small photographs furnished by such customers from which enlargements were to be made, and sometimes represented such orders as either memorandum as to time of delivery or that customer was entitled to free picture;

Facts being papers signed by customers as aforesaid were binding contracts to purchase pictures or "paintings," signed first by salesmen, described therein as "advertising salesmen," containing memorandum of credit for drawing "lucky envelope," provision for free "painting," and other provi-

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sions and representations of binding nature on customer, not explained to him by salesman, and including provisions to effect that contract could not be countermanded and that verbal agreements were not recognized;

- (d) Represented to prospective customers that frames sold and offered were "gold leaf" frames, and that said "gold leaf" was of high quality and of high value, and represented actual and usual value of such frames as much higher than they in fact were, and glass in many of said frames as being imported Belgium glass;

Facts being the finish thereon was not "gold leaf," such frames were not "gold leaf" as term "gold leaf" is used and accepted in trade, but were finished with burnished bronze material of inferior value, usual and actual value thereof was substantially lower than that represented by said individual and salesmen, and glass was not imported Belgium, nor unique in quality or of high value; and

- (e) Adopted and used, as aforesaid, in soliciting sale of and selling frames and pictures, trade name "De Luxe Art Studio," and made use thereof in soliciting orders from customers, and featured said name and added phrase "Artists and Creators of the Original DeLuxe Paintings";

Facts being said individual did not maintain an independent studio in which artists are employed to paint or produce said portraits, enlarged and tinted, as aforesaid by such corporation, and said trade name was adopted by said corporation and said corporation's officers and individuals in order to conceal fact that such corporation was manufacturer and distributor of the pictures, and to mislead and deceive public into belief that said individual maintained a studio of his own in which he made his own pictures;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that all said false and misleading statements and representations were true, and with result that public, acting under mistaken and erroneous belief induced by such false and misleading statements and representations, purchased substantial volume of their pictures and frames, and trade was unfairly diverted to them from their competitors who truthfully represent their products:

Held, That such acts and practices were all to the injury and 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. George Foulkes for the Commission.

Nash & Donnelly, of Chicago, Ill., for Consolidated Portrait & Frame Co., Daniel F. Orange and Charles C. Orange.

Mr. John Lewis Smith and *Mr. James O'Connor Roberts*, of Washington, D. C., for Ben Dial.

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 Consolidated Portrait & Frame Co., a

corporation, and Ben Dial, trading as DeLuxe Art Studio, and Daniel F. Orange and Charles C. Orange, individuals, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Consolidated Portrait & Frame Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal places of business and office at 100 South Jefferson Street in the city of Chicago, State of Illinois. Respondent is now and has been for several years last past engaged in offering for sale and selling frames and tinted enlargements of photographs. In the course and conduct of its business the respondent sells its products through salesmen or representatives appointed by it as agents in its behalf, to customers, some located in the State of Illinois and others in other States of the United States. Pursuant to such sales, shipments are made by respondents from its place of business in Illinois to such customers in States other than the State of Illinois.

The respondent, Ben Dial, trading as DeLuxe Art Studio, is and at all times hereinafter mentioned has been an individual trading under the name of DeLuxe Art Studio with his principal place of business and office at 100 South Jefferson Street in the city of Chicago, State of Illinois. Respondent is engaged in the business of selling frames and tinted enlargements of photographs. The sales are made through salesmen or representatives appointed by said respondent as agents in his behalf, to the general public throughout the United States, and pursuant to said sales, shipments are made by said respondent from his place of business in Chicago to purchasers, some located in the State of Illinois and others located in States of the United States other than the State of Illinois.

The respondents, Daniel F. Orange and Charles C. Orange, are, respectively, president and vice president of the Consolidated Portrait & Frame Co., with their principal place of business and office at 100 South Jefferson Street in the city of Chicago, State of Illinois. Both in his individual capacity and as an officer of the Consolidated Portrait & Frame Co., the respondent, Daniel F. Orange, acts as the agent of the respondent, Ben Dial, trading as the DeLuxe Art Studio, at the above-stated address, or as an agent of the Consolidated Portrait & Frame Co. Both in his individual capacity and as an officer of the Consolidated Portrait & Frame Co., the respondent, Charles C. Orange, is and has been actively engaged as

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agent and manager of the Great Eastern Finance Co., Not Inc., a fictitious name used by the respondent, Ben Dial, for the purpose of impressing debtors in the collection of delinquent accounts. The present address of the Great Eastern Finance Co., Not Inc., is 100 South Jefferson Street, Chicago, Ill.

In the course and conduct of their aforesaid respective businesses, the respondents are in substantial competition with other corporations, partnerships, firms, and persons who are engaged in the sale of frames and tinted enlargements of photographs between and among the various States of the United States.

PAR. 2. In offering for sale and selling frames and tinted enlargements of photographs the respondents named in paragraph 1 hereof employ salesmen or agents to canvass from house to house in various cities located in the several States of the United States, for the purpose of contacting purchasers of the said products. Respondent, Ben Dial, trading as DeLuxe Art Studio, has direct charge and supervision over the aforesaid agents or salesmen. When orders are obtained from customers by said agents or salesmen, they are forwarded to a supervisor who in turn forwards the order for portraits and frames, if frames are ordered, to the respondent, Consolidated Portrait & Frame Co., or to the respondent, Ben Dial, trading as DeLuxe Art Studio. The respondent, Consolidated Portrait & Frame Co., or the respondents, Daniel F. Orange and Charles C. Orange, individually or as agents of respondent, Ben Dial, trading as DeLuxe Art Studio, thereupon open the correspondence containing the orders addressed as aforesaid, manufacture the portraits so ordered and mail them to the supervisor or the agents or salesmen who procured said orders.

The respondent, Ben Dial, trading as DeLuxe Art Studio, the Consolidated Portrait & Frame Co., the respondents, Daniel F. Orange and Charles C. Orange, individually, the Great Eastern Finance Co., Not Inc., and the Moorg Collection Agency, Not Inc., occupy the same offices at 100 South Jefferson Street, Chicago, Ill. The files and records and the books of account of the respondent, Ben Dial, are maintained in the said offices. Respondent, Daniel F. Orange, has charge of the books of account and records of respondent, Ben Dial, supervises and maintains the same, and answers all complaints of customers, and makes all adjustments with customers, in connection with the sale of frames and tinted enlargements and photographs sold by the respondent, Ben Dial, his agents, or salesmen, and the respondents, their agents, or salesmen.

In the course and conduct of his business, the respondent, Ben Dial, and all of the aforesaid respondents, employ the term, "Great East-

ern Finance Co., Not Inc.," a fictitious name, for the purpose of collecting delinquent accounts. When a customer orders a tinted enlargement of a photograph termed by the respondents' agents as a "painting" and fails to pay for the same upon delivery, a form letter is sent to the customers upon the stationery of the Great Eastern Finance Co., Not Inc., by the respondent, Charles C. Orange. When a series of the form letters fail to effect a payment in full from the said delinquent customer, a letter is sent out from the Moorg Collection Agency, Not Inc., also located in the offices at 100 South Jefferson Street, Chicago, Ill. These letters are signed by Charles C. Orange. The Moorg Collection Agency is likewise a fictitious name possessing no assets, no bank account, and is solely a device used by the respondent, Ben Dial, and all the aforesaid respondents, for inducing by fear an immediate payment.

PAR. 3. In the course and conduct of their business, as aforesaid, in the manufacture, soliciting the sale of, and selling of frames and tinted enlargements of photographs as described in paragraphs 1 and 2 hereof, the respective respondents, through salesmen or representatives appointed by them as agents in their behalf, and as an inducement to prospective customers to purchase their portraits or "paintings," represent the actual value of said portraits or "paintings" to be much greater than they in fact are, and represent the usual prices to be far in excess of the prices at which said portraits actually sell, and then offer the said prospective customers pretended special prices which are usually much less than the represented actual value and usual prices of said portraits or "paintings." Such pretended special prices for such portraits or "paintings" are made upon the claimed consideration that such prospective customers will recommend the portraits and advertise the businesses of respondents in the respective communities in which they live, and by inducing prospective customers to participate in a drawing for a so-called "lucky envelope" from a number of envelopes carried by agents of the respondents for that purpose, the greater number of which envelopes contain copies which purport to entitle those drawing the same to discounts from the represented usual prices of portraits or "paintings" sold by respondents, and such drawings are so manipulated by agents of respondents that each prospective customer receives one of the said "lucky envelopes." The agents and salesmen of the respondents represent to prospective customers, in order to induce such customers to participate in the drawing of a "lucky envelope," that upon such drawing the customer will receive a free portrait or "painting," when in truth and in fact the prices represented by the respondents to be the actual and usual

values of their portraits or "paintings" do not indicate the true value nor actual value nor usual value of said portraits. The prices represented by the respondents to be the usual prices of their portraits or "paintings" are fictitious and misleading and are calculated to, and actually do mislead and deceive purchasers as to the values of said portraits or "paintings" and their usual selling prices, and mislead and deceive them into the belief that they are obtaining said portraits at prices substantially below their usual selling prices, and below their true values or worth when they buy at the pretended special prices offered by respondents. The offer of the alleged free picture to the customer by the respondents is in truth and in fact a misrepresentation, in that the customer is advised after and not before the drawing that he will not be entitled to the alleged free picture until the customer has purchased the portrait or "painting" upon which he is entitled to a credit for drawing a so-called "lucky envelope." In truth and in fact, the price paid by the customer for the portrait or "painting" he contracts to buy also includes the cost of the portrait or "painting" he is told he is to receive free of charge.

PAR. 4. The respondents further, in the course of their said businesses, fraudulently induce persons to whom they furnish tinted enlargements of photographs to sign a contract to purchase said reproductions upon the false representation that said contract is merely a receipt for the small photographs from which enlargements are to be "painted," obtained from the customers or a memorandum as to the time of delivery of the said portrait or "painting" or a memorandum that the customer is entitled to a free picture or "painting" or a memorandum. In truth and in fact the document or paper signed by the customer, as aforesaid, is a binding contract to purchase such reproductions containing memorandum of credit for the drawing of a "lucky envelope" and a provision for a free picture and like other provisions, which instrument is first signed by the agent for respondents, who is falsely described in such contract as "advertising salesman," and which contract contains numerous provisions and representations of a binding nature on the customers which are not explained to or understood by said customers, among which are provisions to the effect that such contract cannot be countermanded, and that verbal agreements are not recognized.

PAR. 5. The aforesaid respondents further, in the conduct of their said businesses, cause their agents to call upon prospective customers and to represent to said customers that the finished enlargement offered for sale is an oil painting, or a painting, when in truth and in fact the said tinted enlargement of a photograph is not an oil painting,

or a painting, but is an enlarged photograph tinted with oil by a method known in the trade as the "air brush method." The term "oil painting" is a well-established term and recognized as such among artists and the general public to designate and denominate an object created on a blank surface by the use of oil and by free hand. A tinted or colored enlargement of a photograph is not a "painting" as that term is used and accepted by members of the industry and the general public. The use by the said respondents of the words "painting" and "oil painting" has had and still has the tendency and capacity to deceive, and has deceived and still deceives customers and prospective customers into the belief that the portraits which they will receive will be and are oil paintings, and to purchase said portraits from said respondents in such erroneous belief.

PAR. 6. The aforesaid respondents, further, in the conduct of their said businesses, cause their said agents to call upon prospective customers and to represent to said customers that the frames which the respondents sell are "gold leaf" frames, and that the said "gold leaf" is of high quality and of high value, and represent the actual and usual value of said frames to be much higher than they in fact are, and represent that the glass in said frames is imported Belgium glass, whereas in truth and in fact the said finish on the said frames designated by the respondents as "gold leaf" is not a finish of high value, nor is the said glass imported from Belgium, but on the contrary the prices represented by the respondents to be the actual values and the usual values of said frames do not indicate such values and in truth and in fact said glass is manufactured in the United States. That the frames represented by the respondents to be "gold leaf" frames are not in fact frames finished with "gold leaf" nor are they "gold leaf" frames as the term "gold leaf" is used and accepted in the trade, but are frames finished with burnished bronze. The use by the said respondents, as aforesaid, of the words "gold leaf" and the representation of quality and value, and that the glass is imported, made by the respondents concerning such frames, have had and still have the tendency and capacity to deceive, have deceived and still deceive customers and prospective customers into the belief that the said frames which they are to receive will be finished in "gold leaf" and will be "gold leaf" frames of high value, and that the glass is unique and of high value, and to purchase the said frames in such erroneous belief.

PAR. 7. In the course and conduct of their businesses as aforesaid, the respondents, or more specifically, the respondent Ben Dial trading as DeLuxe Art Studio, in soliciting the sale of and selling frames

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and tinted enlargements of photographs, as described in paragraph 1 hereof, have adopted in years last past and used and still adopt and use as and for a trade name the words "DeLuxe Art Studio" under which to carry on business. Salesmen in the employ of the respondents use said designated trade name in soliciting orders from customers. Letterheads feature the said trade name and the added phrase "Artists and Creators of the Original DeLuxe Paintings." Envelopes, invoices, credit slips, receipts, statements, and other printed material used by said respondents feature the trade name, DeLuxe Art Studio. The term, "Art Studio," is a standard and accepted term and recognized as such among the trade and the general public to designate and denominate a studio or workshop in which an artist applies his art. In truth and in fact the said respondents or the respondent, Ben Dial, trading as DeLuxe Art Studio, does not maintain an independent studio termed the DeLuxe Art Studio in which artists are employed to paint or produce the said portraits, but the said portraits are enlarged and tinted by the respondent, The Consolidated Portrait & Frame Co. The use of such term as aforesaid by the respondents or the respondent, Ben Dial, trading as DeLuxe Art Studio, is calculated to deceive and mislead, and does deceive and mislead customers and prospective customers into the belief that the said respondents trading as the DeLuxe Art Studio maintain a studio called the DeLuxe Art Studio in which they employ artists who paint or produce the paintings or portraits ordered by said customers, and to purchase the said paintings or portraits in such erroneous belief.

PAR. 8. There are among the competitors of the respondents, described in paragraph 1 hereof, corporations, partnerships, firms, and persons who are engaged in the sale of frames and tinted enlargements of photographs who do not employ and maintain the practices as set forth in paragraphs 3 to 7 of this complaint, but who truthfully represent their products and honestly vend the same, and there are also among the competitors of the respondent corporations, partnerships, firms, and persons engaged in the business of painting portraits who truthfully represent their products as being paintings.

PAR. 9. The use by the respondents of the said practices as set forth in paragraphs 2 to 7 of this complaint unfairly diverts trade from their competitors and thereby substantial injury has been done and is being done by respondents to substantial competition in interstate commerce.

PAR. 10. The acts and practices set forth in paragraphs 2, 3, 4, 5, 6, 7, and 8 hereof are all to the prejudice of the public and the re-

spondents' 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 the Federal Trade Commission Act, the Federal Trade Commission, on September 11, 1935, issued and served its complaint in this proceeding upon respondents, Consolidated Portrait & Frame Co., a corporation, and Ben Dial, trading as DeLuxe Art Studio, and Daniel F. Orange and Charles C. Orange, individuals, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission, and in opposition to the allegations of the complaint by James O'Connor Roberts and Frederic L. Goff, attorneys for respondents, before John L. Hornor and Robert S. Hall, 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 answers thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel; 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 Consolidated Portrait & Frame Co. 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 100 South Jefferson Street in the city of Chicago, State of Illinois. Said respondent is now, and for several years last past has been, engaged in the business of selling pictures and frames.

Respondents Daniel F. Orange and Charles C. Orange, are, respectively president and vice president of respondent Consolidated Portrait & Frame Co., and as such operate, control, and direct its corporate affairs and activities.

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Respondent Ben Dial is an individual engaged in the business of selling pictures manufactured by respondent Consolidated Portrait & Frame Co. Respondent Ben Dial also sells frames for said company which the company purchases from manufacturers of picture frames. Respondent Ben Dial's office is also located at 100 South Jefferson Street, Chicago, Ill.

The office business of all the respondents named herein, such as the keeping of files, correspondence with customers and others, and the collecting of delinquent accounts, is handled by respondents Daniel F. Orange and Charles C. Orange at this address.

Respondents cause said pictures and frames, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State from which such shipments are made.

Respondents are now and have been in substantial competition with other corporations, partnerships, firms, and individuals likewise engaged in the business of selling and distributing pictures and frames in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, respondent Consolidated Portrait & Frame Co. sells its products through salesmen who canvass from house to house throughout the various States of the United States for the purpose of procuring orders for respondent's pictures and frames.

In order to sell its pictures and frames, respondent Consolidated Portrait & Frame Co. makes use of the services of certain salesmen who organize and supervise groups or what are known in the trade as "crews" of salesmen. These individual salesmen who organize and supervise groups or "crews" of salesmen maintain their offices at the place of business of respondent Consolidated Portrait & Frame Co. at 100 South Jefferson Street, Chicago, Ill. Said individual salesmen usually accompany their groups or "crews" of salesmen and assist them in their selling efforts as they go from place to place obtaining orders for pictures and frames.

Each salesman is furnished by respondent Consolidated Portrait & Frame Co. with standard selling and operating supplies for use by them in soliciting orders for pictures and frames. These supplies consist of sample selling kits, order blanks, order envelopes, and various other selling paraphernalia such as "lucky envelopes."

Respondent Ben Dial, in selling the products of respondent Consolidated Portrait & Frame Co., had under his supervision one of the said groups or "crews" of salesmen, and during the time

herein mentioned sold a substantial number of pictures and frames throughout the various States of the United States. Respondent Ben Dial, in soliciting orders for pictures and frames and in the conduct of his selling activities, used the trade name DeLuxe Art Studio.

Respondent Ben Dial, together with other salesmen who likewise operated groups or "crews" of salesmen engaged in selling the products of respondent Consolidated Portrait & Frame Co., made use of such a trade name, and on all order blanks and business stationery designated the office address of the DeLuxe Art Studio as 100 South Jefferson Street, Chicago, Ill.

In soliciting the services of salesmen, respondent Consolidated Portrait & Frame Co. causes to be printed and issued to persons interested in selling its products various types of catalogs which set forth descriptions and prices of its merchandise. On the cover pages of said catalogs the following labels appear in large print:

The Company That Helps Agents
Consolidated Portrait and Frame Company,
The Company That Helps Agents

In said catalogs, respondent Consolidated Portrait & Frame Co. sets forth the selling technique to be employed by salesmen in offering for sale and selling its products to customers. In this way salesmen are instructed by respondent Consolidated Portrait & Frame Co. in the method of approach to be employed by them in contacting prospective purchasers and in the representations to be made by them in offering pictures and frames for sale.

Orders for the pictures and frames are solicited from customers and prospective customers in the following manner:

Respondent Ben Dial and salesmen obtain from each customer a small snapshot picture or other picture, which is usually a picture of the customer or of a member of the customer's family, and forward the same to respondent Consolidated Portrait & Frame Co., together with an order signed by the customer and a small envelope upon which are written by the salesmen the instructions of the customer pertaining to the manner in which the customer desires the picture to be made.

Thereupon a picture is made by respondent Consolidated Portrait & Frame Co. from the small snapshot or other picture in accordance with the instructions set forth on the order envelope, and the same is then forwarded by respondent Consolidated Portrait & Frame Co. to respondent Ben Dial and salesmen for delivery to

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the customer. In a number of instances, respondent Consolidated Portrait & Frame Co. shipped the picture directly to the customer.

Payment for the pictures and frames is made by said customers to salesmen either in cash or part cash. If the customer at the time of signing an order for pictures or frames pays only a part of the purchase price of said merchandise, he signs a promissory note for the unpaid balance. The promissory note used by respondent Consolidated Portrait & Frame Co. and respondent Ben Dial and salesman is a form of negotiable note which bears the name of the Great Eastern Finance Co., Not Inc., as payee. The Great Eastern Finance Co., Not Inc., is a trade name used by respondents with its address also designated as 100 South Jefferson Street, Chicago, Ill. Said finance company possesses no bank account or other assets and is merely a trade name used by respondents for the purpose of collecting delinquent accounts.

If said promissory note is not paid upon maturity by the customer, respondents send a form letter to said customer upon the stationery of the Great Eastern Finance Co., Not Inc., demanding payment of the same. If the promissory note still remains unpaid, further notices are sent by respondents to said customer upon the stationery and letterhead of the Moorg Collection Agency, Not Inc., which notices also demand payment. The Moorg Collection Agency, Not Inc., is also a trade name used by respondents for the purpose of collecting delinquent accounts.

All of the correspondence by respondent Consolidated Portrait & Frame Co., respondent Ben Dial, DeLuxe Art Studio, Great Eastern Finance Co., Not Inc., and Moorg Collection Agency, Not Inc., is handled by respondent Consolidated Portrait & Frame Co. in its office at 100 South Jefferson Street, Chicago, Ill. Respondents Daniel F. Orange and Charles C. Orange answer all letters addressed to all of the above-named firms or individuals on the letterheads of said firms or individuals.

PAR. 3. In the course and conduct of their business, respondents represented to customers and prospective customers that the pictures which are manufactured by respondent Consolidated Portrait & Frame Co. are "paintings" or "finely finished portraits."

These representations are made in various ways. On the order blanks with which the salesmen were supplied by respondents, as hereinabove set forth, and which were signed by customers when ordering one of respondents' pictures, a picture is described as a "painting" or "finely finished painting." Said order blanks read as follows:

You will please make for the undersigned from the photograph -----
 delivered to your advertising salesman this day ----- finely finished painting
 ----- (how many)
 ----- and deliver the same to me on or about the ----- day of -----
 ----- 193... The price of the painting ----- is \$-----.

In various statements made in the sales catalogs used by respondent Consolidated Portrait & Frame Co. for the purpose above set forth said pictures are described as "paintings." The following are examples of such statements but are not all inclusive:

To begin with, you want to arouse a desire on the part of the prospect for one of these paintings.

In nine cases out of ten, the paintings, themselves, in your sample case, will create this desire.

In truth and in fact, respondents' products are not paintings and are not finely finished paintings but are enlarged photographs colored.

Respondents' products are made by enlarging small snapshot pictures and other similar pictures and coloring the enlargements.

Paint and coloring are applied to the enlarged photographic outline.

The testimony shows and the Commission finds that a painting, as understood by photographers who color photographs, and by artists who paint pictures, is an original representation by a painter or artist of a design, image, or object on a surface by means of paint, either pastel, water color, or oil; a freehand image painted directly on the surface without the intervention of any mechanical means such as a camera.

PAR. 4. Further, in offering for sale and in selling their pictures, respondents use the so-called "lucky envelope device." Salesmen who canvass from house to house soliciting orders are supplied by respondents with a number of small envelopes, the greater number of which contain a so-called "Merchandise Discount Check" which purports to entitle the person who "draws" one to two "paintings" having a usual selling price of \$40 each at the special price of \$20. Said Merchandise Discount Check has the following statements thereon:

Special Check—If the person whose name appears on this check agrees to assist us in advertising, we will accept this credit check as a Twenty Dollar payment on a \$40 painting and will deliver to such person one additional \$40 painting without additional cost.

Prospective customers are induced to "draw" an envelope from a number of envelopes in order to obtain the lucky envelope containing the so-called Merchandise Discount Check. The envelopes from which the customers are induced to "draw" are manipulated by the salesman in such a manner that each prospective customer draws a lucky envelope containing the so-called Merchandise Discount Check.

In a number of instances salesmen induced customers to participate in a drawing for a lucky envelope by representing to them that upon merely participating in the "draw," with no obligation on the customer's part, the customer would secure a free "painting." After the customer participated in the "draw," he would be informed by the salesman that the "painting" he would get free would not be delivered until the customer purchased the paintings upon which he was entitled to a credit for drawing the so-called lucky envelope containing the Merchandise Discount Check.

The Commission finds that the pictures or "paintings" sold by respondents have a value substantially less than the represented value of \$40. The Commission further finds that the respondent Consolidated Portrait & Frame Co. enabled respondent Ben Dial and the salesmen working under his supervision to mislead and deceive purchasers by supplying them with the aforesaid sales device. The Commission finds that the alleged "drawing" is a fraudulent scheme conceived for the sole purpose and with the result of inducing prospective purchasers to believe that if they draw a lucky envelope they will procure two pictures of the value of \$40 each at a reduced price of \$20. In fact, however, every prospective purchaser is approached in the same way and all pay the same price. By means of this scheme members of the purchasing public are beguiled into believing that they are the exceptional few whom fortune has favored.

PAR. 5. Customers were also led to believe by statements of respondents' salesmen and statements printed on the so-called Merchandise Discount Checks that if they displayed the pictures in a conspicuous place and thereby advertised said pictures to people living in their communities, the salesmen would thereby be able to sell said pictures to neighbors of said customers at the represented usual price of \$40. The Commission finds that respondents and their salesmen did not conduct and were not conducting advertising campaigns in the communities where the pictures were sold, and that respondents' pictures were sold to all customers at a uniform price. As a result of the representations made by salesmen in connection with the "drawing," customers were deceived into believing that they had been lucky and had won a distinct advantage over other customers in the same locality by entering into contracts for the purchase of respondents' pictures.

PAR. 6. Respondent Ben Dial and salesmen induced persons from whom they solicited orders for pictures to sign contracts to purchase said pictures by representing to such persons that orders signed by them were merely receipts for the small photographs furnished by

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such persons from which enlargements were to be made. Ofttimes said salesmen, instead of representing said order blanks as "receipts," represented the same to be either a memorandum as to the time of delivery of said picture, or a memorandum that the customer was entitled to a free picture.

In truth and in fact, the papers signed by the aforesaid customers were binding contracts to purchase pictures or "paintings." All such contracts contained a memorandum of credit for drawing a "lucky envelope" and a provision for a free "painting" and other provisions. Said orders were first signed by the salesman, who is described in such contract as an "advertising salesman." The order blanks also contained numerous other provisions and representations of a binding nature on the customer, which were not explained to the customer by the salesman, among which were provisions to the effect that such contract could not be countermanded and that verbal agreements are not recognized.

PAR. 7. Respondent Ben Dial, trading as DeLuxe Art Studio, sold frames of many different qualities and designs.

Salesmen called upon prospective customers and represented to said customers that frames which they sold and offered for sale were "gold leaf" frames, and that the said "gold leaf" was of high quality and of high value. They also represented the actual value and usual value of such frames to be much higher than they in fact were. They also represented the glass in many of said frames to be imported Belgium glass.

In truth and in fact, the finish on said frames was not a "gold leaf" finish, nor were the frames "gold leaf" frames as the term "gold leaf" is used and accepted in the trade. Said frames were frames finished with burnished bronze, a material of inferior value.

The usual and actual value of said frames was substantially lower than the value represented by respondent Ben Dial and salesmen.

The glass in said frames was not imported Belgium glass, nor was it unique in quality or of high value.

PAR. 8. Respondent Ben Dial, in soliciting the sale of and selling frames and pictures, has adopted, and used as and for a trade name, the words "DeLuxe Art Studio" with which to carry on business.

Respondent Ben Dial used said designated trade name in soliciting orders from customers. Letterheads feature the said trade name and added phrase "Artists and Creators of the Original DeLuxe Paintings."

The term "Art Studio" is a standard and accepted term and recognized as such among the trade and the general public to designate

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and denominate a studio or workshop in which an artist applies his art.

In truth and in fact, respondent Ben Dial does not maintain an independent studio in which artists are employed to paint or produce portraits, but the said portraits are enlarged and tinted by respondent Consolidated Portrait & Frame Co. The name DeLuxe Art Studio is a name adopted by all of the respondents in order to conceal the fact that respondent Consolidated Portrait & Frame Co. is the manufacturer and distributor of the pictures, and to mislead and deceive the public into believing that respondent Ben Dial maintains a studio of his own in which he manufactures his own pictures.

PAR. 9. In the course and conduct of their business, said respondents were and are in substantial competition with other corporations, individuals, firms, and partnerships also engaged in the manufacture, sale, and distribution of frames and pictures in commerce as herein set-out, who did not and do not sell their products by using "lucky envelopes," nor misrepresent the terms and conditions of sale of their pictures and frames, but who truthfully represent the value and quality of their products and truthfully represent the terms and conditions of sale of their said pictures and frames.

Each and all of the false and misleading statements and representations made by respondents in offering for sale and selling pictures and frames had, and now have, the tendency and capacity to, and do, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. Acting under the mistaken and erroneous belief induced by the false and misleading statements and representations herein referred to, the public has purchased a substantial volume of respondents' products, with the result that trade has been unfairly diverted to respondents from their competitors who truthfully represent their products.

CONCLUSION

The aforesaid acts and practices of respondents are all to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 said complaint and in opposition thereto, taken before John

L. Hornor and Robert S. Hall, examiners of the Commission theretofore duly designated by it, briefs filed herein, and oral arguments by George Foulkes, counsel for the Commission, and John Nash and James O'Connor Roberts, attorneys 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 the Federal Trade Commission Act.

It is ordered, That the respondents, Consolidated Portrait & Frame Co., a corporation, and its officers, Daniel F. Orange and Charles C. Orange, individually and as officers of Consolidated Portrait & Frame Co., and Ben Dial, an individual trading as DeLuxe Art Studio, and their respective representatives, salesmen, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, and sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of colored or tinted photographs or enlargements having a photographic base, do forthwith cease and desist from:

1. Representing directly or in any other manner that colored or tinted photographs or photographic enlargements are paintings or "finely finished paintings."

2. Using the term "painting" either alone or in conjunction with any other terms or words in any way to designate, describe, or refer to colored or tinted photographs, or photographic enlargements or other pictures produced from a photographic base or impression.

3. Representing that respondents, or any of them, are conducting a special campaign or advertising campaign in any particular place or locality for the purpose of obtaining customers who will exhibit their pictures, or for any other purpose, unless such campaign is in fact then being conducted in such locality for such purpose.

4. Representing, through use of the "draw" or through the use of "lucky" envelopes, special discount checks, blanks, slips, coupons, or certificates, or through the use of any other device, plan, or scheme, or special advertising offer, that any customer would thereby obtain a financial advantage or be entitled to receive any picture free or receive a substantial discount, or reduction in the price of any picture or pictures.

5. Representing as the customary and regular prices or values for such pictures, prices and values which are in fact fictitious and greatly in excess of the prices at which said pictures are regularly and customarily sold.

It is further ordered, That respondent, Ben Dial, trading as DeLuxe Art Studio, his servants, agents, and salesmen, in connection with the advertising, offering for sale, sale and distribution in commerce, as

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commerce is defined in the Federal Trade Commission Act, of colored or tinted photographs or enlargements having a photographic base, and frames therefor, do forthwith cease and desist from:

1. Representing that order blanks signed by purchasers are other than contracts for the purchase of a picture or pictures.

2. Using the term "gold leaf" or any other term of similar import and meaning to designate or describe frames finished in burnished bronze or materials other than "gold leaf."

3. Representing, by use of a trade name containing the term "Art Studio," or by use of any other name, or through any other means or device, that respondent, Ben Dial, owns, maintains, or operates a studio in which pictures are made by artists.

4. Representing that the domestic glass used in said frames is imported glass, or is superior in quality and value to its actual quality and value.

It is further ordered, That the respondents shall, within 60 days from 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
**CONSOLIDATED PORTRAIT & FRAME CO., AND PAUL
BROYLE, TRADING AS DE LUXE ART STUDIO, AND
DANIEL F. ORANGE AND CHARLES C. ORANGE**

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

Docket 2549. Complaint, Sept. 11, 1935—Decision, Mar. 11, 1939

Where corporation and certain officers and certain agent or employee thereof, as variously engaged in sale and distribution of pictures and frames, namely—

I. Corporation engaged in sale of such products through groups or crews of salesmen who (1) canvassed from house-to-house throughout the various States to procure orders therefor, and whom it (2) supplied with standard selling and operating supplies for their use as aforesaid, and including sample selling kits, order blanks, and envelopes, and selling paraphernalia such as "lucky envelopes," used to create impression in prospect's mind that, by reason of pretended lucky "draw" or other lure, he was to be recipient of special price advantage or free picture, and (3) with catalogs containing descriptions and prices of its merchandise and also instructions and method of approach to be employed by them in contacting prospective purchasers, and representations to be made by them in offering pictures and frames, and who (4) obtained and forwarded with said orders, snapshot, or other picture of customer or member of customer's family, as a rule, together with instructions pertaining to manner in which customer desired picture made;

II. The president and vice president of said corporation, who operated, controlled, and directed its corporate affairs and activities and managed, from the corporate address, the transaction of all the office business incident to offer and sale of their pictures as herein set forth, including keeping of files, correspondence with customers and others, and collection of delinquent accounts, including action in said respect under names of fictitious finance companies made use of by them in such connection; and

III. An individual who was engaged in sale of pictures made by said corporation and of frames purchased by it from manufacturers thereof, and who, in carrying on, under trade name "De Luxe Art Studio," such business, along with others similarly engaged and employed by it, through supervision of one of said groups or crews.

In soliciting and selling such pictures and frames, in substantial competition with others engaged in manufacture, sale, and distribution of such products and who do not sell the same through using "lucky envelopes" or misrepresenting terms and conditions of sale thereof, but truthfully represent value and quality of their products and terms and conditions of sale thereof—

(a) Represented to customers and prospective customers that the pictures which were made by said corporation were "paintings" or "finely finished paintings," through making use of latter characterization thereof in the order blanks supplied such salesmen, and through describing and referring to same as "paintings" in the sales catalogs with which it supplied such salesmen;

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Facts being pictures involved were neither paintings nor finely finished paintings, but enlarged colored photographs made through enlargement of small snapshots and other similar pictures and coloring same through application thereto of paint in color; and

- (b) Induced prospective purchasers solicited by their said salesmen and canvassers as aforesaid, to believe that, as a result of a lucky drawing they would or might procure two pictures of the value of \$40 each at a reduced price of \$20, as a result of their supposed good luck and the display of the pictures in a conspicuous place as a means, purportedly, of advertising the same to people living in the respective communities, and thus enabling the salesmen to sell such pictures to neighbors of the customer at the represented usual price of \$40, through manipulation by salesman of envelopes from which prospective customer was induced to draw, so that prospective customer invariably drew the "lucky envelope" containing so-called "Merchandise Discount Check" setting forth that if person whose name appeared thereon agreed "to assist us in advertising, we will accept this credit check as a Twenty Dollar payment on a \$40 painting and will deliver to such person one additional \$40 painting without additional cost," and in a number of instances induced customers to participate in such drawings by representing that mere participation in such drawings, with no obligation on customer's part, would secure free premium;

Facts being such alleged drawing was fraudulent scheme conceived for sole purpose of inducing prospective purchasers to believe that if they drew a "lucky envelope" they would procure, as above, two pictures of a value of \$40 each at a reduced price of \$20, pictures or so-called "paintings" sold by it had a value substantially less than such represented value, and customer, after participating in such draw, was informed that free "painting" would not be delivered until he had purchased "painting" upon which he was entitled to credit for drawing, as above set forth, and they were not conducting advertising campaigns in communities where pictures were being sold, and their said pictures were sold to all customers at uniform prices; With result that customers were deceived into belief that they had been lucky and won distinct advantage over other customers in same locality by entering into contracts for purchase of said pictures; and

Where said individual engaged, as above set forth, in sale of said corporation's pictures and frames under trade name employed by him, in common with others similarly supervising and working through groups or crews of salesmen, and his said salesmen, engaged as aforesaid—

- (c) Represented to prospective purchasers, whom they solicited to sign contracts, that orders signed by them were merely receipts for the small photographs furnished by such customers from which enlargements were to be made, and sometimes represented such order as either memorandum as to time of delivery or that customer was entitled to free picture;

Facts being papers signed by customers as aforesaid were binding contracts to purchase pictures or "paintings," signed first by salesmen, described therein as "advertising salesmen," containing memorandum of credit for drawing "lucky envelope," provision for free "painting," and other provisions and representations of binding nature on customer, not explained to him by salesman, and including provisions to effect that contract could not be countermanded and that verbal agreements were not recognized;

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(d) Represented to prospective customers that frames sold and offered were "gold leaf" frames, and that said "gold leaf" was of high quality and of high value, and represented actual and usual value of such frames as much higher than they in fact were, and glass in many of said frames as being imported Belgium glass;

Facts being the finish thereon was not "gold leaf," such frames were not "gold leaf" as term "gold leaf" is used and accepted in trade, but were finished with burnished bronze material of inferior value, usual and actual value thereof was substantially lower than that represented by said individual and salesman, and glass was not imported Belgium, nor unique in quality or of high value; and

(e) Adopted and used, as aforesaid, in soliciting sale of and selling frames and pictures, trade name "De Luxe Art Studio," and made use thereof in soliciting orders from customers, and featured said name and added phrase "Artists and Creators of the Original DeLuxe Paintings;"

Facts being said individual did not maintain an independent studio in which artists are employed to paint or produce said portraits, enlarged and tinted as aforesaid, by such corporation, and said trade name was adopted by said corporation and said corporation's officers and individuals in order to conceal fact that such corporation was manufacturer and distributor of the pictures, and to mislead and deceive public into belief that said individual maintained a studio of his own in which he made his own pictures;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that all said false and misleading statements and representations were true, and with result that public, acting under mistaken and erroneous belief induced by such false and misleading statements and representations, purchased substantial volume of their pictures and frames, and trade was unfairly diverted to them from their competitors who truthfully represent their products:

Heid, That such acts and practices were all to the injury and 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. George Foulkes for the Commission.

Nash & Donnelly, of Chicago, Ill., for Consolidated Portrait & Frame Co., Daniel F. Orange, and Charles C. Orange.

Mr. John Lewis Smith and *Mr. James O'Connor Roberts*, of Washington, D. C., for Paul Broyle.

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 Consolidated Portrait & Frame Co., a corporation, and Paul Broyle, trading as DeLuxe Art Studio, and Daniel F. Orange and Charles C. Orange, individuals, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in

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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, Consolidated Portrait & Frame Co., 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 and office at 100 South Jefferson Street in the city of Chicago, State of Illinois. Respondent is now and has been for several years last past engaged in offering for sale and selling frames and tinted enlargements of photographs. In the course and conduct of its business the respondent sells its products through salesmen or representatives appointed by it as agents in its behalf, to customers, some located in the State of Illinois and others in other States of the United States. Pursuant to such sales, shipments are made by respondent from its place of business in Illinois to such customers in States other than the State of Illinois.

The respondent, Paul Broyle, trading as DeLuxe Art Studio, is and at all times hereinafter mentioned has been an individual trading under the name of DeLuxe Art Studio with his principal place of business and office at 100 South Jefferson Street in the city of Chicago, State of Illinois. Respondent is engaged in the business of selling frames and tinted enlargements of photographs. The sales are made through salesmen or representatives appointed by said respondent as agents in his behalf, to the general public throughout the United States, and pursuant to said sales, shipments are made by said respondent from his place of business in Chicago to purchasers, some located in the State of Illinois and others located in States of the United States other than the State of Illinois.

The respondents, Daniel F. Orange and Charles C. Orange, are, respectively, president and vice president of the Consolidated Portrait & Frame Co., with their principal place of business and office at 100 South Jefferson Street in the city of Chicago, State of Illinois. Both in his individual capacity and as an officer of the Consolidated Portrait & Frame Co., the respondent, Daniel F. Orange, acts as the agent of the respondent, Paul Broyle, trading as the DeLuxe Art Studio, at the above stated address, or as an agent of the Consolidated Portrait & Frame Co. Both in his individual capacity and as an officer of the Consolidated Portrait & Frame Co., the respondent, Charles C. Orange, is and has been actively engaged as agent and manager of the Midwest Finance Co., Not Inc., a fictitious name used by the respondent, Paul Broyle, for the purpose of impressing debtors in the collection of delinquent accounts. The

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present address of the Midwest Finance Co., Not Inc., is 100 South Jefferson Street, Chicago, Ill.

In the course and conduct of their aforesaid respective businesses, the respondents are in substantial competition with other corporations, partnerships, firms, and persons who are engaged in the sale of frames and tinted enlargements of photographs between and among the various States of the United States.

PAR. 2. In offering for sale and selling frames and tinted enlargements of photographs the respondents named in paragraph 1 hereof employ salesmen or agents to canvass from house to house in various cities located in the several States of the United States, for the purpose of contacting purchasers of the said products. Respondent, Paul Broyle, trading as DeLuxe Art Studio, has direct charge and supervision over the aforesaid agents or salesmen. When orders are obtained from customers by said agents or salesmen, they are forwarded to a supervisor who in turn forwards the order for portraits and frames, if frames are ordered, to the respondent, Consolidated Portrait & Frame Co., or to the respondent, Paul Broyle, trading as DeLuxe Art Studio. The respondent, Consolidated Portrait & Frame Co., or the respondents, Daniel F. Orange and Charles C. Orange, individually, or as agents of respondent, Paul Broyle, trading as DeLuxe Art Studio, thereupon open the correspondence containing the orders addressed as aforesaid, manufacture the portraits so ordered, and mail them to the supervisor or the agents or salesmen who procured said orders.

The respondent, Paul Broyle, trading as DeLuxe Art Studio, the Consolidated Portrait & Frame Co., the respondents, Daniel F. Orange and Charles C. Orange, individually, the Midwest Finance Co., Not Inc., and the Moorg Collection Agency, Not Inc., occupy the same offices at 100 South Jefferson Street, Chicago, Ill. The files and records and the books of account of the respondent, Paul Broyle, are maintained in the said offices. Respondent, Daniel F. Orange, has charge of the books of account and records of respondent, Paul Broyle, supervises and maintains the same, and answers all complaints of customers, and makes all adjustments with customers, in connection with the sale of frames and tinted enlargements and photographs sold by the respondent, Paul Broyle, his agents or salesmen, and the respondents, their agents or salesmen.

In the course and conduct of his business, the respondent, Paul Broyle, and all of the aforesaid respondents, employ the term, "Midwest Finance Company, Not Inc.," a fictitious name, for the purpose of collecting delinquent accounts. When a customer orders a tinted enlargement of a photograph termed by the respondents'

agents as a "painting" and fails to pay for the same upon delivery, a form letter is sent to the customers upon the stationery of the Midwest Finance Co., Not Inc., by the respondent, Charles C. Orange. When a series of the form letters fail to effect a payment in full from the said delinquent customer, a letter is sent out from the Moorg Collection Agency, Not Inc., also located in the offices at 100 South Jefferson Street, Chicago, Ill. These letters are signed by Charles C. Orange. The Moorg Collection Agency is likewise a fictitious name possessing no assets, no bank account, and is solely a device used by the respondent, Paul Broyle, and all the aforesaid respondents, for inducing by fear an immediate payment.

PAR. 3. In the course and conduct of their business, as aforesaid, in the manufacture, soliciting the sale of, and selling of frames and tinted enlargements of photographs as described in paragraphs 1 and 2 hereof, the respective respondents, through salesmen or representatives appointed by them as agents in their behalf, and as an inducement to prospective customers to purchase their portraits or "paintings," represent the actual value of said portraits or "paintings" to be much greater than they in fact are, and represent the usual prices to be far in excess of the prices at which said portraits actually sell, and then offer the said prospective customers pretended special prices which are usually much less than the represented actual value and usual prices of said portraits or "paintings." Such pretended special prices for such portraits or "paintings" are made upon the claimed consideration that such prospective customers will recommend the portraits and advertise the business of respondents in the respective communities in which they live, and by inducing prospective customers to participate in a drawing for a so-called "lucky envelope" from a number of envelopes carried by agents of the respondents for that purpose, the greater number of which envelopes contain copies which purport to entitle those drawing the same to discounts from the represented usual prices of portraits or "paintings" sold by respondents, and such drawings are so manipulated by agents or respondents that each prospective customer receives one of the said "lucky envelopes." The agents and salesmen of the respondents represent to prospective customers, in order to induce such customers to participate in the drawing of a "lucky envelope," that upon such drawing the customer will receive a free portrait or "painting," when in truth and in fact the prices represented by the respondents to be the actual and usual values of their portraits or "paintings" do not indicate the true value nor actual value nor usual value of said portraits. The prices represented by the respondents to be the usual prices of their portraits or "paintings"

are fictitious and misleading and are calculated to, and actually do mislead and deceive purchasers as to the values of said portraits or "paintings" and their usual selling prices, and mislead and deceive them into the belief that they are obtaining said portraits at prices substantially below their usual selling prices, and below their true values or worth when they buy at the pretended special prices offered by respondents. The offer of the alleged free picture to the customer by the respondents is in truth and in fact a misrepresentation, in that the customer is advised after and not before the drawing that he will not be entitled to the alleged free picture until the customer has purchased the portrait or "painting" upon which he is entitled to a credit for drawing a so-called "lucky envelope." In truth and in fact, the price paid by the customer for the portrait or "painting" he contracts to buy also includes the cost of the portrait or "painting" he is told he is to receive free of charge.

PAR. 4. The respondents further, in the course of their said businesses, fraudulently induce persons to whom they furnish tinted enlargements of photographs to sign a contract to purchase said reproductions upon the false representation that said contract is merely a receipt for the small photographs from which enlargements are to be "painted," obtained from the customers or a memorandum as to the time of delivery of the said portrait or "painting" or a memorandum that the customer is entitled to a free picture or "painting" or a memorandum. In truth and in fact the document or paper signed by the customer, as aforesaid, is a binding contract to purchase such reproductions containing memorandum of credit for the drawing of a "lucky envelope" and a provision for a free picture and like other provisions, which instrument is first signed by the agent for respondents, who is falsely described in such contract as "advertising salesman," and which contract contains numerous provisions and representations of a binding nature on the customers which are not explained to or understood by said customers, among which are provisions to the effect that such contract cannot be countermanded, and that verbal agreements are not recognized.

PAR. 5. The aforesaid respondents further, in the conduct of their said businesses, cause their agents to call upon prospective customers and to represent to said customers that the finished enlargement offered for sale is an oil painting, or a painting, when in truth and in fact the said tinted enlargement of a photograph is not an oil painting, or a painting, but is an enlarged photograph tinted with oil by a method known in the trade as the "air brush method." The term "oil painting" is a well-established term and recognized as such among

artists and the general public to designate and denominate an object created on a blank surface by the use of oil and by free hand. A tinted or colored enlargement of a photograph is not a "painting" as that term is used and accepted by members of the industry and the general public. The use by the said respondents of the words "painting" and "oil painting" has had and still has the tendency and capacity to deceive, and has deceived and still deceives customers and prospective customers into the belief that the said frames which they are to receive will be finished in "gold leaf" and will be "gold leaf" frames of high value, and that the glass is unique and of high value, and to purchase the said frames in such erroneous belief.

PAR. 6. The aforesaid respondents, further, in the conduct of their said businesses, cause their said agents to call upon prospective customers and to represent to said customers that the frames which the respondents sell are "gold leaf" frames, and that the said "gold leaf" is of high quality and of high value, and represent the actual and usual value of said frames to be much higher than they in fact are, and represent that the glass in said frames is imported Belgium glass, whereas in truth and in fact the said finish on the said frames designated by the respondents as "gold leaf" is not a finish of high value, nor is the said glass imported from Belgium, but on the contrary the prices represented by the respondents to be the actual values and the usual values of said frames do not indicate such values and in truth and in fact said glass is manufactured in the United States. That the frames represented by the respondents to be "gold leaf" frames are not in fact frames finished with "gold leaf" nor are they "gold leaf" frames as the term "gold leaf" is used and accepted in the trade, but are frames finished with burnished bronze. The use by the said respondents, as aforesaid, of the words "gold leaf" and the representation of quality and value, and that the glass is imported, made by the respondents concerning such frames, have had and still have the tendency and capacity to deceive, and have deceived and still deceive customers and prospective customers into the belief that the said frames which they are to receive will be finished in "gold leaf" and will be "gold leaf" frames of high value, and that the glass is unique and of high value, and to purchase the said frames in such erroneous belief.

PAR. 7. In the course and conduct of their businesses as aforesaid, the respondents, or more specifically, the respondent Paul Broyle trading as DeLuxe Art Studio, in soliciting the sale of and selling frames and tinted enlargements of photographs, as described in paragraph 1 hereof, have adopted in years last past and used and still adopt and use as and for a trade name the words "DeLuxe Art Studio"

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under which to carry on business. Salesmen in the employ of the respondents use said designated trade name in soliciting orders from customers. Letterheads feature the said trade name and the added phrase "Artists and Creators of The Original DeLuxe Paintings." Envelopes, invoices, credit slips, receipts, statements, and other printed material used by said respondents feature the trade name, DeLuxe Art Studio. The term, "Art Studio," is a standard and accepted term and recognized as such among the trade and the general public to designate and denominate a studio or workshop in which an artist applies his art. In truth and in fact the said respondents or the respondent, Paul Broyle, trading as DeLuxe Art Studio, does not maintain an independent studio termed the DeLuxe Art Studio in which artists are employed to paint or produce the said portraits, but the said portraits are enlarged and tinted by the respondent, The Consolidated Portrait & Frame Co. The use of such term as aforesaid by the respondents or the respondent, Paul Broyle, trading as DeLuxe Art Studio, is calculated to deceive and mislead, and does deceive and mislead customers and prospective customers into the belief that the said respondents trading as the DeLuxe Art Studio maintain a studio called the DeLuxe Art Studio in which they employ artists who paint or produce the paintings or portraits ordered by said customers, and to purchase the said paintings or portraits in such erroneous belief.

PAR. 8. There are among the competitors of the respondents, described in paragraph 1 hereof, corporations, partnerships, firms, and persons who are engaged in the sale of frames and tinted enlargements of photographs who do not employ and maintain the practices as set forth in paragraphs 3 to 7 of this complaint, but who truthfully represent their products and honestly vend the same, and there are also among the competitors of the respondent corporations, partnerships, firms, and persons engaged in the business of painting portraits who truthfully represent their product as being paintings.

PAR. 9. The use by the respondents of the said practices as set forth in paragraphs 2 to 7 of this complaint unfairly diverts trade from their competitors and thereby substantial injury has been done and is being done by respondents to substantial competition in interstate commerce.

PAR. 10. The acts and practices set forth in paragraphs 2, 3, 4, 5, 6, 7, and 8 hereof are all to the prejudice of the public and the 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 the Federal Trade Commission Act, the Federal Trade Commission, on September 11, 1935, issued and served its complaint in this proceeding upon respondents, Consolidated Portrait & Frame Co., a corporation, and Paul Broyle, trading as De Luxe Art Studio, and Daniel F. Orange and Charles C. Orange, individuals, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission, and in opposition to the allegations of the complaint by James O'Connor Roberts and Frederic L. Goff, attorneys for respondents, before John L. Hornor and Robert S. Hall, 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 answers thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel; 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 Consolidated Portrait & Frame Co. 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 100 South Jefferson Street in the city of Chicago, State of Illinois. Said respondent is now, and for several years last past has been, engaged in the business of selling pictures and frames.

Respondents Daniel F. Orange and Charles C. Orange are, respectively, president and vice president of respondent Consolidated Portrait & Frame Co., and as such operate, control, and direct its corporate affairs and activities.

Respondent Paul Broyle is an individual engaged in the business of selling pictures manufactured by respondent Consolidated Portrait & Frame Co. Respondent Paul Broyle also sells frames for said company which the Company purchases from manufacturers of

picture frames. Respondent Paul Broyle's office is also located at 100 South Jefferson Street, Chicago, Ill.

The office business of all the respondents named herein, such as the keeping of files, correspondence with customers and others, and the collecting of delinquent accounts, is handled by respondents Daniel F. Orange and Charles C. Orange at this address.

Respondents cause said pictures and frames, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State from which such shipments are made.

Respondents are now and have been in substantial competition with other corporations, partnerships, firms, and individuals likewise engaged in the business of selling and distributing pictures and frames in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, respondent Consolidated Portrait & Frame Co. sells its products through salesmen who canvass from house to house throughout the various States of the United States for the purpose of procuring orders for respondent's pictures and frames.

In order to sell its pictures and frames, respondent Consolidated Portrait & Frame Co. makes use of the services of certain salesmen who organize and supervise groups or what are known in the trade as "crews" of salesmen. These individual salesmen who organize and supervise groups or "crews" of salesmen maintain their offices at the place of business of respondent Consolidated Portrait & Frame Co. at 100 South Jefferson Street, Chicago, Ill. Said individual salesmen usually accompany their groups or "crews" of salesmen and assist them in their selling efforts as they go from place to place obtaining orders for pictures and frames.

Each salesman is furnished by respondent Consolidated Portrait & Frame Co. with standard selling and operating supplies for use by them in soliciting orders for pictures and frames. These supplies consist of sample selling kits, order blanks, order envelopes, and various other selling paraphernalia such as "lucky envelopes."

Respondent Paul Broyle, in selling the products of respondent Consolidated Portrait & Frame Co., had under his supervision one of the said groups or "crews" of salesmen, and during the time herein mentioned sold a substantial number of pictures and frames throughout the various States of the United States. Respondent Paul Broyle, in soliciting orders for pictures and frames and in the conduct of his selling activities, used the trade name DeLuxe Art Studio.

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Respondent Paul Broyle, together with other salesmen who likewise operated groups or "crews" of salesmen engaged in selling the products of respondent Consolidated Portrait & Frame Co., made use of such a trade name, and on all order blanks and business stationery designated the office address of the DeLuxe Art Studio as 100 South Jefferson Street, Chicago, Ill.

In soliciting the services of salesmen, respondent Consolidated Portrait & Frame Co. causes to be printed and issued to persons interested in selling its products various types of catalogs which set forth descriptions and prices of its merchandise. On the cover pages of said catalogs the following labels appear in large print:

The Company That Helps Agents
Consolidated Portrait and Frame Company
The Company That Helps Agents

In said catalogs, respondent Consolidated Portrait & Frame Co. sets forth the selling technique to be employed by salesmen in offering for sale and selling its products to customers. In this way salesmen are instructed by respondent Consolidated Portrait & Frame Co. in the method of approach to be employed by them in contacting prospective purchasers and in the representations to be made by them in offering pictures and frames for sale.

Orders for the pictures and frames are solicited from customers and prospective customers in the following manner:

Respondent Paul Broyle and salesmen obtain from each customer a small snapshot picture or other picture, which is usually a picture of the customer or of a member of the customer's family, and forward the same to respondent Consolidated Portrait & Frame Co., together with an order signed by the customer and a small envelope upon which are written by the salesmen the instructions of the customer pertaining to the manner in which the customer desires the picture to be made.

Thereupon a picture is made by respondent Consolidated Portrait & Frame Co. from the small snapshot or other picture in accordance with the instructions set forth on the order envelope, and the same is then forwarded by respondent Consolidated Portrait & Frame Co. to respondent Paul Broyle and salesmen for delivery to the customer. In a number of instances, respondent Consolidated Portrait & Frame Co. shipped the picture directly to the customer.

Payment for the pictures and frames is made by said customers to salesmen either in cash or part cash. If the customer at the time

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of signing an order for pictures or frames pays only a part of the purchase price of said merchandise, he signs a promissory note for the unpaid balance. The promissory note used by respondent Consolidated Portrait & Frame Co. and respondent Paul Broyle and salesman is a form of negotiable note which bears the name of the Mid-West Finance Co., Not Inc., as payee. The Mid-West Finance Co., Not Inc., is a trade name used by respondents, with its address also designated as 100 South Jefferson Street, Chicago, Ill. Said finance company possesses no bank account or other assets and is merely a trade name used by respondents for the purpose of collecting delinquent accounts.

If said promissory note is not paid upon maturity by the customer, respondents send a form letter to said customer upon the stationery of the Mid-West Finance Co., Not Inc., demanding payment of the same. If the promissory note still remains unpaid, further notices are sent by respondents to said customer upon the stationery and letterhead of the Moorg Collection Agency, Not Inc., which notices also demand payment. The Moorg Collection Agency, Not Inc., is also a trade name used by respondents for the purpose of collecting delinquent accounts.

All of the correspondence by respondent Consolidated Portrait & Frame Co., respondent Paul Broyle, DeLuxe Art Studio, Mid-West Finance Co., Not Inc., and Moorg Collection Agency, Not Inc., is handled by respondent Consolidated Portrait & Frame Co. in its office at 100 South Jefferson Street, Chicago, Ill. Respondents Daniel F. Orange and Charles C. Orange answer all letters addressed to all of the above-named firms or individuals on the letterheads of said firms or individuals.

PAR. 3. In the course and conduct of their business, respondents represented to customers and prospective customers that the pictures which are manufactured by respondent Consolidated Portrait & Frame Co. are "paintings" or "finely finished paintings."

These representations are made in various ways. On the order blanks with which the salesmen were supplied by respondents, as hereinabove set forth, and which were signed by customers when ordering one of respondents' pictures, a picture is described as a "painting" or "finely finished painting." Said order blanks read as follows:

You will please make for the undersigned from the photograph _____ delivered to your advertising salesman this day _____ finely finished painting--
(how many)
and deliver the same to me on or about the _____ day of _____
193__ The price of the painting__ is \$-----.

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In various statements made in the sales catalogs used by respondent Consolidated Portrait & Frame Co. for the purpose above set forth, said pictures are described as "paintings." The following are examples of such statements but are not all inclusive:

To begin with, you want to arouse a desire on the part of the prospect for one of these paintings.

In nine cases out of ten the paintings, themselves, in your sample case, will create this desire.

In truth and in fact, respondents' products are not paintings and are not finely finished paintings but are enlarged photographs colored.

Respondents' products are made by enlarging small snapshot pictures and other similar pictures and coloring the enlargements.

Paint and coloring are applied to the enlarged photographic outline.

The testimony shows and the Commission finds that a painting, as understood by photographers who color photographs and by artists who paint pictures, is an original representation by a painter or artist of a design, image, or object on a surface by means of paint, either pastel, water color, or oil; a freehand image painted directly on the surface without the intervention of any mechanical means such as a camera.

PAR. 4. Further, in offering for sale and in selling their pictures, respondents use the so-called "lucky envelope device." Salesmen who canvass from house to house soliciting orders are supplied by respondents with a number of small envelopes, the greater number of which contain a so-called "Merchandise Discount Check" which purports to entitle the person who "draws" one to two "paintings" having a usual selling price of \$40 each at the special price of \$20. Said Merchandise Discount Check has the following statements thereon:

Special Check.—If the person whose name appears on this check agrees to assist us in advertising, we will accept this credit check as a TWENTY DOLLAR payment on a \$40 painting and will deliver to such person one additional \$40 painting without additional cost.

Prospective customers are induced to "draw" an envelope from a number of envelopes in order to obtain the lucky envelope containing the so-called merchandise discount check. The envelopes from which the customers are induced to "draw" are manipulated by the salesman in such a manner that each prospective customer draws a lucky envelope containing the so-called merchandise discount check.

In a number of instances salesmen induced customers to participate in a drawing for a lucky envelope by representing to them that upon merely participating in the "draw," with no obligation on the cus-

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tomers' part, the customer would secure a free "painting." After the customer participated in the "draw," he would be informed by the salesman that the "painting" he would get free would not be delivered until the customer purchased the paintings upon which he was entitled to a credit for drawing the so-called lucky envelope containing the merchandise discount check.

The Commission finds that the pictures or "paintings" sold by respondents have a value substantially less than the represented value of \$40. The Commission further finds that the respondent Consolidated Portrait & Frame Co. enabled respondent Paul Broyle and the salesmen working under his supervision to mislead and deceive purchasers by supplying them with the aforesaid sales device. The Commission finds that the alleged "drawing" is a fraudulent scheme conceived for the sole purpose and with the result of inducing prospective purchasers to believe that if they draw a lucky envelope they will procure two pictures of the value of \$40 each at a reduced price of \$20. In fact, however, every prospective purchaser is approached in the same way and all pay the same price. By means of this scheme members of the purchasing public are beguiled into believing that they are the exceptional few whom fortune has favored.

PAR. 5. Customers were also led to believe by statements of respondents' salesmen and statements printed on the so-called merchandise discount checks that if they displayed the pictures in a conspicuous place and thereby advertised said pictures to people living in their communities, the salesmen would thereby be able to sell said pictures to neighbors of said customers at the represented usual price of \$40. The Commission finds that respondents and their salesmen did not conduct and were not conducting advertising campaigns in the communities where the pictures were sold, and that respondents' pictures were sold to all customers at a uniform price. As a result of the representations made by salesmen in connection with the "drawing," customers were deceived into believing that they had been lucky and had won a distinct advantage over other customers in the same locality by entering into contracts for the purchase of respondents' pictures.

PAR. 6. Respondent Paul Broyle and salesmen induced persons from whom they solicited orders for pictures to sign contracts to purchase said pictures by representing to such persons that orders signed by them were merely receipts for the small photographs furnished by such persons from which enlargements were to be made. Ofttimes said salesmen, instead of representing said order blanks as "receipts," represented the same to be either a memorandum as to

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the time of delivery of said picture, or a memorandum that the customer was entitled to a free picture.

In truth and in fact, the papers signed by the aforesaid customers were binding contracts to purchase pictures or "paintings." All such contracts contained a memorandum of credit for drawing a "lucky envelope" and a provision for a free "painting" and other provisions. Said orders were first signed by the salesman, who is described in such contract as an "advertising salesman." The order blanks also contained numerous other provisions and representations of a binding nature on the customer, which were not explained to the customer by the salesman, among which were provisions to the effect that such contract could not be countermanded and that verbal agreements are not recognized.

PAR. 7. Respondent Paul Broyle, trading as DeLuxe Art Studio, sold frames of many different qualities and designs.

Salesmen called upon prospective customers and represented to said customers that frames which they sold and offered for sale were "gold leaf" frames, and that the said "gold leaf" was of high quality and of high value. They also represented the actual value and usual value of such frames to be much higher than they in fact were. They also represented the glass in many of said frames to be imported Belgium glass.

In truth and in fact, the finish on said frames was not a "gold leaf" finish, nor were the frames "gold leaf" frames as the term "gold leaf" is used and accepted in the trade. Said frames were frames finished with burnished bronze, a material of inferior value.

The usual and actual value of said frames was substantially lower than the value represented by respondent Paul Broyle and salesmen.

The glass in said frames was not imported Belgium glass, nor was it unique in quality or of high value.

PAR. 8. Respondent Paul Broyle, in soliciting the sale of and selling frames and pictures, has adopted, and used as and for a trade name, the words "DeLuxe Art Studio" with which to carry on business.

Respondent Paul Broyle used said designated trade name in soliciting orders from customers. Letterheads feature the said trade name and added phrase "Artists and Creators of the Original DeLuxe Paintings."

The term "Art Studio" is a standard and accepted term and recognized as such among the trade and the general public to designate and denominate a studio or workshop in which an artist applies his art.

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In truth and in fact, respondent Paul Broyle does not maintain an independent studio in which artists are employed to paint or produce portraits, but the said portraits are enlarged and tinted by respondent Consolidated Portrait & Frame Co. The name DeLuxe Art Studio is a name adopted by all of the respondents in order to conceal the fact that respondent Consolidated Portrait & Frame Co. is the manufacturer and distributor of the pictures, and to mislead and deceive the public into believing that respondent Paul Broyle maintains a studio of his own in which he manufactures his own pictures.

PAR. 9. In the course and conduct of their business, said respondents were and are in substantial competition with other corporations, individuals, firms, and partnerships also engaged in the manufacture, sale, and distribution of frames and pictures in commerce as herein set out, who did not and do not sell their products by using "lucky envelopes," nor misrepresent the terms and conditions of sale of their pictures and frames, but who truthfully represent the value and quality of their products and truthfully represent the terms and conditions of sale of their said pictures and frames.

Each and all of the false and misleading statements and representations made by respondents in offering for sale and selling pictures and frames had, and now have, the tendency and capacity to, and do, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. Acting under the mistaken and erroneous belief induced by the false and misleading statements and representations herein referred to, the public has purchased a substantial volume of respondents' products, with the result that trade has been unfairly diverted to respondents from their competitors who truthfully represent their products.

CONCLUSION

The aforesaid acts and practices of respondents are all to the injury and prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 thereto, testimony and other evidence in support of the allegations of said complaint and in opposition thereto, taken before John L. Hornor and Robert S. Hall, examiners of the Commission theretofore duly designated by it, briefs filed herein, and oral arguments

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by George Foulkes, counsel for the Commission, and John Nash and James O'Connor Roberts, attorneys 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 the Federal Trade Commission Act.

It is ordered, That the respondents, Consolidated Portrait & Frame Co., a corporation, and its officers, Daniel F. Orange and Charles C. Orange, individually and as officers of Consolidated Portrait & Frame Co., and Paul Broyle, an individual trading as Deluxe Art Studio, and their respective representatives, salesmen, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, and sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of colored or tinted photographs or enlargements having a photographic base, do forthwith cease and desist from:

1. Representing directly or in any other manner that colored or tinted photographs or photographic enlargements are paintings or "finely finished paintings".

2. Using the term "painting" either alone or in conjunction with any other terms or words in any way to designate, describe, or refer to colored or tinted photographs, or photographic enlargements or other pictures produced from a photographic base or impression.

3. Representing that respondents, or any of them, are conducting a special campaign or advertising campaign in any particular place or locality for the purpose of obtaining customers who will exhibit their pictures, or for any other purpose, unless such campaign is in fact then being conducted in such locality for such purposes.

4. Representing, through use of the "draw" or through the use of "lucky" envelopes, special discount checks, blanks, slips, coupons, or certificates, or through the use of any other device, plan, or scheme, or special advertising offer, that any customer would thereby obtain a financial advantage or be entitled to receive any picture free or receive a substantial discount, or reduction in the price of any picture or pictures.

5. Representing as the customary and regular prices or values for such pictures, prices and values which are in fact fictitious and greatly in excess of the prices at which said pictures are regularly and customarily sold.

It is further ordered, That respondent, Paul Broyle, trading as Deluxe Art Studio, his servants, agents, and salesmen, in connection with the advertising, offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of

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colored or tinted photographs or enlargements having a photographic base, and frames therefor, do forthwith cease and desist from:

1. Representing that order blanks signed by purchasers are other than contracts for the purchase of a picture or pictures.

2. Using the term "gold leaf" or any other term of similar import and meaning to designate or describe frames finished in burnished bronze or materials other than "gold leaf."

3. Representing, by use of a trade name containing the term "Art Studio," or by use of any other name, or through any other means or device, that respondent, Paul Broyle, owns, maintains, or operates a studio in which pictures are made by artists.

4. Representing that the domestic glass used in said frames is imported glass, or is superior in quality and value to its actual quality and value.

It is further ordered, That the respondents shall, within 60 days from 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

HERSHEY CHOCOLATE CORPORATION, PETER CAILLER KOHLER SWISS CHOCOLATES COMPANY, INC., CHOCOLATE SALES CORPORATION, LAMONT, CORLISS & COMPANY, SANITARY AUTOMATIC CANDY CORPORATION, BERLO VENDING COMPANY, AND CONFECTION CABINET COMPANY

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

Docket 3134. Complaint, May 20, 1937—Decision, Mar. 14, 1939

Where three vending machine operators which (1) were engaged in operation of such machines in various sections of the United States and in sale and distribution through said machines in theaters of confections, (2) thus sold certain special Hershey and Nestle solid chocolate bars made by the respective manufacturers for the vending-machine trade, and most popular solid chocolate bars made by far, enjoying much greater consumer demand than any such competitive products, and, prior to matters below set forth, sold generally to such operators' competitors, and (3) constituted the three largest operators of such machines in the industry, composed of 25 or more of such operators, and in competition with many other similarly engaged operators of such machines—

- (a) Entered into exclusive distributing contract with exclusive selling agent of said Nestle items, sale of which, or of others equal in size and weight and at as low a price, was thereafter no longer made to any member of the vending-machine trade other than three operators aforesaid; and
- (b) Protested sale of certain special Hershey competitive chocolate vending-machine items theretofore put on the market by said manufacturer to meet competition of such Nestle items, with result that such manufacturer immediately established policy of restricting sales of its said items, theretofore sold to trade in question generally, to three operators aforesaid, and so informed trade; and

Where manufacturer of said Nestle bars, and its said exclusive selling agent, engaged in manufacturing and sale of such bars in active competition with others similarly engaged—

- (c) Entered into exclusive distributor contract above set forth with such vending-machine operators and, in compliance therewith, notified immediately its vending-machine customers that it had discontinued manufacture of said special items and would no longer be able to supply other special bars as substitutes therefor, and thereafter neither made, offered, nor sold to any member of vending-machine trade other than said three operators any solid chocolate bar equal in size and weight to, and at as low a price as, said items aforesaid; and

Where manufacturer of said Hershey bars, engaged in active competition with others similarly engaged as aforesaid, and following protest, as aforesaid set forth, of such operators with reference to sale of its said special bars to vending-machine trade at large—

- (d) Established policy of restricting sale of such items to said operators, and thus informed trade, for fear that it would not otherwise obtain as large a percentage of the business of such operators as it had previously obtained unless it did so, and thereafter neither made nor offered to said vending-machine trade at large, whether through its selling agent or own selling organization, any solid chocolate bar comparable in size and weight to size and weight of aforesaid items, and at as low a price;

With results that—

(1) Vending-machine operators competing with the three aforesaid were unable to service their machines during such period with Hershey and Nestle solid chocolate bars, preferred by some theater managements for such machines located on their premises, and requested by such managements of competitors of three aforesaid, because of inability to obtain said bars at price which would insure sufficient profit to said competitors to permit them to grant the theater managements percentage of gross take necessary to obtain locations, and such competing vending-machine operators met with difficulty in negotiations for, and lost, theater locations because of inability, by reason of said exclusive distributor arrangements, to obtain such bars; and

(2) The effects of said exclusive distributor arrangements between said chocolate bar manufacturers and their selling and distributing agencies on the one hand, and such vending-machine operators on the other, entered into pursuant to agreements and understandings as above set out, were effectively to close sources of supply of such Hershey and Nestle solid chocolate bars made by their respective manufacturers to members of vending-machine trade other than said three vending-machine operators, and thereby deprived members of consuming public, who might desire to purchase such special chocolate bars from vending machines of competitors of said operators, of opportunity so to do:

Held, That such acts and practices had a dangerous tendency to monopolize sale of such chocolate bars in said vending-machine operators, and actually hindered and prevented competition in sale thereof in commerce, and unreasonably restrained such commerce in vending-machine industry and constituted unfair methods of competition therein.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. John Darsey for the Commission.

Mr. Wellington S. Crouse, of Hershey, Pa., for Hershey Chocolate Corp. and Chocolate Sales Corp.

Mr. Grosvenor Calkins, of Boston, Mass., for Peter Cailler Kohler Swiss Chocolates Co., Inc. and Lamont, Corliss & Co.

Mr. William B. Jaffe and *Mr. Sol A. Rosenblatt*, of New York City, for Sanitary Automatic Candy Corp.

Mr. Max Aron and *Mr. George Phineas Aarons*, of Philadelphia, Pa., for Berlo Vending Co.

Mr. M. Robert Sturman, of Chicago, Ill., for Confection Cabinet 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, having reason to believe that Hershey Chocolate Corporation, Peter Cailler Kohler Swiss Chocolates Co., Inc., Chocolate Sales Corporation, Lamont, Corliss & Co., Sanitary Automatic Candy Corporation, Berlo Vending Co., and Confection Cabinet Co., hereinafter referred to as the respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said Act 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, Hershey Chocolate Corporation, hereinafter for convenience referred to as "Hershey," is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business located in the city of Hershey, State of Pennsylvania. It is, and has been for more than 3 years last past, engaged in the manufacture and sale of candy products. For a period longer than a year immediately prior to October 1, 1935, it manufactured a special chocolate bar which it offered for sale and sold to candy vending-machine dealers and operators.

PAR. 2. The respondent, Peter Cailler Kohler Swiss Chocolates Co., Inc., hereinafter for convenience referred to as "Kohler," is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and place of business in the city of Fulton, State of New York. It is, and has been for more than 3 years last past, engaged in the manufacture and sale of candy products. For a period longer than a year immediately prior to October 1, 1935, it manufactured a special chocolate bar which it offered for sale and sold to candy vending-machine dealers and operators.

PAR. 3. Respondent, Chocolate Sales Corporation, hereinafter for convenience referred to as the "Chocolate Company," is a corporation organized and existing by virtue of the laws of the State of Delaware, with an office and place of business located in the city of Hershey, State of Pennsylvania. It is, and for a period of more than 3 years last past has been, engaged in selling and distributing candy products. It is, and for a period longer than a year immediately prior to October 1, 1935, was, the sole distributing agent of the candy products manufactured by respondent "Hershey." For a period of more than a year

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immediately prior to October 1, 1935, the respondent "Chocolate Company," pursuant to the sole-distributor arrangement with the respondent "Hershey," offered for sale and sold to the candy vending-machine trade the special chocolate bar manufactured by the respondent "Hershey."

PAR. 4. Respondent, Lamont, Lamont, Corliss & Co., hereinafter for convenience referred to as "Lamont," is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and place of business at 60 Hudson Street, in the city of New York, State of New York. It is, and for a period of more than 3 years last past has been, engaged in selling and distributing candy products. It is, and for a period longer than a year immediately prior to October 1, 1935, was, the sole distributing agent of the candy products manufactured by respondent "Kohler." For a period of more than a year immediately prior to October 1, 1935, the respondent "Lamont," pursuant to the sole-distributor arrangement with the respondent "Kohler," offered for sale and sold to the candy vending-machine trade the special chocolate bar manufactured by the respondent "Kohler."

PAR. 5. Respondent, Sanitary Automatic Candy Corporation, hereinafter for convenience referred to as "Sanitary," is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and place of business located at 235 West Twenty-third Street, in the city of New York, State of New York. It is, and for a period of more than 4 years last past has been, engaged in the business of operating candy-vending machines and in the sale and distribution of confectionery through the medium of vending machines.

In the course and conduct of its aforesaid business, the respondent "Sanitary" causes vending machines to be located or placed in theaters and public gathering places in the various States of the United States through and by virtue of arrangements or contractual relationships with the owners, proprietors, or managements of the theaters or such public gathering places. The respondent "Sanitary" causes the said vending machines, when located and placed as aforesaid, to be stocked or filled with confectionery. The products are obtained from the said machines upon the deposit of a designated coin by the customer. For a period longer than a year immediately prior to October 1, 1935, the respondent "Sanitary" stocked and serviced its vending machines with the special chocolate bars manufactured by the respondents "Hershey" and "Kohler" for the candy vending-machine trade which it purchased from or through the respondents "Chocolate Company" and "Lamont."

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PAR. 6. The respondent, Berlo Vending Co., hereinafter for convenience referred to as "Berlo," is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and place of business at 1518 North Broad Street, in the city of Philadelphia, State of Pennsylvania. It is, and for a period of more than 4 years last past has been, engaged in the business of operating candy-vending machines and in the sale and distribution of confectionery through the medium of vending machines.

In the course and conduct of its aforesaid business, the respondent "Berlo" causes vending machines to be located or placed in theaters and public gathering places in the various States of the United States through and by virtue of arrangements or contractual relationships with the owners, proprietors, or managements of the theaters or such public gathering places. The respondent "Berlo" causes the said vending machines, when located and placed as aforesaid, to be stocked or filled with confectionery. The products are obtained from the said machines upon the deposit of a designated coin by the customer. For a period longer than a year immediately prior to October 1, 1935, the respondent "Berlo" stocked and serviced its vending machines with the special chocolate bars manufactured by the respondents "Hershey" and "Kohler" for the candy vending-machine trade, which it purchased from or through the respondents "Chocolate Company" and "Lamont."

PAR. 7. The respondent, Confection Cabinet Co., hereinafter for convenience referred to as "Cabinet," is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with an office and place of business located at 315 Clinton Avenue, in the city of Newark, State of New Jersey. It is, and for a period of more than 4 years last past has been, engaged in the business of operating candy-vending machines and in the sale and distribution of confectionery through the medium of vending machines.

In the course and conduct of its aforesaid business, the respondent "Cabinet" causes vending machines to be located or placed in theaters and public gathering places in the various States of the United States through and by virtue of arrangements or contractual relationships with the owners, proprietors or managements of the theaters or such public gathering places. The respondent "Cabinet" causes the said vending machines, when located and placed as aforesaid, to be stocked or filled with confectionery. The products are obtained from the said machines upon the deposit of a designated coin by the customer. For a period longer than a year immediately prior to October 1, 1935, the respondent "Cabinet" stocked and serviced its vending machines with the special chocolate bars manufactured by the respondents

"Hershey" and "Kohler" for the candy vending-machine trade, which it purchased from or through the respondents "Chocolate Company" and "Lamont."

PAR. 8. There are other individuals, firms, partnerships, and corporations engaged in the business of operating vending machines in the various States of the United States and the distribution and sale of confectionery through the medium of vending machines, and with such individuals, firms, partnerships, and corporations, the respondents "Sanitary," "Berlo," and "Cabinet," at all times mentioned herein have been, and are, in competition.

PAR. 9. On or about October 1, 1935, all of the parties respondent herein agreed, conspired, combined, and confederated together, and united in, and pursued, a common and concerted course of action and undertaking among themselves to close the source of supply of the special chocolate bar manufactured by the respondents "Hershey" and "Kohler" for the vending-machine trade to all members of the vending-machine trade other than the respondents "Sanitary," "Berlo," and "Cabinet," and to eliminate, harass, and unduly burden competitors of the respondents "Sanitary," "Berlo," and "Cabinet" in the candy vending-machine trade.

Pursuant to, and for the purpose of effecting and carrying out the aforesaid program, agreement, combination, confederation, conspiracy, and undertaking, respondents have done, among other things, the following:

(a) Established and designated the respondent "Sanitary," as the purchasing agent, or the representative, of the respondents "Sanitary," "Berlo," and "Cabinet."

(b) Caused a contract to be executed by and between the respondent "Sanitary," acting for and on behalf of the respondents "Berlo" and "Cabinet," and the respondent "Lamont," acting for and on behalf of the respondent "Kohler," the terms of which contract are, among other things, that no sales of the special chocolate bar, manufactured by the respondent "Kohler" for the vending-machine trade, are to be made to any member of the candy vending-machine trade other than the respondents "Sanitary," "Berlo," and "Cabinet," subsequent to the date of October 1, 1935.

(c) Caused a contract, agreement, or understanding to be executed or entered into by and between the respondent "Sanitary," acting for and on behalf of the respondents "Berlo" and "Cabinet," and the respondent "Chocolate Company," acting for and on behalf of the respondent "Hershey," the terms of which contract, agreement or understanding are, among other things, that no sales of the special

chocolate bar, manufactured by the respondent "Hershey" for the vending-machine trade, are to be made to any member of the candy vending machine trade other than the respondents "Sanitary," "Berlo," and "Cabinet," subsequent to the date of October 1, 1935.

(d) Used and engaged in other acts, cooperative and concerted action and coercive methods and practices in promoting, establishing, and carrying out the aforesaid program and agreement, combination, conspiracy, confederation, and undertaking set forth herein.

PAR. 10. The capacity, tendency, and effect of said agreement, combination, conspiracy, confederation, and undertaking, and the said acts and practices of respondents, as set forth in paragraph 9 hereof, are, and have been:

(a) To monopolize in the respondents "Sanitary," "Berlo," and "Cabinet," the sale of the products of the respondents "Kohler" and "Hershey," for which products there is substantial public demand.

(b) To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the candy vending-machine industry, and to deprive the purchasing and consuming public of advantages in prices, 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.

(c) To substantially increase the cost of candy products with which competitors of respondents service or stock their vending machines, thereby eliminating the source of supply to the consuming public of products of equal quality and value.

(d) To place respondents in a position to persuade the proprietors and managements of theaters and public gathering places to permit the installation or location of their vending machines on such premises in lieu, or instead, of vending machines of competitors because of a public demand for respondents' products with the attendant result of obstructing, eliminating, oppressing, stifling, and restricting competition in the location and installation of candy-vending machines.

PAR. 11. The above alleged acts and things done by respondents as set forth in paragraphs 9 and 10 hereof, are monopolistic practices and are methods of competition which are unfair, and they constitute unfair methods of competition in commerce within the intent and meaning, and in violation, of Section 5 of said act approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 20, 1937, issued and served its complaint in this proceeding upon the parties respondent named in the caption hereof, 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 answers thereto on behalf of said parties respondent, testimony and other evidence in support of the allegations of said complaint were introduced by John Darsey, attorney for the Commission, and in opposition to the allegations of the complaint by counsel for the several respondents, before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final 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 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, Hershey Chocolate Corporation (hereinafter referred to as Hershey), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. It is now and for many years prior hereto has been engaged in the business of manufacturing and selling chocolate and cocoa candy products. Its factories and principal place of business are located at Hershey, Pa.

In the course and conduct of its said business the respondent has sold and shipped, and does now sell and ship, chocolate and cocoa candy products in commerce between and among the various States of the United States from the State in which its factories and place of business are located to purchasers thereof located in States other than the State in which its said factories and places of business are located.

PAR. 2. The respondent, Peter Cailler Kohler Swiss Chocolates Co., Inc. (hereinafter referred to as Kohler), is a corporation organized, existing, and doing business under and by virtue of the laws of the

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State of New York. It is now and for many years prior hereto has been engaged in the business of manufacturing and selling chocolate candy products. Its factories and principal place of business are located at Fulton, N. Y.

In the course and conduct of its said business the respondent has sold and shipped, and does now sell and ship, chocolate candy products in commerce between and among the various States of the United States from the State in which its factories and principal place of business are located to purchasers thereof located in States other than the State in which respondent's said factories and principal place of business are located.

PAR. 3. The respondent, Chocolate Sales Corporation, was a corporation organized under the laws of the State of Delaware. For many years prior to June 1937 it was the sole distributing agent of the candy products manufactured by the respondent Hershey. Respondent Chocolate Sales Corporation was legally dissolved in June 1937, and since that date respondent Hershey has maintained its own selling organization.

PAR. 4. The respondent, Lamont, Corliss & Co. (hereinafter referred to as Lamont), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. The business of the respondent Lamont is that of a selling agent and for many years it has been the exclusive selling agent of the candy products manufactured by respondent Kohler. Respondent Lamont maintains its offices and principal place of business at 60 Hudson Street, in the city of New York, N. Y.

PAR. 5. The respondent, Sanitary Automatic Candy Corporation (hereinafter referred to as Sanitary), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. It is now, and for many years prior hereto has been, engaged in the business of operating vending machines and in the sale and distribution of confectionery products through the medium of vending machines. It maintains an office and principal place of business at 235 West Twenty-third Street, in the city of New York, N. Y.

PAR. 6. The respondent, Berlo Vending Co. (hereinafter referred to as Berlo), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. It is now, and for many years prior hereto has been, engaged in the business of operating vending machines and in selling and distributing confectionery products through the medium of vending machines. It maintains an office and principal place of business at 1518 North Broad Street, in the city of Philadelphia, Pa.

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PAR. 7. The respondent, Confection Cabinet Co. (hereinafter referred to as Cabinet), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey. It is now, and for many years prior hereto has been, engaged in the business of operating vending machines and selling and distributing confectionery products through the medium of vending machines. It maintains an office and principal place of business at 315 Clinton Avenue, in the city of Newark, N. J.

PAR. 8. There are many other parties engaged in the manufacture and sale of solid chocolate bars, who pursuant to orders therefor, ship their said products into and through the various States of the United States to the respective places of business of purchasers located in the various States of the United States, and with such parties, the respondents Kohler, Lamont, Hershey, and Chocolate Sales Corporation (until it was dissolved in June 1937), at all times referred to herein have been, and are, in active competition.

PAR. 9. There are also many other parties engaged in the business of operating vending machines in the various States of the United States and in the sale of confectionery products through the medium of such vending machines, and with said parties the respondent Sanitary, Berlo, and Cabinet, at all times referred to herein have been, and are, in active competition.

PAR. 10. For many years, in the course and conduct of its aforesaid business, the respondent Kohler has manufactured, and respondent Lamont, its exclusive selling agent, has sold a variety of chocolate candy products under the trade name Nestle. Among the products manufactured by respondent Kohler and sold by respondent Lamont are special chocolate bars manufactured for the vending-machine trade. The special chocolate bars so manufactured have been sold to the respondents Sanitary, Berlo, and Cabinet, and to the competitors of the last named respondents, except insofar as sales of said products have been restricted as hereinafter set forth, for many years, pursuant to which sales said products have been shipped by respondent Kohler into and through the various States of the United States to said purchasers.

PAR. 11. For many years, in the course and conduct of its aforesaid business the respondent Hershey has manufactured, and the respondent Chocolate Sales Corporation (until it was dissolved in June 1937), sold a variety of chocolate candy products under the trade name Hershey. Since June 1937 the products manufactured by respondent Hershey have been sold through its own selling organization. Among the products manufactured and sold as aforesaid by respondent Hershey are special chocolate bars manufactured for the vending-machine

trade. The special chocolate bars so manufactured have been sold to the respondents Sanitary, Berlo, and Cabinet, and to competitors of the last-named respondents, except insofar as sales of said products have been restricted as hereinafter set forth, for many years, pursuant to which sales said products have been shipped by respondent Hershey into and through the various States of the United States to said purchasers.

PAR. 12. The special Hershey and Nestle solid chocolate bars manufactured by respondents Hershey and Kohler, respectively, for the vending-machine trade are by far the most popular solid chocolate bars manufactured and they enjoy a much greater consumer demand than any competing solid chocolate bars.

PAR. 13. In the course and conduct of their respective businesses, each of the respondents Sanitary, Berlo, and Cabinet, seek to and do negotiate contracts with theater owners and operators providing for the installation of one or more of their machines on the premises of the theaters operated by such theater owners or managements. Some of the vending machines used by respondents Sanitary, Berlo, and Cabinet, contain six slots and some contain nine slots. A large variety of confectionery products, probably 25 or more, are sold through the machines. The types of confectionery products with which the vending machines are serviced are determined upon the basis of the relative popularity of confectionery items in the particular locality in which the machines are located. Respondent Sanitary operates in the metropolitan area of New York, and to some extent through subsidiaries on the West coast. Respondent Berlo operates in the Middle Atlantic States and respondent Cabinet operates throughout the United States. The products are taken from the vending machines by customers, who are patrons of the theaters in which such machines are located, upon deposit of a coin therein. Generally the machines are serviced with confectionery products by the operator installing the machines. Occasionally, they are serviced by the theater management with confectionery products purchased from the machine operator.

The predominant consideration in the negotiation of contracts permitting installation of machines on theater premises is the percentage of the gross take, or income, of each machine offered the theater management for such privilege. Other considerations are the type of machine used, service offered, and quality of the products with which the machines are to be serviced. Respondents Sanitary, Berlo, and Cabinet are the three largest operators of vending machines in the industry which is composed of 25 or more vending-machine operators. The respondents Sanitary, Berlo, and Cabinet for several years have

serviced their vending machines with the special solid chocolate bars manufactured for the vending machine trade by the respondents Hershey and Kohler.

PAR. 14. In 1932 respondent Lamont solicited the business of the respondent Sanitary and was informed that respondent Sanitary was not interested in the solid chocolate bars then being manufactured by respondent Kohler, but would be interested in a bar of such size and shape as would be suitable for use in its vending machines. Negotiations ensued between respondents Lamont and Sanitary resulting in respondent Sanitary submitting to respondent Lamont a design and specifications for a special chocolate bar for use in vending machines. Respondent Lamont, accepted the design submitted by respondent Sanitary and respondent Kohler began the production of a solid chocolate bar in accordance therewith. This bar was designated by respondent Kohler as Item No. 634, and purchase thereof was open to all candy vending machine operators. In 1934 respondent Sanitary requested a bar of lighter weight than No. 634 with a corresponding reduction in price. Respondent Lamont acceded to this request and respondent Kohler thereupon discontinued the manufacture of Item No. 634 and began the manufacture of a lighter solid chocolate bar which was designated No. 635. At this time respondent Kohler also began the manufacture of a special almond bar for the vending machine trade, which bar was designated as Item No. 637. The special bars Nos. 635 and 637 manufactured by respondent Kohler were sold generally to the candy vending-machine trade until the summer of 1935. In the period between September 1, 1934, and May 1, 1935, respondent Lamont sold 4,400,000 bars of Items Nos. 635 and 637 to 22 different vending-machine operators, of which approximately 1,200,000 were purchased by parties other than respondents Sanitary, Berlo, and Cabinet.

PAR. 15. In 1934 respondent Hershey in an effort to meet competition of the Special bars, Nos. 635 and 637, then being manufactured by respondent Kohler and sold by respondent Lamont to the vending-machine trade, obtained some of said bars and designed a mold in imitation thereof and began the production of a solid chocolate bar and an almond bar through the use thereof, which said bars were designated Items Nos. 38 and 106, respectively. Respondent Chocolate Sales Corporation offered and sold the Items Nos. 38 and 106 manufactured by respondent Hershey to the vending-machine trade at large until the summer of 1935.

PAR. 16. In the spring of 1935 respondent Lamont, in an effort to increase the volume of sales of chocolate bars for vending machines, requested respondent Sanitary to confine its purchases of solid choco-

late bars to respondent Lamont. Respondent Sanitary rejected this request and countered with the proposal that respondent Lamont confine the sale of Items Nos. 635 and 637 being manufactured by respondent Kohler to respondent Sanitary. After several months of negotiation, during which time respondents Sanitary, Berlo, and Cabinet, held numerous conferences with reference to obtaining an exclusive distributor contract of Items Nos. 635 and 637 then being manufactured by respondent Kohler and sold by respondent Lamont to the vending-machine trade at large, a contract was entered into between respondent Lamont and respondent Sanitary on August 29, 1935, which provided in substance that sales of the special chocolate bars No. 635 and No. 637 being manufactured by respondent Kohler in accordance with the design submitted by respondent Sanitary would be confined to respondents Sanitary, Berlo, and Cabinet, in consideration of their agreement to purchase at least 10,000,000 bars per year. The contract also provided that such bars would, in the future, be wrapped with the ABC monogram, which is a symbol for respondent Sanitary's trade-mark, America's Best Candies. In compliance with said contract respondent Lamont immediately notified its vending-machine customers that respondent Kohler had discontinued the manufacture of Items Nos. 635 and 637, and that it would not be able to supply other special bars as substitutes therefor. The Nos. 681 and 682 were used in said exclusive distributor contract to designate the special chocolate bars referred to therein in lieu of the Nos. 635 and 637 which were used prior to the execution of said contract, but respondent Lamont continued to sell Items Nos. 635 and 637 to respondents Sanitary, Berlo, and Cabinet as late as the middle of November 1935. The Items Nos. 681 and 682, which were ultimately substituted by respondent Kohler for Items Nos. 635 and 637, were substantially the same as the bars which were formerly designated Nos. 635 and 637, the only difference being a slight change in design and the ABC monogram with which they were wrapped. The substituted bars, namely, Items Nos. 681 and 682, were sold to the respondents Sanitary, Berlo, and Cabinet under the exclusive distributor contract at the same price that Items Nos. 635 and 637 were previously sold to the trade at large.

Prior to the execution of the said exclusive distributor contract between respondent Lamont and respondent Sanitary, respondent Sanitary had sold respondents Berlo and Cabinet vending machines bearing respondent Sanitary's trade-mark, America's Best Candies, and respondents Berlo and Cabinet were granted the privilege of using said trade-mark on confectionery products sold through such machines.

Respondent Sanitary's requirements of special chocolate bars for use in its vending machines have never amounted to 10,000,000 bars per year. Prior to the execution of the said exclusive distributor contract between respondent Lamont and respondent Sanitary for the special chocolate bars manufactured by respondent Kohler, conferences were held between respondents Sanitary, Berlo, and Cabinet with the view of pooling their requirements in order to comply with the condition of agreeing to purchase 10,000,000 bars per year in consideration of the exclusive distributor arrangement. Pursuant to such conferences respondents Berlo and Cabinet authorized respondent Sanitary to execute said exclusive distributor contract on their behalf and each of the respondents Berlo and Cabinet committed itself to purchase 2,500,000 bars per year.

After the expiration of the first year under the said exclusive distributor contract between respondents Lamont and Sanitary, respondents Sanitary, Berlo, and Cabinet had failed to purchase the 10,000,000 bars stipulated in said contract, and a controversy arose between the parties thereto with respect to the provisions thereof, whereupon the said exclusive distributor contract was terminated. At this time respondent Lamont agreed to continue to supply respondents Sanitary, Berlo, and Cabinet with its Items Nos. 681 and 682 wrapped with Sanitary's ABC monogram.

At no time since the execution of the exclusive distributor contract between the respondents Lamont and Sanitary on August 29, 1935, and its termination in October 1936, to the date of the closing of the taking of testimony herein, viz, April 6, 1938, did respondent Kohler manufacture and respondent Lamont offer and sell to any member of the vending-machine trade other than the respondents Sanitary, Berlo, and Cabinet, any solid chocolate bar equal in size and weight to, and at a price as low as, the size, weight, and price of its Items Nos. 681 and 682.

PAR. 17. Almost simultaneously with the execution of the exclusive distributor contract between respondents Lamont and Sanitary, respondents Sanitary, Berlo, and Cabinet protested to respondent Hershey with reference to the sale of its special chocolate bars Nos. 38 and 106 to the vending-machine trade at large. Respondent Hershey immediately established the policy of restricting sales of its Items Nos. 38 and 106 to respondents Sanitary, Berlo, and Cabinet, and so informed the trade. Respondent Hershey agreed to confine sales of Items Nos. 38 and 106 to respondents Sanitary, Berlo, and Cabinet for fear that it would not obtain as large a percentage of the business of respondents Sanitary, Berlo, and Cabinet as it had previously obtained

unless it did so. Respondent Hershey has never labeled any of its products with respondent Sanitary's ABC trade-mark.

From the time respondent Hershey established the policy of confining sales of its Items Nos. 38 and 106 to respondents Sanitary, Berlo, and Cabinet in the summer of 1935 to the spring of 1938, respondent Hershey did not manufacture and offer to the vending-machine trade at large, either through its selling agent, respondent Chocolate Sales Corporation, or through its own selling organization, any solid chocolate bar comparable in size and weight to, and at a price as low as, the size, weight, and price of its Items Nos. 38 and 106.

Respondent Hershey professes to have abandoned the policy of confining sales of its Items Nos. 38 and 106 to respondents Sanitary, Berlo, and Cabinet in the spring of 1938. Sales of Items Nos. 38 and 106 were made to only one customer other than respondents Sanitary, Berlo, and Cabinet prior to the closing of the taking of testimony herein on April 6, 1938.

PAR. 18. Some theater managements prefer that vending machines located on their premises be serviced with Hershey and Nestle solid chocolate bars and have requested competitors of respondents Sanitary, Berlo, and Cabinet to service their machines with such bars.

Vending-machine operators competing with respondents Sanitary, Berlo, and Cabinet have been unable to service their machines with Hershey and Nestle solid chocolate bars during the period covered by the exclusive distributor arrangements between respondents Lamont and Sanitary, Berlo, and Cabinet on the one hand, and between respondents Hershey and Sanitary, Berlo, and Cabinet on the other hand, because of their inability to obtain such bars at a price which would insure sufficient profit to them to permit such competing operators to grant the theater managements a percentage of the gross take necessary to obtain locations.

Vending-machine operators competing with respondents Sanitary, Berlo, and Cabinet have met with difficulty in their negotiations for, and have lost, theater locations because of their inability to obtain Hershey and Nestle solid chocolate bars because of the exclusive distributor arrangements above referred to.

PAR. 19. The effects of the aforesaid exclusive distributor arrangements between respondents Lamont and Sanitary, Berlo, and Cabinet on the one hand, and between respondent Hershey and Sanitary, Berlo, and Cabinet on the other hand, entered into pursuant to the agreements and understandings between the said parties respondent hereinabove set out has been to effectively close the sources of supply of the Hershey and Nestle special chocolate bars manufactured by respondents Hershey and Kohler respectively, to members of the vending-

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machine trade other than respondents Sanitary, Berlo, and Cabinet, thereby depriving members of the consuming public who may desire to purchase said special chocolate bars from the vending machines of competitors of said respondents Sanitary, Berlo, and Cabinet, of the opportunity to do so.

CONCLUSION

The aforesaid acts and practices of respondents have a dangerous tendency to monopolize the sale of said solid chocolate bars in the respondent vending-machine operators, and have actually hindered and prevented competition in the sale of said products in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in the vending-machine industry, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers filed on behalf of the parties respondent named in the caption hereof, testimony and other evidence taken before Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by John Darsey, counsel for the Commission, and by the several counsel for the said parties respondent, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Sanitary Automatic Candy Corporation, Berlo Vending Co., and Confection Cabinet Co., their officers, representatives, agents, and employees, in connection with the sale or purchase of confectionery products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Entering into or carrying out any agreement or understanding among themselves, or between or among any two of them, or between or among any one of them and any other or others, to influence, persuade, or coerce any one or more of the respondents, Hershey Chocolate Corporation, Peter Cailler Kohler Swiss Chocolates Co., Inc., or Lamont, Corliss & Co., or any other manufacturer or seller of confectionery products, to refuse to sell any of such products to any other member of the vending-machine trade, or to refuse to sell any of such products to any other member of the vending-machine trade upon

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terms and conditions as favorable as the terms and conditions upon which such products are purchased by any one of the respondent vending-machine operators.

2. Entering into or carrying out any agreement or understanding among themselves, or between or among any two of them, or between or among any one of them and any other or others, to prevent, interfere with, or hinder, directly or indirectly, the purchase of any of such products by any other member of the vending-machine trade from any manufacturer or seller thereof, or to prevent, interfere with, or hinder, directly or indirectly, the purchase of any such products by any other member of the vending-machine trade from any manufacturer or seller thereof upon terms and conditions as favorable as the terms and conditions upon which such products are purchased by any one of the respondent vending-machine operators.

It is further ordered, That the respondents, Hershey Chocolate Corporation, Peter Cailler Kohler Swiss Chocolates Co., Inc., and Lamont, Corliss & Co., their officers, representatives, agents, and employees, and each of them, cease and desist from participating in, or doing any act or thing in furtherance of any agreement or understanding between or among any of the respondent vending-machine operators, or between or among any one of them and any other or others, having for its purpose the accomplishment of any of the restraints prohibited in paragraphs 1 and 2 of this order.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent, Chocolate Sales Corporation, for the reason that this respondent has been legally dissolved.

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

IN THE MATTER OF
LUX-VISEL 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 3683. Complaint, Jan. 5, 1939—Decision, Mar. 14, 1939

Where a corporation engaged in manufacture and sale of electric hot water heaters under name "Lux" or "Superlux"; in advertising for salesmen to sell and distribute its said products throughout the various States, in newspapers and periodicals, and in follow-up literature, letters, pamphlets, and order blanks sent to prospective salesmen making inquiry—

(a) Represented and implied to purchasing public and to prospective agents and salesmen, that by purchasing one heater at a stipulated amount they would receive an additional one free, or that by purchasing larger quantities they would receive others free of charge, or that they would receive a "free offer" or "free sample offer," through such statements as "Free Offer," "Free Sample Offer—No Risk," and "I will send you two Super Lux Heaters for the price of only one which is \$3.00," etc., and "Don't forget I give you Free Heaters to cover transportation charges regardless of the quantity you buy";

Facts being it did not make such free offer, nor would customer get heater free, but price of so-called "free heater" was included in price of other articles, rendering of a service or payment of money was required before such free heater was furnished by it, and price charged for the one heater and the "free" heater was the regular customary price charged for two, and said offer was not special, but one of long standing which constituted its permanent method of doing business, with price referred to included in that of other articles which must be purchased to obtain so-called "free" item;

(b) Represented, as aforesaid, that its agents normally or usually made up to \$30 a day or other large amounts of money as profits derived from their efforts in selling its said product, through such statements as "Up to \$30 Profit Daily," "Up to \$30 and More Daily," and "Pays Agents Up to \$20, \$30, \$40 in a Day," and "Try to think of any business offering you the chance to make up to \$15 to \$35 and over in a single day that you can get into as easily as this one";

Facts being its said agents do not normally or usually make profits up to \$30 a day, or any comparable or similar amounts, its claims of earnings made by its agents were greatly in excess of average earnings made by active full-time agents under normal conditions in usual course of business, very few of its agents were full-time employees or had even given it "repeat" orders, only a small percentage of its customers actually worked as agents for it or made any further purchase of its said product other than the original small order, and its sales methods accomplished, in general, only initial sale to a customer, rather than continuous and numerous repeat sales to agents and salesmen; and

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(c) Represented that its product had been approved or tested by the Underwriters Laboratories through placing in its advertising pamphlets, leaflets, and circulars, for purpose of misleading and deceiving purchasers and prospective purchasers, sketch of its said heater together with statement, in large prominent letters, "Underwriters Laboratories Seal of Approval," followed by, in small type, "is on the 8-foot cord of every," and below and again in large prominent letters, "Lux Electric Water Heater," and thereby led purchasers or prospective purchasers to believe that entire heater had been thus approved;

Facts being only cord used for attaching same to electric outlet had been approved as aforesaid, and "seal of approval" of heater had not been thus given;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of its said product into erroneous belief that all of such false and misleading representations, and others of similar purport and effect, were true, and that said product had been approved by recognized testing laboratory with respect to quality and effectiveness, and with result that such purchasers were misled into believing that by answering its advertisements or purchasing its products or acting as its agents or salesmen they would receive something free or be able to earn large and exaggerated profits or commissions, and that, as a direct consequence of such erroneous beliefs thus induced, substantial number of purchasing public bought large quantity of its said products:

Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Merle P. Lyon for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Lux-Visel Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Lux-Visel Co., Inc., is a corporation organized, existing and doing business under the laws of the State of Indiana, with its office and principal place of business located at 415 West Franklin Street, Elkhart, Ind.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the manufacture and sale of an electric hot water heater, sold under the name of Lux Electric Water Heater or Superlux Electric Water Heater. In the conduct of its business respondent uses the trade names "The Lux Company" and "Superlux." Respondent's heater consists essentially of a small aluminum disc com-

bined with a wire heating element, designed for use in the home, shop or office, for the purpose of heating water.

In the course and conduct of its said business, respondent causes its product when sold to be transported from its aforesaid place of business in the State of Indiana to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said electric water heaters sold and distributed by it 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 said business, respondent employs agents and salesmen to sell and distribute its product throughout the various States of the United States, and for the purpose of securing the services of such agents and salesmen it publishes advertisements in newspapers, periodicals, and magazines soliciting agents to sell its product. Such advertisements emphasize and stress the claimed money-making possibilities for agents selling respondent's product.

Among the advertisements so published by respondent and typical of its representations in this respect are the following:

Mysterious Disc Boils Water instantly without coal gas or oil. Pays to \$30 dally. New Principle. Pocket size. Free offer. Write Superlux, Elkhart, Indiana.

This Magic-Disc Heats Water Instantly. Up to \$30 Profit Daily. Free sample Offer. Write at once for full details. The Lux Company, Dept., 403, Elkhart, Ind.

This Magic Disc Pays You Up to \$30 and More Daily. Free Offer.

Magic Disc Pays You Up to \$30 Daily! Free sample Offer—No Risk.

Amazing Magic Disc Boils Water Almost Instantly, And Pays Agents Up to \$20, \$30, \$40 in a Day.

FREE SAMPLE OFFER COUPON.

The Lux Co., Dept. 513

Elkhart, Ind.

Rush me your FREE SAMPLE Offer for a New SUPERLUX Electric Water Heater and full information about your BIG MONEY MAKING Opportunity.

Name _____

Address _____

City _____ State _____

PAR. 4. When an inquiry is received from a prospective salesman who has read one of respondent's above advertisements and has indicated his interest in becoming an agent for the sale of respondent's product, respondent sends to such person "follow-up" literature, letters, pamphlets, and order blanks, containing, among others, representations as follows:

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Thousands of others have accepted my Free Sample Offer and are now making profits up to 233% and you can do the very same thing.

Unlike other concerns which require you to buy your sales outfit at an exorbitant price, I am going to help you get started with my Free Sample Offer which you will find explained in detail under Offer #1 in the enclosed application blank. I will send you two Super Lux Heaters for the price of only one which is \$3.00. When they arrive you can sell one immediately for \$3.00 and get your money back. That will give you your demonstrator without any cost whatsoever.

In addition to this handsome profit you get a liberal supply of FREE heaters that increase the amount of your profits. You don't have to hesitate to accept my Free Sample Offer because if the Lux Heater isn't all I claim, or if you are not satisfied with the Lux, just return the two heaters within ten days from shipment date and I'll refund your \$3.00 immediately.

Clouds of STEAM pay Agents up to \$30.00 in a day!

Two Easy Ways to Start making up to \$15 to \$35 in a Day. Try to think of any business offering you the chance to make up to \$15 to \$35 and over in a single day that you can get into as easily as this one.

Don't forget I give you FREE HEATERS to cover transportation charges regardless of the quantity you buy.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondent represents and implies to the purchasing public and to prospective agents and salesmen:

1. That by purchasing one heater at a stipulated amount they will receive an additional one free, or that by purchasing larger quantities of heaters they will receive others free of charge, or that they will receive a "free offer" or "Free sample offer".

2. That respondent's agents normally or usually make up to \$30 a day or other large amounts of money as profits derived from their efforts in selling respondent's product.

PAR. 6. In truth and in fact, respondent does not make a "free offer" or "free sample offer," since the customer does not get a heater "free." The price of the so-called "Free" heater is included in the price of other articles, and the rendering of a service or a payment of money is required before such "free" heater is furnished by respondent. The price charged for the one heater and the "free" heater is the regular and customary price charged for two heaters, and is not a special offer. Furthermore, this offer of the "Free" heater or heaters is one of long standing and constitutes the respondent's permanent method of doing business and the price thereof is included in the price of the other articles which must be purchased to obtain the so-called free items.

Respondent's agents do not normally or usually make profits "up to \$30 a day" or any comparable or similar amounts, and respondent's claims of earnings made by its agents are greatly in excess of the

average earnings made by respondent's active full-time agents under normal conditions in the usual course of business. In truth and in fact, very few, if any, of respondent's agents are full-time employees or have even given the respondent "repeat" orders. Only a small percentage of respondent's customers actually work as agents for respondent or make any further purchase of respondent's heater than the original small order, and respondent's sales methods accomplish in general only the initial sale to a customer, rather than continuous and numerous "repeat" sales to agents and salesmen.

PAR. 7. For the purpose of misleading and deceiving purchasers and prospective purchasers the respondent places a pictorial representation or a sketch of its heater in its advertising pamphlets, leaflets, and circulars, which pictorial representation is accompanied by the statement "Underwriters Laboratories Seal of Approval" in large prominent letters, below which appears in small type "is on the 8-foot cord of every," and below this again in large prominent letters "Lux Electric Water Heater." By this means the purchaser or prospective purchaser is led to believe that the entire electric water heater has been approved by the Underwriters Laboratories when in truth and in fact only the cord used for attaching respondent's heater to an electric outlet has been approved by the Underwriters Laboratories, and respondent's heater is not so approved or given its "seal of approval."

PAR. 8. The use of the foregoing false and misleading representations by respondent as above set-out and others of similar purport and effect have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's product into the erroneous belief that all of said representations are true and that said product has been approved by a recognized testing laboratory as to its quality or effectiveness in use. Such purchasers and prospective purchasers are also misled into believing that by answering respondent's advertisements or purchasing its products or acting as its agents or salesmen, they will receive something free or that they will be able to earn large and exaggerated profits or commissions. As a direct result of these erroneous and mistaken beliefs induced by the false representations hereinbefore set-out, a substantial number of the purchasing public have purchased a large quantity of respondent's products.

PAR. 9. The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 5, 1939, issued, and subsequently served, its complaint in this proceeding upon the respondent, Lux-Visel Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce and in violation of the provisions of said act. Subsequently, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, Lux-Visel Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of Indiana, with its office and principal place of business located at 415 West Franklin Street, Elkhart, Ind.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the manufacture and sale of an electric hot water heater, sold under the name of Lux Electric Water Heater, or Superlux Electric Water Heater. In the conduct of its business respondent uses the trade names, "The Lux Company" and "Superlux." Respondent causes its products when sold to be transported from its aforesaid place of business in the State of Indiana to the purchasers thereof located in various other States of the United States.

Respondent maintains and for the past several years has maintained a course of trade in said electric water heaters 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 said business, respondent employs agents and salesmen to sell and distribute its product throughout the various States of the United States, and for the purpose of securing the services of such agents and salesmen it publishes advertisements in newspapers, periodicals, and magazines soliciting agents to sell its product. Such advertisements emphasize and stress the claimed money-making possibilities for agents selling respondent's product.

Among the advertisements so published by respondent and typical of its representations in this respect are the following:

Mysterious Disc Boils Water instantly without coal, gas or oil. Pays to \$30 daily. New principle. Pocket size. Free offer. Write Superlux, Elkhart, Indiana.

This Magic-Disc Heats Water Instantly. Up to \$30 Profit Daily. Free Sample Offer. Write at once for full details. The Lux Company, Dept. 403, Elkhart, Ind.

This Magic Disc Pays You Up to \$30 and More Daily. Free Offer.

Magic Disc Pays You Up to \$30 Daily! Free Sample Offer—No Risk.

Amazing Magic Disc Boils Water Almost Instantly, And Pays Agents Up to \$20, \$30, \$40 in a Day.

FREE SAMPLE OFFER COUPON.

The Lux Co. Dept 513

Elkhart, Ind.

Rush me your FREE SAMPLE Offer for a New SUPER-LUX Electric Water Heater and full information about your BIG MONEY MAKING Opportunity.

Name.....

Address.....

City.....State.....

PAR. 4. When an inquiry is received from a prospective salesman who has read one of respondent's above advertisements and has indicated his interest in becoming an agent for the sale of respondent's product, respondent sends to such person "follow-up" literature, letters, pamphlets, and order blanks, containing, among others, representations as follows:

Thousands of others have accepted my FREE SAMPLE OFFER and are now making profits up to 233% and you can do the very same thing.

Unlike other concerns which require you to buy your sales outfit at an exorbitant price, I am going to help you get started with my FREE SAMPLE OFFER which you will find explained in detail under Offer #1 in the enclosed application blank. I will send you two SUPER LUX HEATERS for the price of only one which is \$3.00. When they arrive you can sell one immediately for \$3.00 and get your money back. That will give you your demonstrator without any cost whatsoever.

In addition to this handsome profit you get a liberal supply of FREE Heaters that increase the amount of your profits. You don't have to hesitate to accept by FREE SAMPLE OFFER because if the Lux Heater isn't all I claim, or if you are not satisfied with the Lux, just return the two heaters within ten days from shipment date and I'll refund your \$3.00 immediately.

Clouds of STEAM pay Agents up to \$30.00 in a day!

Two Easy Ways to Start making up to \$15 to \$35 in a day. Try to think of any business offering you the chance to make up to \$15 to \$35 and over in a single day that you can get into as easily as this one.

Don't forget I give you FREE HEATERS to cover transportation charges regardless of the quantity you buy.

PAR. 5. Through the use of the statements and representations hereinabove set forth and other representations similar thereto not

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specifically set-out herein, the respondent represents and implies to the purchasing public and to prospective agents and salesmen:

1. That by purchasing one heater at a stipulated amount they will receive an additional one free, or that by purchasing larger quantities of heaters they will receive others free of charge, or that they will receive a "free offer" or "Free sample offer."

2. That respondent's agents normally or usually make up to \$30 a day or other large amounts of money as profits derived from their efforts in selling respondent's product.

PAR. 6. In truth and in fact, respondent does not make a "free offer" or "free sample offer," since the customer does not get a heater "free." The price of the so-called "free" heater is included in the price of other articles, and the rendering of a service or a payment of money is required before such "free" heater is furnished by respondent. The price charged for the one heater and the "free" heater is the regular customary price charged for two heaters, and is not a special offer. Furthermore, this offer of the "free" heater or heaters is one of long standing and constitutes the respondent's permanent method of doing business and the price thereof is included in the price of the other articles which must be purchased to obtain the so-called free items.

Respondent's agents do not normally or usually make profits "up to \$30 a day" or any comparable or similar amounts, and respondent's claims of earnings made by its agents are greatly in excess of the average earnings made by respondent's active full-time agents under normal conditions in the usual course of business. In truth and in fact, very few, if any, of respondent's agents are full-time employees or have even given the respondent "repeat" orders. Only a small percentage of respondent's customers actually work as agents for respondent or make any further purchase of respondent's heater than the original small order, and respondent's sales methods accomplish in general only the initial sale to a customer, rather than continuous and numerous "repeat" sales to agents and salesmen.

PAR. 7. For the purpose of misleading and deceiving purchasers and prospective purchasers the respondent places a pictorial representation or a sketch of its heater in its advertising pamphlets, leaflets, and circulars, which pictorial representation is accompanied by the statement "UNDERWRITERS LABORATORIES SEAL OF APPROVAL" in large prominent letters, below which appears in small type "is on the 8-foot cord of every," and below this again in large prominent letters "LUX ELECTRIC WATER HEATER." By this means the purchaser or prospective purchaser is led to believe that the entire electric water heater has been approved by the Under-

writers Laboratories when in truth and in fact only the cord used for attaching respondent's heater to an electric outlet has been approved by the Underwriters Laboratories, and respondent's heater is not so approved or given its "seal of approval."

PAR. 8. The use of the foregoing false and misleading representations by respondent as above set-out and others of similar purport and effect have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's product into the erroneous belief that all of said representations are true and that said product has been approved by a recognized testing laboratory as to its quality or effectiveness in use. Such purchasers and prospective purchasers are also misled into believing that by answering respondent's advertisements or purchasing its products or acting as its agents or salesmen, they will receive something free or that they will be able to earn large and exaggerated profits or commissions. As a direct result of these erroneous and mistaken beliefs induced by the false representations hereinbefore set-out, a substantial number of the purchasing public have purchased a large quantity of respondent's products.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Lux-Visel Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of an electric hot water heater sold under the name of Lux Electric Water Heater or Superlux Electric Water Heater, or any other name or names, in commerce, as com-

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merce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "free" or any other term of similar import or meaning to describe or refer to goods, wares, or merchandise regularly offered in connection with the purchase of specified quantities of identical, similar, or other merchandise.

2. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors, for any given period of time, which is not a true representation of the average earnings or profits consistently made by its active, full-time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

3. Representing any specified sum of money as earnings or profits of any specified agent, salesman, representative, or distributor, for any given period of time, which has not in fact been consistently earned by such agent, salesman, representative, or distributor in the ordinary course of business and under normal conditions and circumstances.

4. Representing that its product has been approved or tested by the "Underwriters' Laboratory" or any similar organization unless said product has been so approved or tested, and when only a portion or part of said product has been so approved or tested such fact must be clearly and unequivocally stated so that there is no deception as to which part or parts have been so approved or tested.

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
LIGHTMORE APPLIANCE CORPORATION AND SOLAR-
RAY LAMP 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 2575. Complaint, Oct. 9, 1935—Decision, Mar. 15, 1939

Where a corporation engaged in manufacture and sale of incandescent bulbs for general lighting service, and of 28-40-volt lamps for country home lighting service through use of current from storage batteries and low-voltage generators, and second concern, engaged, for time, in sale of products made by former, and under same control and management—

- (a) Represented that their said lamps were guaranteed to give 1,000 hours average service, and were made according to and complied with standard specifications set by the United States Government, facts being said lamps had no guarantor other than themselves, did not give said number of hours average service, but were very erratic in both intake and output, lamps labeled 60 watts used more current and emitted more light, in many cases, than those labeled 100 watts, some lamps produced over twice as much light as others which bore identical labels as to voltage and wattage, said lamps were not made according to and in compliance with standards and specifications set by the Government, which bought no 28-40-volt lamps and had no specifications for such lamps, and specifications or requirements of which, for general lighting service lamps, were not met in the majority of cases by their said lamps, which either greatly exceeded, or fell far short of, labeled wattage and of light output required for lamps so marked;
- (b) Represented that their said lamps were quality products made for service and economy, and were rigidly tested and checked by experts at every stage of manufacture to insure high quality and uniformity, and were sold at prices lower than those of competing products, made possible by short cut, efficient methods of distribution, elimination of red tape and heavy overhead expenses, through which they were enabled to pass on to public, purchasing their said products in preference to such competitive lamps, substantial important saving, facts being they were not of high quality, etc., nor rigidly tested, etc., as above set out, nor sold at lower prices, and they did not pass on to public preferentially buying their said products substantial or important savings, but general use thereof throughout United States would have cost purchasing public, in course of a year, on basis of estimates of Bureau of Standards, over \$100,000,000 more than was then paid for current consumed by lamps in actual use;
- (c) Represented that their said products were guaranteed and made in the United States by skilled American workers, facts being they were not wholly thus made, but in the case of many contained substantially cheaper bases made in Japan by foreign workers, with label "Made in Japan" concealed from view of buyers through construction of completed products ready for use; and

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- (d) Represented that their country home-service lamps were of voltage 28-32, and that purchase orders should specify such voltage and "country home lighting," facts being their said lamps were not labeled "28-32 volts" and were not such voltage, in accordance with reasonable, regular, and customary practice of all members of the industries engaged in manufacture and sale of incandescent lamps for country-home service, but were, as labeled, 28-40 volts, representing impracticable voltage range in that lamp burning in 28-volt circuit should last about 125 times as long as one in 40-volt circuit, and
- (e) Represented that said second and selling concern above referred to was manufacturer of lamps sold by it prior to February 1937, at which time, though continuing its existence, it discontinued business, facts being said concern never made any lamps;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and false belief that such various false, misleading, and untrue representations, made by them as aforesaid, were true, and to induce number thereof to buy substantial quantities of such lamps, which they would not purchase except for such erroneous and false belief, and to cause number of such public, as direct consequence of such belief induced by such misrepresentations, to buy substantial quantities of their merchandise, with result that trade was diverted unfairly to them from others likewise engaged in sale of incandescent lamps and who truthfully advertise and represent their said products; to competitors' substantial injury:

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

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

Mr. Edward E. Reardon and *Mr. Clark Nichols* for the Commission.

Mr. Willis B. Rice, 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 Lightmore Appliance Corporation and Solar-Ray Lamp Co., Inc., hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lightmore Appliance Corporation, is a corporation, organized on or about July 14, 1930, under the laws of the State of New York, having a place of business at Nos. 16 to 20 East Twelfth Street in the city of New York, and it is and has been

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since on or about the date of its organization engaged in the business of the manufacture and in the business of the sale of incandescent lamps.

PAR. 2. Respondent, Solar-Ray Lamp Co., Inc., is a corporation, organized on or about February 10, 1934, under the laws of the State of New York, having a place of business at Nos. 16 to 20 East Twelfth Street in the city of New York, and it is and has been since on or about the date of its organization engaged in the business of the sale of incandescent lamps. The respondents above mentioned occupy the same premises in the city of New York as their place of business.

PAR. 3. Peter Kornstein, Augusta Kornstein, and Louis Gottlieb, residents of the city of New York, are and have been, respectively, the president, vice president, and the secretary-treasurer of each respondent corporation since the time of its organization above mentioned and they have directed and controlled the business and all the activities of the respondents in the manufacture and sale of incandescent lamps.

PAR. 4. During all the times, respectively, since their organization as corporations the respondent Solar-Ray Lamp Co., directly, and the respondent Lightmore Appliance Corporation, either directly or through the Solar-Ray Lamp Co., have sold incandescent lamps, manufactured by respondent Lightmore Appliance Corporation or others, including the lamps hereinafter mentioned and referred to, some of which were made and sold for general lighting service for operation in connection with electric current supplied by public service corporations and some of which were made and sold for country home lighting service for operation in connection with electric current supplied from storage batteries and low-voltage generators, to purchasers, including wholesale dealers or jobbers and retail dealers therein, located in various States of the United States other than New York or the State of origin of the shipment, for resale by the dealer for use or consumption. The respondents, respectively, have caused the lamps when so sold by them to be transported from New York, or from the State of origin of the shipment, to the purchasers located in other States.

PAR. 5. During all the times above mentioned and for many years prior thereto, other individuals, firms, and corporations, hereinafter referred to as sellers, have been engaged, some of them in the business of the manufacture and sale, and others in the business of the sale of incandescent lamps for operation both with electric current supplied by public service corporations for general lighting service

and with electric current supplied for country home lighting service from storage batteries and low-voltage generators, to purchasers, wholesale dealers, or jobbers and retail dealers therein, located in various States of the United States other than the State of the seller or the State of origin of the shipment, for resale by the dealers for use or consumption. The sellers, respectively, have caused the lamps, 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 other States.

PAR. 6. The respondents, in the sale of incandescent lamps, are and have been in substantial competition in interstate commerce with the other individuals, firms, and corporations, referred to as sellers in paragraph 5 hereof, during all the times referred to in paragraph 4 hereof.

PAR. 7. Substantially, at all the times above mentioned and referred to and for many years prior thereto, it has been the custom and practice of public service corporations throughout the United States to supply users of electric current for general lighting service in the respective communities served by them, variously for the particular community, on either 110-, 115-, or 120-volt multiple circuits, as the case may be. During said times, all the members of the industries engaged in the manufacture and sale of incandescent lamps throughout the United States have known of this custom and practice and of the voltage of the electric current supplied by the service corporations in their respective localities.

Substantially, at all the times above mentioned and referred to and for many years prior thereto, it has been known to and recognized by all of the members of the industries engaged in the manufacture and sale of incandescent lamps throughout the United States that the electromotive force supplied by storage batteries and low-voltage generators for service in the operation of country home lighting has averaged and continues to average from 28-32 volts.

PAR. 8. There is and has been, during all the times above mentioned and referred to and for many years prior thereto, an established and universal custom in the United States in connection with the manufacture and sale of incandescent lamps manufactured for general lighting service for operation in connection with electric current supplied by public service corporations, and of incandescent lamps manufactured for country home service for operation in connection with electric current supplied from storage batteries and low-voltage generators, that, at the times they are displayed or offered for sale or sold by the manufacturers to dealer distributors for resale and at

the times they are displayed or offered for sale or sold by manufacturers, dealer distributors, or others to users or consumers, including the Federal and State Governments and their agencies, and municipal and other corporations, and members of the public, the lamps shall be legibly, durably marked or branded, among other things, with the words and figures indicating, respectively, the number of volts and watts that is the measure of their electromotive force and power, allowing for certain tolerances, more or less, in the statement of the number of watts with which they are marked or branded. The tolerances in the watt measurement above referred to are and have been known to and recognized, substantially by all the members of the industries engaged in the manufacture and sale of incandescent lamps in the United States during all the times above mentioned and referred to. And, the tolerances in the watt measurements of incandescent lamps manufactured for general lighting service, above referred to, have during said times coincided with the tolerances as set forth in the Federal Specifications for the purchase of incandescent lamps by the United States Government.

PAR. 9. Prior to and during all the times above mentioned and referred to, it is and has been the universal understanding in the commercial manufacturing and distributing industries in incandescent lamps, that the lamps operated for general lighting service on 110-, 115-, and 120-volt multiple circuits should produce a certain number of lumens of light per watt, according to the watt rating of the lamp, allowing for certain tolerances of measure above or below the said number of lumens, in order to be adequately and practicably efficient in the production of light. During substantially all of the times above mentioned and referred to, the said number of lumens per watt and the tolerances referred to, have been known to and have been recognized by the members of the manufacturing and distributing industries engaged in the commercial manufacture and sale of incandescent lamps in the United States, and substantially during said times the lamps made and sold by the members of the said industries when operated for general lighting service have produced the amount of lumens per watt above referred to, which has during said times coincided with the amount of lumens per watt and with the tolerances therefor as set forth in the Federal Specifications for the purchase of incandescent lamps by the United States Government.

For example, for the years beginning July 1, 1932, and ending June 30, 1933; beginning July 1, 1933, and ending June 30, 1934; and beginning July 1, 1934, and ending June 30, 1935, the rated initial lumens, and the rated initial lumens per watt for large tungsten fila-

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ment lamps for 110-, 115-, and 120-volt multiple lighting service, on standard bulbs for general lighting service marked 25, 40, 60, 75, and 100 watts, were as follows:

For the year beginning July 1, 1932 and ending June 30, 1933

| Watts | Rated initial lumens | Rated initial lumens per watt | Bulb |
|----------|----------------------|-------------------------------|------|
| 25..... | 253 | 10.1 | A-19 |
| 40..... | 440 | 11.0 | A-19 |
| 60..... | 738 | 12.3 | A-21 |
| 75..... | 998 | 13.3 | A-23 |
| 100..... | 1430 | 14.3 | A-23 |

For the year beginning July 1, 1933 and ending June 30, 1934

| Watts | Initial lumens | Rated initial lumens per watt | Bulb |
|----------|----------------|-------------------------------|------|
| 25..... | 250 | 10.0 | A-19 |
| 40..... | 432 | 10.8 | A-19 |
| 60..... | 732 | 12.2 | A-21 |
| 75..... | 1,028 | 13.7 | A-21 |
| 100..... | 1,470 | 14.7 | A-23 |

For the year beginning July 1, 1934 and ending June 30, 1935

| Watts | Initial lumens | Rated initial lumens per watt | Bulb |
|----------|----------------|-------------------------------|------|
| 25..... | 250 | 10.0 | A-19 |
| 40..... | 428 | 10.7 | A-19 |
| 60..... | 744 | 12.4 | A-21 |
| 75..... | 1,035 | 13.8 | A-21 |
| 100..... | 1,490 | 14.9 | A-23 |

For the 2 years above mentioned, from July 1, 1933 to June 30, 1934, and July 1, 1934 to June 30, 1935, the rated lumens per watt for the 25-watt lamps listed above were for 115-volt lamps only. For 25-watt lamps, for 110-volt multiple lighting service, to obtain the correct rated lumens per watt there should be added 0.05 to the rated lumens per watt listed above; and, for 120-volt lamps there should be subtracted 0.05 from the rated lumens per watt listed above.

For the 2 years from July 1, 1933 to June 30, 1935, the rated lumens listed above for the 40-, 60-, 75-, and 100-watt lamps were for 115-volt lamps only. To obtain the correct rated lumens for 110-volt lamps of those watt measurements there should be added 0.15; and, for 120-volt lamps of such watt measurement there should be subtracted 0.15 from the lumens per watt listed above.

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PAR. 10. The tolerances allowed in the statement of the number of watts with which incandescent lamps are and have been marked or branded and the tolerances allowed and recognized in the measure of the lumens of light produced by incandescent lamps or the rate of lumens per watt mentioned and referred to in paragraphs 8 and 9 hereof, during the times mentioned and referred to in said paragraphs 8 and 9, for example, for the years beginning July 1, 1932, and ending June 30, 1933; beginning July 1, 1933, and ending June 30, 1934; and beginning July 1, 1934, and ending June 30, 1935, for large tungsten filament lamps for general lighting service, on 110-, 115-, and 120-volt multiple circuits, for standard bulbs marked 25, 40, 60, 75, and 100 watts, were as follows:

For the year beginning July 1, 1932 and ending June 30, 1933

| Watts | Bulb | Lumens per watt above or below standard | Total watts above or below standard |
|----------|------|-----------------------------------------|-------------------------------------|
| | | <i>Percent</i> | <i>Percent</i> |
| 25..... | A-19 | 6 | 4 |
| 40..... | A-19 | 6 | 4 |
| 60..... | A-21 | 6 | 4 |
| 75..... | A-23 | 6 | 4 |
| 100..... | A-23 | 6 | 4 |

For the years July 1, 1933 to June 30, 1934, and July 1, 1934 to June 30, 1935

| Watts | Bulb | Lumens per watt above or below declared rating | Total watts above or below rating |
|----------|------|------------------------------------------------|-----------------------------------|
| | | <i>Percent</i> | <i>Percent</i> |
| 25..... | A-19 | 5 | 4 |
| 40..... | A-19 | 5 | 4 |
| 60..... | A-21 | 5 | 4 |
| 75..... | A-21 | 5 | 4 |
| 100..... | A-23 | 5 | 4 |

PAR. 11. At all times in the use of incandescent lamps, the purchaser, or user, of the lamp is really buying light and the most efficient lamp is the one which produces the required amount of light for the least cost. Generally the cost of the electricity consumed by an incandescent lamp is many times more than the cost of the lamp to the purchaser or user and the efficiency of the lamp purchased by the user determines how advantageously or economically the electricity used by the lamp produces light. Lamps of low efficiency are inferior to lamps of high efficiency and waste electricity, thereby increasing the cost of light to the purchaser.

Incandescent lamps may be manufactured or designed for a long or a short life performance but as the efficiency of such lamps is in general not maintained at their initial light output beyond a certain period, it is desirable to manufacture such lamps in accordance with a design for a certain period of life, and to such effect that they will come as nearly as possible to maintaining their initial light output throughout their life.

There is and has been during all the times above mentioned and referred to, a standard of life performance, stated in hours, for large tungsten filament incandescent lamps of the different watt measurements for general lighting service, for 110-, 115-, and 120-volt multiple lighting service and which lamps produce, respectively, the amount of lumens of light referred to in paragraph 9 hereof, the amount of lumens for 25-, 40-, 60-, 75-, and 100-watt lamps being, for example, set forth in said paragraph 9. The standard of life performance above referred to coincides with the specifications therefor in the above-mentioned Federal Specifications for such incandescent lamps, and is known to, and recognized by, all the members of the industry engaged in the manufacture and sale of incandescent lamps throughout the United States.

The efficient life performance, referred to, of incandescent lamps measuring 25, 40, 60, 75, and 100 watts, and of standard lumen production as above set forth, was, during the year beginning July 1, 1932, and ending June 30, 1933, 1,000 hours, respectively. For the years beginning July 1, 1933 and ending June 30, 1934, and beginning July 1, 1934 and ending June 30, 1935, it was 1,000 hours for lamps rated at 25, 40, and 60 watts, and for lamps rated at 75 and 100 watts, the rated life performance was 750 hours, respectively.

PAR. 12. During all the times above mentioned it is and has been the reasonable, regular, and customary practice of all members of the industries in the United States engaged in the manufacture and sale of incandescent lamps for country-home service, to design them for an average electromotive force, or voltage, suitable for operation on 28-32-volt circuits, and only of 15-, 25-, 50-, and 100-watts electromotive power.

During all the times above referred to, standard incandescent lamps, A-17, A-19, A-21, and A-23, for country-home service and of 15, 25, 50, and 100 watts, respectively, and of an average voltage of 28-32-volts have been customarily made to produce 160, 318, 770, and 1,720 rated initial lumens respectively; or, 10.7, 12.7, 15.4, and 17.2 rated initial lumens per watt, respectively, and such lamps have been customarily represented and sold to have and they have had during said times, respectively, an average life performance of 1,000 hours.

PAR. 13. During the times mentioned and referred to in paragraphs 4 and 6 hereof the respondents in offering for sale and in the sale of incandescent lamps sold by them as set forth in said paragraph 4 have represented to dealers and to members of the public who purchase such lamps for use, on the bulbs of the lamps and in advertisements on the labels of the cartons in which the individual lamps were packed when sold by them, and in which they were re-sold by dealers to the public for use, as set forth in said paragraph 4, and they have also represented to dealers and to the public in statements and representations in circulars and other advertisements to the effect that the lamps referred to and so sold by them were manufactured by and were the product of the respondent Solar-Ray Lamp Co., Inc. The respondents have also represented to dealers and to the public in statements in circulars and in other printed forms of advertising and verbally through their respective officers, agents, and salesmen that the incandescent lamps so sold by them, respectively, were a guaranteed product made in the United States of America by highly skilled American workers.

The respondents made and caused dealers or others, engaged in the sale of their said lamps to make, in turn, the above statements and representations to the public who purchase incandescent lamps for use; and the respondents further made and caused dealers and others likewise to make statements in similar forms of advertisements to the effect that the incandescent lamps sold by them for general-lighting service under the trade names or trade-marks Solar-Ray and Lightmore, respectively, were guaranteed to give 1,000 hours average service and that their lamps were made according to and that they complied with the standard specifications set by the United States Government (Catalog W-L-101); that the lamps were made for service and economy, were quality products, were rigidly tested and checked by experts at every stage of manufacture before leaving the factory in order to insure their high quality and uniformity; that the lamps were offered for sale and sold at lower prices than incandescent lamps were offered for sale and sold by competitors, which prices were made possible by short cut, efficient methods of distribution and by the elimination of red tape and heavy overhead expenses which enabled the respondents to pass on to the public a substantial important saving if their incandescent lamps were purchased by dealers and users in preference to lamps of respondents' competitors; that the use of the mushroom lamp, made by respondents, effected a gain of 36 percent in light, or a saving of 36 percent in lighting cost; that, by replacing an 100-watt ordinary standard lamp with an 100-watt mushroom lamp made by the respondents, the

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user would get light exceeding that given by an ordinary 150-watt lamp of a competitor; that the fact that respondents' mushroom lamps give 36 percent more light than ordinary standard lamps of competitors has been proven by scientific tests.

The respondents during the times above mentioned and referred to, represented in printed circulars and catalogs of their lamps, that orders received by them from dealers or others for country home-service lamps made by the respondents, respectively, should specify "28-32-volts" and "Country Home Lighting," and also represented in their catalogs that country home-service lamps sold by them were of the voltage 28-32 volts; and the respondents represented that the incandescent lamps made by them for country home service were guaranteed to give 1,000 hours average service, that is that they would have 1,000 hours of life performance.

The respondents made and caused dealers and others, in turn, to make the above statements and representations concerning the incandescent lamps sold by them, as set forth in paragraph 4 hereof, and many other statements and representations similar in form and effect during the times above mentioned.

The respondents caused statements of the watt and voltage measurement of the electromotive force and power of the incandescent lamps sold by them, as set forth in paragraph 4 hereof, to be printed or placed on the bulbs of the lamps by such method and in such manner that the figures or numbers representing the number of watts and volts were easily erased, and contrary to the usual custom in marking or branding such numbers or figures, employed by the members of the industries engaged in making and selling such lamps in the United States who etch or other wise cause such numbers or figures to be placed on the lamps practically permanently during their lifetime use.

PAR. 14. During all the times above mentioned and referred to, the respondent Solar Ray Lamp Co. was not engaged in the manufacture of incandescent lamps, and the representation above referred to that it was the manufacturer of the lamps sold by it, was false.

During all the times above mentioned the figures or numbers which the respondents caused to be printed or placed on the bulbs of the incandescent lamps sold by them, representing the number of watts of their electromotive power, were either greatly in excess of or less than the actual watt measurement of the lamps, after taking into consideration the tolerance above mentioned, and the respondents knew or with ordinary care should have known, their lamps were falsely branded or labeled with respect to their watt measurement.

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The respondents, knowing or having reason to believe their lamps to be falsely branded or labeled in that respect, caused the watt marking to be placed on the lamps in such manner that it could be and was easily, purposely, or accidentally by wear and tear, erased and the evidence thereby destroyed, which would show to be false, the statements and representations respecting the same, made by the respondents to dealers and caused by respondents to be passed on by the dealers, in turn, to members of the public.

In consequence of the false marking or branding of the watt measurement and the method by which respondents' lamps were marked or branded, purchasers and users of respondents' lamps, as a practical matter, were thereby prevented from readily learning the facts concerning the operation of the lamps in comparison with the facts in the operation of lamps of competitors, and in further consequence from learning that the lamps of competitors were more efficient in producing light and less expensive than respondents' to purchase and to operate.

During the times above mentioned the incandescent lamps for general lighting service, sold by the respondents as set forth in paragraph 4 hereof, were not made according to, and they did not when made comply with, the Federal Specifications for the purchase of incandescent lamps by the United States Government, in that, among other particulars, the actual measure of their electromotive power was generally either above or below the number of watts with which they were marked or branded or caused to be marked or branded by the respondents and generally they were lower in lumen efficiency, and in lumens per watt, than the measure of lumen efficiency and lumens per watt contained in the Federal Specifications above referred to, and they were lower in number of lumens of light per watt than is and has been the recognized requirement for such lamps within the understanding of the commercial manufacturing and distributing industries in such lamps in the United States during said times, after allowing for the tolerances above mentioned.

The lamps, both those for general lighting and those for country home-lighting service, so sold by the respondents as above set forth were not the product of highly skilled American workers and made in the United States of America, but were lamps a part of which, namely the bases, were made by foreign workmen in a foreign country and marked at the time of their importation into the United States with the name of the foreign country in which such bases were made. Such bases, when the lamps in which they were used by respondents were assembled ready for sale and distribution, were so marked that the name of the country in which they were manufac-

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tured was concealed and therefore not visible to purchasers or prospective purchasers or users of respondents' lamps. The respondents caused such lamps, made in part in a foreign country and by foreign workmen, to be falsely stamped on the outside and also to be falsely represented in advertisements with the words "Made in U. S. A."

The lamps sold by the respondents above referred to, both those made for general-lighting service and those made for country home-lighting service, were not quality products; were not economical in use; were not rigidly tested and checked by experts before leaving respondents' factory to insure high quality and uniformity. The respondents' lamps were not offered for sale and sold at lower prices than incandescent lamps represented to be for the same service or use and of the same watt measurement which were offered for sale and sold by competitors. The respondents did not pass on to the public who purchased incandescent lamps made and sold by them, as above set forth, any saving in expense either in the purchase of their lamps or in the operation of their lamps afterwards in use, but on the contrary the initial cost and also the cost of operation of respondents' lamps was more expensive to members of the public than the initial cost and the cost of operation of lamps of respondents' competitors. The so-called mushroom lamp made and sold by the respondents did not effect a gain of 36 percent or of any percent in lighting cost, and, when an 100-watt mushroom lamp of the respondents was used to replace an 100-watt ordinary standard lamp of respondents' competitors, the user of such a mushroom lamp would not get light exceeding that given by an 100-watt ordinary standard lamp, but on the contrary the use of the so-called mushroom lamp, in any watt size, made by the respondents produced less light, and was more expensive in lighting cost than a standard lamp of the same watt measurement made and sold by respondents' competitors.

While the respondents represented to purchasers and prospective purchasers that purchasers should specify "28-32-volts" in purchasing respondents' incandescent lamps for country-home lighting, the respondents sold such lamps for country home-lighting service which they marked or labeled "28-40 volts," and incandescent lamps for country-home service with a range of 28 to 40 volts are impracticable for use and the life of such lamps when operated at 40 volts would not exceed, in many instances, more than 20 to 30 hours.

The incandescent lamps made and sold by the respondents for general lighting service and for country home-lighting service did not give 1,000 hours average service, or have a life performance of 1,000 hours, excepting in such instances when respondents' lamps

were so deficient in lumen production that as a consequence their life performance was thereby extended and equalled or surpassed the period of 1,000 hours, during which time such lamps did not maintain their initial light output throughout their life performance and they were during such period inefficient and excessively expensive in operation.

Each and all of the representations mentioned and referred to in paragraph 13 hereof, made and caused to be made by respondents concerning the incandescent lamps made and sold by them, including the incandescent lamps made and sold by them as set forth in paragraph 4 hereof, were false representations of material facts in the sale of incandescent lamps and when made by the respondents were known, or with reasonable care should have been known by them to be false.

PAR. 15. The statements and representations made by the respondents mentioned and referred to in paragraphs 13 and 14 hereof had the capacity and tendency to deceive and mislead wholesale and retail dealers and to cause such dealers in turn to pass on to members of the public, purchasers, and users of incandescent lamps, the representations made by the respondents; and, the said wholesale and retail dealers and members of the public were deceived and misled thereby into purchasing the respondents lamps, to their injury and prejudice, in place of incandescent lamps sold by respondents' competitors, and trade in incandescent lamps was thereby diverted from respondents' competitors to the respondents.

PAR. 16. 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 the Federal Trade Commission Act (U. S. Code, Title 15, Sec. 45), the Federal Trade Commission, on October 9, 1935, issued, and October 11, 1935, served its complaint in this proceeding upon Lightmore Appliance Corporation and Solar-Ray Lamp Co., Inc., charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act, and respondents entered their appearance and filed their answer herein. Thereafter hearings were held and evidence was introduced by E. E. Reardon and Clark Nichols, attorneys for the Commission,

and two of the four witnesses were cross-examined by Willis B. Rice, attorney for respondents, before John W. Addison, trial examiner theretofore duly appointed by the Commission. Opportunity was given respondents to offer testimony in their behalf. Thereupon this proceeding came on for final hearing before the Commission on said complaint, answer, evidence, and brief on behalf of the Commission (brief for respondents and oral argument 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, Lightmore Appliance Corporation and Solar-Ray Lamp Co., Inc., are, respectively, 1930 and 1934 New York corporations, having their places of business in common at 16-18-20 East Twelfth Street, New York, N. Y.

PAR. 2. Philip (misnamed "Peter" in the complaint) Kornstein is president, Augusta Kornstein, vice president, and Louis Gottlieb, secretary-treasurer of both companies. They have controlled the business and activities of both companies from inception.

PAR. 3. Respondent Lightmore Appliance Corporation employs about 20 people and has been and is engaged in the business of making incandescent lamps in New York—some for general-lighting service in connection with current supplied by public service companies, and some for country-home lighting by use of current supplied from storage batteries and low-voltage generators—and of selling such lamps to wholesale and retail dealers located in various States of the United States, for resale to the public for use. It causes the lamps so sold to be transported from New York to purchasers located in other States.

PAR. 4. Respondent Solar-Ray Lamp Co., Inc., is still in existence, but has not continued to do business since about February 1937. Prior to that time it sold a portion of Lightmore Appliance Corporation's output of said lamps in commerce among the several States, in the same manner as Lightmore Appliance Corporation, itself, sold such lamps as aforesaid.

PAR. 5. General Electric Co. and other corporations, partnerships, or individuals are also engaged in the business, some making and selling and others of selling, incandescent lamps for the same purposes of use as the lamps described in paragraph 3 hereof. They also sell such lamps, in competition in commerce with respondents, to wholesale and retail dealers located in the various States of the United States

other than the State of the seller, for resale to the public for use, and cause the lamps so sold to be transported from the State of the seller to the purchasers located in other States.

PAR. 6. Substantially at all the times above mentioned and referred to, and for many years prior thereto, it has been the custom and practice of public service corporations throughout the United States to supply users of electric current for general-lighting service in the respective communities served by them, variously for the particular community, on either 110-, 115-, or 120-volt multiple circuits, as the case may be. During said times, all the members of the industries engaged in the manufacture and sale of incandescent lamps throughout the United States have known of this custom and practice and of the voltage of the electric current supplied by the service corporations in their respective localities.

PAR. 7. Substantially at all the times above mentioned and referred to, and for many years prior thereto, it has been known to and recognized by all of the members of the industries engaged in the manufacture and sale of incandescent lamps throughout the United States that the electromotive force supplied by storage batteries and low-voltage generators for service in the operation of country home lighting, has averaged and continues to average 28-32 volts.

PAR. 8. At all times in the use of incandescent lamps, the purchaser or user of the lamp is really buying light, and the most efficient lamp is the one which produces the required amount of light for the least cost. Generally, the cost of the electricity consumed by an incandescent lamp is many times more than the cost of the lamp to the purchaser or user, and the efficiency of the lamp purchased by the user determines how advantageously or economically the electricity used by the lamp produces light. Lamps of low efficiency are inferior to lamps of high efficiency and waste electricity, thereby increasing the cost of light to the purchaser.

PAR. 9. Incandescent lamps may be manufactured or designed for a long- or a short-life performance, but, as the efficiency of such lamps is in general not maintained at their initial light output beyond a certain period, it is desirable to manufacture such lamps in accordance with a design for a certain period of life, and to such effect that they will come as near as possible to maintaining their initial output throughout their life.

PAR. 10. During all the times above mentioned it is and has been the reasonable, regular, and customary practice of all members of the industries in the United States engaged in the manufacture and sale of incandescent lamps for country-home service, to design them for an average electromotive force or voltage suitable for operation on 28-32 volt circuits, and only of 15, 25, 50, and 100 watts electromotive power.

PAR. 11. Respondents, to promote the sale of said lamps, represent or represented that the lamps:

(a) Are guaranteed to give 1,000 hours average service.

(b) Are made according to and comply with the standard specifications set by the United States Government.

(c) Are quality products made for service and economy and are rigidly tested and checked by experts at every stage of manufacture, in order to insure high quality and uniformity; are sold at prices lower than prices of competing lamps; that such lower prices are made possible by short cut, efficient methods of distribution, and by the elimination of red tape and heavy overhead expenses which enable them to pass on to the public buying their lamps in preference to competing lamps, a substantial, important saving.

(d) Are guaranteed products, made in the United States by skilled American workers.

It is further represented by respondents that the country home-service lamps are of the voltage 28-32 volts and that purchase orders should specify "28-32 volts" and "country-home lighting." It is represented by respondent Solar-Ray Lamp Co., Inc., that it was the manufacturer of lamps sold by it prior to February 1937.

PAR. 12. In truth and in fact:

(a) The lamps have no guarantor other than respondents; they do not give 1,000 hours average service. Tests of 125 general lighting lamps and 25 country home-service lamps sold in commerce by the respondents showed service varying from zero to 8,707 hours and averaging for different wattages from 391 to 930 hours for the general-service lamps, and from 406 to 4,056 for the country home-service lamps. They are very erratic in both intake and output. In many cases lamps labeled 60 watts use more current and emit more light than those labeled 100 watts. Some of the lamps produce over twice as much light as others which bear identical labels as to voltage and wattage.

(b) The lamps are not made according to and in compliance with the standards and specifications set by the United States Government. The Government buys no 28-40-volt lamps and has set no specifications for such lamps. The requirements of Government specifications for initial light output, with wattage and output tolerances allowable for 25-, 40-, 60-, 75-, and 100-watt large tungsten filament lamps, for general-lighting service in 110-, 115-, and 120-volt multiple lighting circuits, for the 3 years ending June 30, 1935, are correctly set forth in the tables in paragraphs 9 and 10 of the complaint. Respondents' general-lighting service lamps, in the majority

of cases, do not meet these requirements. They either greatly exceed or fall far short of labeled wattage and of the light output required for lamps so marked.

(c) The lamps are not products of high quality and uniformity, effecting good service and economy; they are not rigidly tested and checked by experts at every stage of manufacture in order to insure high quality and uniformity; they are not sold at prices lower than prices of competing lamps, and respondents do not pass on to the public, buying their lamps in preference to competing lamps, substantial or important savings. On the contrary, it is estimated by the Bureau of Standards, that if respondents' lamps had been used throughout the United States in the year 1931, instead of the 25-, 40-, 60-, 75-, and 100-watt lamps that were used, 109.1 million more lamps would have been required, and the cost of current for operating respondents' lamps, assuming a price of 5 cents per kilowatt hours, would have been \$107,000,000 greater than was paid for the current consumed by the lamps actually used.

(d) The lamps are not wholly made in the United States by skilled American workers. Many of them contain bases made in Japan by foreign workers, and labeled "Made in Japan"; but this label is concealed from the view of buyers when these bases are by respondents placed in lamps ready for use. The cost of these bases is \$4.25 per thousand, as compared with \$5.65 per thousand for domestic bases.

(e) The country home-service lamps are not labeled 28-32 volts, but are labeled 28-40 volts. The voltage range of 28-40 is impracticable, because a lamp burning in a 28-volt circuit should last about 125 times as long as the same lamp in a 40-volt circuit.

(f) Respondent Solar-Ray Lamp Co., Inc., never made any lamps.

PAR. 13. Each and all of the false, misleading, and untrue representations so made by respondents, as set forth in paragraph 11, have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and false belief that said representations are true; and to induce a number of the purchasing public to buy a substantial quantity of said lamps when they would not buy them except for such erroneous and false belief. Further, said representations have the capacity and tendency, as a direct consequence of such erroneous and false belief induced by the misrepresentations of respondents, as aforesaid, to cause a number of the purchasing public to buy substantial quantities of said merchandise, with the result that trade is diverted unfairly to respondents from other individuals, partnerships, and corporations likewise engaged in the sale of incandescent

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lamps, who truthfully advertise and represent their merchandise. Substantial injury has been and is being done by respondents herein to their competitors in commerce among the several States of the United States, and to the public.

CONCLUSION

The aforesaid acts and representations of the respondents, Lightmore Appliance Corporation and Solar-Ray Lamp Co., Inc., have been and are to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Lightmore Appliance Corporation and Solar-Ray Lamp Co., Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of incandescent electric lamp bulbs in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or by implication, that the respondent Solar-Ray Lamp Co., Inc., is a manufacturer of incandescent electric lamp bulbs, unless and until said respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are manufactured.

2. Representing, directly or by implication, that respondents' lamp bulbs are made by skilled American workmen, with the most modern equipment, from the finest materials obtainable, under the supervision of highly paid engineers who have devoted their lives to the manufacture of incandescent lamp bulbs, unless such is the fact.

3. Representing, directly or by implication, that respondents' lamp bulbs will give 1,000 hours average service, unless and until such bulbs meet this standard.

4. Representing, directly or by implication, that respondents' lamp bulbs are made according to the standard specifications fixed by the United States Government, unless and until such bulbs meet these specifications.

5. Representing, directly or by implication, that respondents' lamp bulbs are rigidly tested and checked by experts at every stage of manufacture, unless such is the fact.

6. Representing, directly or indirectly, that incandescent lamp bulbs, known as country home-service lamps, constructed for use on 28-40-volt circuits will operate efficiently on a 28-32-volt circuit.

7. Representing, directly or by implication, that respondents' said products sell for less, or operate more economically, than similar products offered for sale and sold by competitors.

8. Selling, or offering for sale, as products wholly made in the United States by skilled American workmen, electric lamp bulbs constructed with bases imported from Japan.

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
**SIDNEY A. WEITZMAN, INDIVIDUALLY, AND TRADING AS
CERTIFIED SALES SERVICE**

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

Docket 3245. Complaint, Oct. 20, 1937—Decision, Mar. 15, 1939

Where an individual engaged in offer and sale of various articles of merchandise, including clocks, cameras, electric dry shavers, and other articles; in soliciting sale of and in selling and distributing his said products—

Furnished various devices and plans of merchandising, which involved operation of games of chance, gift enterprises, or lottery schemes for distribution of said articles to members of public, wholly by lot or chance, and which consisted of push cards for use in sale and distribution of his said products under a plan and in accordance with said cards' explanatory legends by which amount paid for chance, or receipt of free chance, as case might be, by purchaser or customer was dependent upon number pushed by chance, and receipt by customer of article being thus disposed of was dependent upon success or failure in selecting from list on card, girl's name corresponding to that concealed under card's master seal, and under which, in case of some, person selecting by chance certain number received secondary prizes, and maker of last purchase, and under which, failing the aforesaid contingencies, customer received nothing, and operator of card was compensated for services by one of articles being thus disposed of; and

Supplied and placed thereby in hands of others means by which games of chance, gift enterprises, or lottery schemes were conducted through distribution to public wholly by lot or chance of such articles, and ascertainment, similarly, of amount, if any, paid for chance, and involving game of chance or sale of a chance to procure one of said articles without cost, or by expenditure of a sum much less than price at which one of said articles would sell in usual course of retail trade, contrary to an established policy of the United States Government and in violation of the laws of several of the States, and in competition with many who sell articles of merchandise of like or similar type, grade, and quality, and are unwilling to sell such articles by any method or sales plan involving game of chance, gift enterprise, or lottery scheme and refrain from use thereof;

With result that many persons were attracted by element of chance involved in sales plan or method by which articles dealt in by him were distributed to public by use of such cards and induced to purchase such articles from him in preference to like or similar articles of competitors who do not furnish with their merchandise any push card or other device or devices by which such articles can be distributed to public by lot or chance, and he sold, as result, substantial quantities of his merchandise and trade was thus diverted unfairly to him from competitors;

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

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COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Sidney A. Weitzman, individually and trading as Certified Sales Service, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual trading under the name and style of Certified Sales Service, with his principal office and place of business located at 357 West Sixty-third Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in offering for sale and selling various articles of merchandise including, among others, clocks, cameras, automatic vibro shavers, Marvel dry shavers, fountain pen and desk sets, to purchasers thereof located in various States of the United States. He causes said merchandise when sold to be shipped or transported from his place of business in the State of Illinois 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 States of the United States. In the course and conduct of his business respondent is in competition with other individuals and with partnerships and corporations 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 his business, as described in paragraph 1 hereof, respondent has caused and causes the representation to be made to his customers and prospective customers by his salesmen and agents, and to be set forth on his business stationery, billheads, invoices, and other printed literature, that he is a manufacturer's distributor of the merchandise which he sells, making among other representations the following:

Certified Sales Service—Manufacturers' Distributors

By the representation that he is a manufacturer's distributor, respondent represents that he is the direct distributor of the concern or concerns manufacturing the merchandise which he sells. A substantial portion of the purchasing public have expressed, and have,

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a preference for purchasing merchandise direct from the manufacturer or his distributors, such persons believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from an independent selling agency or middleman.

PAR. 3. The use by respondent of said representation that he is a manufacturer's distributor has the capacity and tendency to and does mislead and deceive many of respondent's said customers and prospective customers into the erroneous belief that respondent is the direct distributor of a business concern or business concerns which control and operate a factory or factories in which the merchandise sold by respondent is manufactured and that persons dealing with the respondent are buying such merchandise from the direct agent of the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages, including advantages in service, delivery, and adjustment of account, that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent is not the direct distributor for the manufacturer or manufacturers of the merchandise which he sells, but on the contrary only purchases from others the merchandise which he sells.

PAR. 4. There are among the competitors of respondent, referred to in paragraph 1 hereof, many who manufacture the merchandise which they sell or who are direct distributors of such manufacturers and who rightfully represent that they are the manufacturers thereof or are the distributors of such manufacturers. There are others of said competitors who purchase the merchandise in which they deal and resell the same at a profit to themselves and who in no wise represent that they manufacture said merchandise or are the manufacturers' distributors. The above alleged acts and practices of respondent, as set out in paragraphs 2 and 3, tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 5. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing his 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

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blanks, and advertisements containing illustrations of his 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 disks marked "Push," below each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the cards. The push cards have a master disk, 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:

SELECT YOUR FAVORITE GIRL'S NAME
AND RECEIVE AN
AUTOMATIC
VIBRO
SHAVER

"It soothes while it shaves"

Numbers Under 29
Pay What You draw

Numbers Over 29
Only Pay 29¢

NO HIGHER

(SEAL)

Write Your Name
Opposite Name
You Select on
Reverse Side

Do not remove
seal until
entire card
is sold

The other push cards bears similar legends, but vary in detail. Such variations cover the merchandise to be distributed, the quantity thereof, and the price to be paid therefor. 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 amount which a customer pays for a particular push is also determined wholly by lot or chance.

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PAR. 6. Respondent, in selling his 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 his 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 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.

PAR. 7. 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 his said competitors who do not use the same or an equivalent method.

PAR. 8. 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 the Federal Trade Commission Act, the Federal Trade Commission, on October 20, 1937, issued and thereafter served its complaint in this proceeding upon the respondent, Sidney A. Weitzman, individually, and trading as Certified Sales Service, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issu-

ance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission before William C. Reeves, an examiner of the Commission theretofore duly designated by it (no testimony or other evidence was tendered for or on behalf of respondent), and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, brief in support of the complaint (respondent not having filed a brief and oral argument not having been requested); 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, Sidney A. Weitzman, is an individual trading under the name and style of Certified Sales Service, with his principal place of business at 357 West Sixty-third Street, Chicago, Ill. He has been engaged in the business of offering for sale and selling various articles of merchandise, including clocks, cameras, electric dry shavers, automatic vibro shavers, and fountain pen and desk sets. Respondent causes and has caused said articles of merchandise when sold to be shipped or transported from his aforesaid place of business in the State of Illinois to purchasers thereof in various 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 by respondent in such merchandise in commerce between and among various States of the United States. In the course and conduct of his said business respondent has been and is now in active competition with various partnerships and corporations, and with other persons also engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of the articles of merchandise dealt in by him, and in selling and distributing same, has furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes by which said articles of merchandise have been distributed to members of the public wholly by lot or chance. Said devices and

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plans of merchandising consisted of push cards which were operated in substantially the following manner:

Each of the cards had printed thereon a number of girls' names, and below each name was a partially perforated disk which concealed a number. Each of the cards also had stamped thereon a larger disk in the form of a seal which concealed a name which was the same as one of the names on the card. Members of the public were solicited to select one or more of the names on the card and pay the number of cents indicated by the number concealed by the disk below each of the names selected. When all of the names were selected the seal was removed and the name concealed thereby was disclosed and the article of merchandise involved in the operation of the card was given to the person who had selected the name which was the same as that concealed by the seal, and the agent or salesman in charge of each of some types of the cards, who had induced members of the public to select the names and to pay the amounts indicated by the concealed numbers, also was given, for his services in this regard, one of the articles of merchandise involved in each of the lotteries. With some of the types of cards so used selectors of numbers higher than 29 paid only 29 cents, and with one type of the cards used selectors of numbers higher than 25 paid only 25 cents, and some of the numbers were designated as "Free," and selectors of those numbers paid nothing; and the selectors of No. 33 and the person to whom the last sale was made on one of the cards each was given a secondary prize, but the selectors of all other numbers received nothing. Each of the articles of merchandise distributed by the use of one of the cards was of a value greater than the cost of the selection of any one of the names on one of the cards. By the use of these cards the articles of merchandise dealt in by respondent were distributed to the public wholly by lot or chance, and the amount that any member of the public was required to pay for a chance to participate in the lottery or whether such chance was free also was determined wholly by lot or chance. As a result of the use of these cards respondent has sold between 400 and 500 electric dry shavers in sets of two for which he obtained \$16.95 for each set; also about 100 vibro shavers in sets of two for which he obtained \$6.95 for each set; also about 200 cameras in sets of two for which he obtained \$7.95 for each set; also about 100 rotary clocks in sets of two for which he obtained \$6.45 for each set; also about 200 pendulum clocks for which he obtained \$8.95 each.

PAR. 3. The Commission finds that the persons to whom respondent furnished push cards and the sales plans as described in paragraph 2 hereof, used same in purchasing, selling, and distributing articles of merchandise obtained from respondent. Respondent in this manner

has supplied to others, and placed in their hands the means by which games of chance, gift enterprises, or lottery schemes have been conducted. The sale and distribution of articles of merchandise by the use of such push cards and in accordance with such sales plans, is a practice of the sort which is contrary to an established public policy of the Government of the United States, and in violation of the laws of several of the States of the United States. Many competitors of respondent sell articles of merchandise of like or similar type, grade, and quality to those sold by respondent, and in competition with respondent, which competitors are unwilling to sell such articles of merchandise by any method or sales plan which involves a game of chance, gift enterprise, or lottery scheme, and refrain from the use of same, and as a result are placed at a disadvantage in competition.

PAR. 4. The sale and distribution of articles of merchandise to the purchasing public in the manner, and by the method hereinbefore found, involves a game of chance or the sale of a chance to procure one of such articles of merchandise without cost or by the expenditure of a sum of money much less than the price at which one of such articles of merchandise would sell in the usual course of retail trade. Many persons have been attracted by the element of chance involved in the sales plan or method by which articles of merchandise dealt in by respondent have been distributed to the public by the use of push cards, and have been induced to purchase such articles of merchandise from respondent in preference to like or similar articles of merchandise sold by competitors of respondent who did not and do not furnish with articles of merchandise sold by them any push card, or other device or devices by the use of which such articles of merchandise could be distributed to the public by lot or chance, and as a result respondent has sold substantial quantities of the articles of merchandise, which has caused trade to be diverted unfairly to respondent from his competitors.

CONCLUSION

The aforesaid acts and practices of respondent, as hereinbefore found, 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 the Federal Trade Commission Act.

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 William C. Reeves, an examiner of the Commission theretofore duly designated by it, in sup-

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port of the allegations of said complaint and in opposition thereto, brief of the attorney for the Commission (respondent having filed no brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Sidney A. Weitzman, individually, and trading as Certified Sales Service, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of clocks, cameras, electric dry shavers, automatic Vibro shavers, fountain pen and desk sets, or any other merchandise, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hand of others push or pull cards, punchboards, or other lottery devices, for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to agents or to distributors or members of the public push or pull cards, punchboards, or other lottery devices, so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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
FRED W. HERRSCHNER, JR., INDIVIDUALLY, AND TRADING AS 20TH CENTURY SALES CO.

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

Docket 3251. Complaint, Oct. 25, 1937—Decision, Mar. 15, 1939

Where an individual, engaged in sale and distribution of cameras, vibro shavers, clocks, and pen and pencil sets; in soliciting sale of and in selling his said articles—

Furnished to purchasers and prospective purchasers of his said merchandise various devices and plans and methods of merchandising which involved operation of games of chance, gift enterprises or lottery schemes by which said merchandise was to be distributed to members of public wholly by lot or chance through use of push cards, under plan and in accordance with said cards' explanatory legends and instructions for use thereof by which amount paid by customer for chance or, in case of some, receipt of free chance was dependent upon particular number selected by chance, and customer's receipt of article being thus disposed of was dependent upon success or failure in selecting from list of girls' names displayed on card name corresponding to that concealed under card's master seal and under which, failing such contingencies, customer received nothing; and

Supplied thereby and placed in the hands of others means by which lotteries were conducted in the sale and distribution of articles of merchandise sold by said individual and under which distribution of such articles and amount, if any, which member of public was required to pay for chance to obtain such an article was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure articles for sum less than price at which such or similar articles were being sold in usual course of retail trade, contrary to an established public policy of the United States Government and in violation of the laws of several States, and in competition with those engaged in the sale and distribution of like and similar articles and who do not make use of any game of chance, gift enterprise, lottery scheme, or other similar device or devices in sale of their products;

With result that many purchasers of articles sold by said individual were attracted by element of chance in sales plan and method used by him and thereby induced to purchase his articles in preference to like or similar products offered and sold by competitors who did not use same or similar sales plans and methods, and public, by reason of such preference, purchased substantial volume of merchandise from him, and trade was diverted unfairly to him from competitors:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* 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 Fred W. Herrschner, Jr., individually and trading as 20th Century Sales Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style of 20th Century Sales Co., with his principal office and place of business located at 329 South Wood 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, clocks, automatic razors, cameras, 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 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, 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 or distribution thereof 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. 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 an equivalent method.

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 the Federal Trade Commission Act, the Federal Trade Commission on October 25, 1937, issued and thereafter served its complaint in this proceeding upon the respondent, Fred W. Herrschner, Jr., individually, and trading as 20th Century Sales Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint (respondent not having filed answer), testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by the respondent, in person (respondent not being represented by counsel), before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence, and brief in support of the complaint (respondent not having filed an answer or brief, and oral argument not having been requested), 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, Fred W. Herrschner, Jr., is an individual doing business under the name and style of 20th Century Sales Co., with its principal place of business at 329 South Wood Street, Chicago, Ill. Since about April 1, 1937, respondent has been engaged in the business of selling and distributing cameras, vibro shavers, clocks, and pen and pencil sets. Since about April 1, 1938, respondent also has carried on business under the name and style of Princess Garment Co., and under that name and style has sold and distributed articles of wearing apparel for men and women. Respondent has caused the articles of merchandise sold by him to be transported from his place of business in the State of Illinois, to the respective purchasers thereof located in various States of the United States other than the State of Illinois. In the course and conduct of his said business respondent at all times mentioned herein has been, and is now in substantial competition with various partnerships and corporations, and other persons, also engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among various States of the United States.

PAR. 2. In carrying on his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of articles of merchandise and in the sale and distribution of same, has furnished to purchasers of such merchandise and to prospective purchasers various devices, and plans and methods of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise was to be distributed to members of the public wholly by lot or chance, which plans and methods were to be carried on by the use of devices commonly known as "push cards," which cards had printed thereon an explanation of the purposes for which such cards were intended, and detailed instructions to be followed in the use and operation of such cards in the sale and distribution of the articles of merchandise offered for sale and sold by respondent. Also additional detailed instructions concerning the use and operation of the cards were contained in printed matter accompanying such cards. Each of the cards had printed thereon a number of girls' names arranged in alphabetical order, and opposite each name was a space in which the name of the member of the public who had selected that name on the card should be written. Each of the cards had a corresponding number of disks with the word "Push" printed thereon, each immediately below one of the names printed elsewhere on the card, and each disk concealed a number which was disclosed when the disk was separated from the card. Also upon each of the cards was

a larger disk in the form of a seal which concealed one of the names printed on the card. When a member of the public selected one of the names he was required to pay the number of cents corresponding with the number concealed by the disk immediately below the name so selected, and when all of the names had been selected the larger disk was removed and the name concealed thereby disclosed, and the person who had selected the name on the card, which was the same as the name concealed by the seal, was given the article of merchandise involved in that particular lottery scheme without further charge. On some of the cards so furnished by respondent, certain of the disks concealed numbers which were designated as free, and selectors of those numbers paid nothing, and in the operation of other cards so furnished by respondent, selectors of numbers higher than 19 paid only 19 cents, and with still other such cards, selectors of numbers higher than 29 paid only 29 cents. Customers who selected names other than that concealed by the seal received nothing. From April 1937, to May 1938, respondent furnished push cards to purchasers of 2,400 cameras, 200 vibro shavers, and a smaller number of clocks. The price obtained by respondent for two of the cameras was \$7.59, and for two of the vibro shavers \$6.95.

The Commission finds that the articles of merchandise sold by respondent were distributed to the purchasing public wholly by lot or chance, and that the amount which a member of the public was required to pay for a chance to obtain such an article of merchandise, or whether such chance would cost nothing, was determined wholly by lot or chance.

PAR. 3. The Commission finds that the persons to whom respondent furnished push cards, as set out in paragraph 2 hereof, used same in purchasing, selling, and distributing articles of merchandise sold by respondent in accordance with the methods and plans described in said paragraph 2. Respondent in this manner has supplied to others, and placed in their hands, the means by which lotteries have been conducted in the resale and distribution of articles of merchandise sold by respondent; that the sale of such merchandise to the purchasing public by the use of such cards involved a game of chance or the sale of a chance to procure articles of merchandise for a sum less than the price at which such articles or like or similar articles were being sold in the usual course of retail trade; that the use by respondent of such methods in the sale and distribution of merchandise has the capacity and tendency to induce, and has induced numerous customers of respondent to purchase the articles of merchandise sold by respondent in preference to like or similar articles of merchandise sold by competitors of respondent who do not use, and have

not used, like or similar sales plans or methods in the sale and distribution of articles of merchandise sold by them; that the use of such sales plans and methods is a practice of a sort which is contrary to an established public policy of the Government of the United States, and is in violation of the laws of several States of the United States.

PAR. 4. There are among the competitors of respondent, persons, partnerships, and corporations engaged in the sale and distribution of like and similar articles of merchandise to those sold by respondent, in commerce between and among various States of the United States, which persons, partnerships and corporations do not make use of any game of chance, gift enterprise, lottery scheme, or other similar device or devices in the sale of such merchandise. Many purchasers of articles of merchandise sold by respondent were attracted by the element of chance in the sales plans and methods used by respondent, and as a result were induced to purchase articles of merchandise sold by respondent in preference to like or similar articles of merchandise offered for sale and sold by competitors of respondent who did not use the same or similar sales plans and methods. Because of this preference the public has purchased a substantial volume of merchandise from respondent with the result that trade has been diverted unfairly to respondent from his competitors.

CONCLUSION

The aforesaid acts and practices of respondent as hereinbefore found, 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (respondent not having filed an answer), 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, brief filed by the attorney for the Commission (respondent having filed no brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Fred W. Herrschner, Jr., individually and trading as 20th Century Sales Co., or trading under

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any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cameras, vibro shavers, clocks, pen and pencil sets, or any other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, to forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to agents or to distributors or members of the public push or pull cards or punchboards or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards or punchboards or other lottery devices.

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

E. J. BRACH & SONS, AND EMIL J. BRACH, EDWARD M. KERWIN, EDWIN O. BLOMQUIST, THEODORE STEMPFEL, AND EMIL J. GUTGSELL, INDIVIDUALLY, AND AS OFFICERS OF E. J. BRACH & SONS

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

Docket 3307. Complaint, Jan. 19, 1938—Decision, Mar. 15, 1939

Where a corporation and three individuals, officers thereof, engaged in manufacture and sale of candy, and as thus engaged in—

(1) Selling its "Betsy Ross" all-metal baskets, with asserted value of \$1, and containing 25 pounds of candy, 50 cellophane bags, and push card for sale and distribution of said items under a plan by which purchasers, for 10 cents, of said half-pound cellophane bags of candy, secured right to select one of number of girls' names displayed on said card and received or failed to receive said basket in accordance with success or failure in selecting name corresponding to that concealed under card's master seal; and in—

(2) Furnishing to customers, with plans of merchandising which involved operation of games of chance, gift enterprise, or lottery schemes, 400-hole, 8-section punchboards, for sale and distribution of candy under plan by which two of numbers concealed in said board entitled chance purchasers to 2-pound boxes of candy, for nickel paid, 4 other numbers entitled each of chance selectors to 1-pound box of chocolates, 24 other numbers entitled each of selectors to 1-pound box of chocolates of another type, and makers of last sale in each of aforesaid sections were similarly entitled to pound boxes of such candy, and purchasers thus received, in event of those making selections as aforesaid, prizes greatly exceeding cost of chance and received, in event of selection of 362 other numbers on board, nothing; and in—

(3) Furnishing various other types of punchboards, together with their candies, for distribution by use of such boards to customers in various States in substantially same manner as above described and varying therefrom in detail only—

Sold to wholesalers and jobbers candy manufactured by it and accompanied by punchboards and push cards for use in sale and distribution of said candy by retail dealer-purchasers thereof, who sold and distributed same to purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of such candy, involving game of chance or sale of a chance to procure quantities of candy at prices much less than prevailing price for like or similar candy in usual course of retail trade, contrary to an established public policy of the United States Government and in violation of the laws of the States and in competition with many who sell and distribute like or similar candy and are unwilling to offer or sell their said candy by any method or sales plan which involves game of chance, gift enterprise, lottery scheme, or other method or plan contrary to public policy and refrain from use thereof;

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With effect of inducing numerous customers to purchase their candies in preference to those sold by competitors who do not use like or similar sales or methods in sale and distribution of their products, and with result that numerous wholesale and retail candy dealers were attracted by element of chance involved in sales plan or method by which their said candies were resold to consuming public by retail dealers as before set out, and such dealers, by reason of said element of chance, were induced to purchase such candies from them in preference to like or similar candies sold by competitors who do not use like or equivalent methods and they or their corporation were thereby enabled to sell substantial quantities of candy and trade was unfairly diverted to corporation aforesaid from competitors thereof:

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Ryan, Condon & Livingston, 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 E. J. Brach & Sons, a corporation, and Emil J. Brach, Edward M. Kerwin, Edwin O. Blomquist, Theodore Stempfel, and Emil J. Gutsell, individuals and officers of E. J. Brach & Sons, hereinafter referred to as respondents, have been, and are 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, E. J. Brach & Sons is a corporation organized and doing business under the laws of the State of Illinois, with its offices and principal place of business at 4656 West Kinzie Street in the city of Chicago in said State.

Respondent Emil J. Brach is the president and director of said corporation and resides in St. Petersburg, Fla. Respondent Edward M. Kerwin is vice president, assistant secretary, and assistant treasurer of said corporation and lives at 530 North Euclid Avenue, Oak Park, Ill. Respondents Edwin O. Blomquist, Theodore Stempfel, and Emil J. Gutsell are vice presidents of corporate respondent and, together with respondent Kerwin, have their business offices at the same address as said E. J. Brach & Sons. Respondent Brach, as an officer and director, and respondents Kerwin, Blomquist, Stempfel,

and Gutzsell, as officers of said corporation, control and direct the policies, acts, and practices thereof. Respondents act together and in cooperation with each other in doing the acts and things herein-after alleged.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture of candies and in the sale and distribution thereof, to retail and wholesale dealers and jobbers. Respondents cause and have caused said candy when sold to be transported from their 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 some time last past, a course of trade and commerce by said respondents in such candy between and among the various States of the United States. In the course and conduct of their business, as hereinabove described, respondents are in competition with other corporations and individuals and with partnerships engaged in the sale and distribution of candy and assortments of candy in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their said business as described in paragraph 2 hereof, respondents in soliciting the sale of, and in selling and distributing their candy, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said candy is distributed to the ultimate consumers thereof wholly by lot or chance. Said devices or plans of merchandising consist of a variety of push cards and punchboards. The methods and practices adopted and used by respondents are substantially as follows:

Respondents distribute or cause to be distributed to customers and prospective customers, including wholesale dealers and jobbers, retail dealers and the purchasing public, through the United States mails in interstate commerce, certain literature including various order blanks, advertisements, catalogs, circulars, and other printed matter containing illustrations of their products and explaining respondents' plan of selling said candy and of allotting candy and other merchandise as premiums or prizes to the consuming public and to the operators of said push cards or punchboards. Said push cards or punchboards vary in detail and involve different assortments and various plans of distribution. One such plan is described in detail for illustration, but other plans used by respondents involve the same principle or method.

One such assortment consists of a number of bars or small pieces of assorted candy, 50 cellophane transparent bags, and an additional article of merchandise, together with a 50-hole push card. The said

push card is a paper card having 50 partially perforated disks, said disks being divided into two sections. A master seal is attached to the upper right-hand corner thereof. Concealed within each disk is a girl's name. At the right of said disk sections are printed 50 girls' names. Sales are 10 cents per 6-ounce bag of said candy, and with each purchase the customer is given a free push. The name of said purchaser is written opposite the listed name corresponding to the name secured by said customer from said disk. When all of the candy has been sold and all of the disks have been pushed, the master seal is removed and the person selecting the name corresponding to the name under said seal is given an additional article of merchandise which is worth more than 10 cents, without additional charge. The additional article of merchandise is thus distributed to the purchasing public 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. The purchasing public is thus induced and persuaded into purchasing pushes from said card in the hope that they may select a prize-winning name and thus obtain an additional article of merchandise without additional charge.

PAR. 4. The wholesale dealers and jobbers to whom respondents sell said candy resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondents sell direct expose said products for sale and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of said candy in accordance with the sales plan hereinabove set forth; and said sales plan has the capacity and tendency to induce purchasers thereof to purchase respondents' said candy in preference to the candy offered for sale and sold by their competitors.

PAR. 5. 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 an additional item of merchandise. The use by respondents of said method in the sale of candy and the sale of such candy by and through the use thereof and by the aid of said method is a practice of the sort which the common-law and criminal statutes have long deemed contrary to public policy, and is contrary to an established public policy of the Government of the United States. The use by respondents of said methods has a tendency unduly to hinder competition or create a 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 sell and distribute candy in competition with the respondents, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

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

PAR. 7. The aforesaid acts and practices of respondents are all to the injury and prejudice of the public and respondents' competitors, as hereinabove related. 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 the Federal Trade Commission Act, the Federal Trade Commission, on January 19, 1938, issued and thereafter served its complaint in this proceeding upon the respondents, E. J. Brach & Sons, a corporation, Emil J. Brach, Edward M. Kerwin, Edwin O. Blomquist, Theodore Stempfel, and Emil J. Gutgsell, individually, and as officers of E. J. Brach & Sons, charging

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Findings

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 complaint were introduced by Henry C. Lank, and D. C. Daniel, attorneys for the Commission, and in opposition to the allegations of the complaint by Ryan, Condon & Livingston, attorneys for the respondents, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, brief in support of the complaint, and in opposition thereto (oral argument not having been requested), 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, E. J. Brach & Sons, is a corporation organized under the laws of the State of Illinois, with its principal place of business at Chicago in said State; it is engaged in the business of the manufacture and sale of candy. The respondent, Emil J. Brach is the president of the respondent, E. J. Brach & Sons, and a member of its board of directors; the respondent, Edward M. Kerwin, is vice president, assistant secretary, and assistant treasurer of the respondent, E. J. Brach & Sons; and the respondents, Edwin O. Blomquist and Emil J. Gutgsell, also are vice presidents of the respondent, E. J. Brach & Sons; and the respondent, Theodore Stempfel is vice president and general merchandising manager of the respondent E. J. Brach & Sons. The respondent, E. J. Brach & Sons, has caused candy manufactured by it to be transported when sold from its place of business in Chicago, in the State of Illinois, through and into or into various other States of the United States to the respective purchasers thereof, and in the course and conduct of its said business said respondent, E. J. Brach & Sons, has been in active competition with various persons and partnerships and other corporations also engaged in the manufacture and sale, or the sale, of candy, in commerce between and among several of the States of the United States.

PAR. 2. The greater portion of the output of the respondent, E. J. Brach & Sons, consists of candy sold in bulk, packed in 30-pound

units, but it manufactures a small amount of penny goods, bars intended for resale to the public at 5 cents each, and some box candy. In April 1937 it featured what it termed "Betsy Ross Baskets," each of which contained 25 pounds of candy; the container was described as "an all-metal combination bread box, picnic box or tackle box," and was represented as being of the value of \$1; 2,100 of these baskets were sold; with each of the baskets of candy there were packed 50 cellophane bags, each suitable for holding one-half pound of candy, and these bags were to be used in the resale of the candy in half-pound bags at 10 cents per bag. Also there was packed in each of the baskets a push card, and the use to be made of said card was explained in a circular letter which the respondent sent out on April 21, 1937, addressed to "Our Jobbers." Each of the cards had printed thereon a number of girls' names, and near the upper right-hand corner there was a disk in the form of a seal which concealed a name which was the same as one of the names printed on the card. Each purchaser of one of the bags of candy for 10 cents was to be given the right to select one of the names on the card without additional charge, and the names of each of the selectors were to be written on the card; when all the names had been selected the seal was then opened, and the name concealed thereby was disclosed, and the person who had selected the name on the card which was the same as that concealed by the seal, was awarded the metal basket, the determination in each instance being wholly a matter of chance, and purchasers who did not select a prize-winning name received no prize. The gross sales by the respondent, E. J. Brach & Sons, aggregated \$8,776,000 in 1937, and \$7,790,000 in 1936; its sales of candy with which it furnished punchboards or push cards aggregated \$48,000 in 1937, and \$78,000 in 1936. Said respondent has discontinued the practice of furnishing punchboards or push cards with candy sold by it.

PAR. 3. In carrying on its business as described in paragraphs 1 and 2 hereof, the respondent, E. J. Brach & Sons, also has supplied or furnished its customers with devices known as "punchboards" and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes. One of the boards so furnished by respondent had 400 holes arranged in 8 sections; in each of the holes was inserted a rolled slip of paper on each of which was printed a number, the numbers running from 1 to 400, both inclusive; it was operated substantially as follows: Members of the public were required to pay 5 cents for the privilege of punching 1 of these slips from 1 of the boards, and 2 of the numbers so obtained entitled each of the selectors to a 2-pound box of chocolates; 4 other numbers so obtained entitled each of the selectors to a 1-pound box of chocolates,

and 24 other numbers, so obtained, entitled each of the selectors to a 1-pound box of another type of chocolates, and each of the persons to whom the last sale in each section was made, was given a 1-pound box of chocolates. Each of the prizes so obtained by members of the public who had selected winning numbers, greatly exceeded the cost of a single number punched from the board, but the selectors of each of the other numbers, 362 out of 400, received nothing. By the use of these boards in the manner described, candy sold by respondent has been distributed to the purchasing public wholly by lot or chance. Said respondent has furnished various other types of punchboards together with candies to be distributed by the use of such boards to customers in various States of the United States, but the boards of each of said types were operated in substantially the same manner as the one herein described, and varied only in detail.

PAR. 4. Respondent, E. J. Brach & Sons, has sold candy manufactured by it accompanied by "push cards" or "punchboards" for use in the distribution of same as described herein, to wholesalers and jobbers who have resold such candy accompanied by such boards and cards, to retail dealers who in turn sold and distributed such candy by means of such push cards and punchboards to members of the purchasing public, in accordance with the sales plans hereinbefore described. Said respondent in this manner has supplied to others, and placed in their hands, the means of conducting lotteries in the sale and distribution of such candy. Said sales plans have the capacity and tendency to induce, and have induced numerous customers of respondent to purchase candies manufactured by it in preference to candies sold by competitors of said respondent who did not and do not use like or similar sales plans or methods in the sale and distribution of candies sold by them.

PAR. 5. The sale and distribution of candies to the purchasing public in the manner, and by the method described in paragraphs 2 and 3 hereof, involves a game of chance, or the sale of a chance, to procure quantities of candy at prices much less than the prevailing price for like or similar candy in the usual course of retail trade. The sale and distribution of candy by such methods is a practice of the sort which is contrary to an established public policy of the Government of the United States, and is in violation of the laws of several of the States of the United States. Among the competitors of respondent, E. J. Brach & Sons, are many persons, partnerships, and corporations who sell and distribute like or similar candies to those sold by said respondent, and in competition with it, which competitors are unwilling to offer for sale or sell their said candies by any method or sales plan which involves a game of chance, gift enterprise, lottery scheme,

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or any other method or plan that is contrary to public policy, and said competitors refrain from the use of any such plan or method and as a result are placed at a disadvantage in competition.

PAR. 6. Numerous wholesale and retail dealers in candy have been attracted by the element of chance involved in the sales plan or method by which candies sold by respondent, E. J. Brach & Sons, have been resold to the consuming public by retail dealers as hereinbefore set out, and said dealers by reason of such element of chance, have been induced to purchase such candies from said respondent in preference to like or similar candies sold by competitors of said respondent who do not use like or equivalent methods, and as a result of such preference said respondent has been able to sell substantial quantities of candy, and thereby trade has been diverted unfairly to said respondent from its competitors.

CONCLUSION

The aforesaid acts and practices of the respondents, as hereinbefore found, are all to the prejudice and injury of the public, and to competitors of the respondent, E. J. Brach & Sons, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of respondents, testimony, and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein (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 the Federal Trade Commission Act.

It is ordered, That the respondent, E. J. Brach & Sons, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of candy, or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or other merchandise so packed and assembled that sales of said merchandise to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise;

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2. Supplying to, or placing in the hands of, others assortments of candy or other merchandise 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 said assortments to the public;

3. Supplying to, or placing in the hands of, others assortments of candy or other merchandise, together with punchboards, push or pull cards, or other lottery devices which said punchboards, push or pull cards, or other lottery devices, are to be used or may be used in selling or distributing said merchandise to the public;

4. Supplying to, or placing in the hands of, others punchboards, push or pull cards, or other lottery devices, either with assortments of said merchandise or separately, which lottery devices are to be used or may be used in selling or distributing said merchandise to the public;

5. Selling or otherwise disposing of any merchandise by the use of punchboards, push or pull cards, or any other lottery device or devices.

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.

It is further ordered, That the complaint insofar as it relates to respondents, Emil J. Brach, Edward M. Kerwin, Edwin O. Blomquist, Theodore Stempfel and Emil J. Gutsell, as individuals, be, and the same hereby is, dismissed without prejudice.

Complaint

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IN THE MATTER OF
DE KAMA, INC.

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

Docket 3480. Complaint, July 9, 1938—Decision, Mar. 15, 1939

Where a corporation engaged in sale and distribution of cosmetics with claimed therapeutic properties—

(a) Represented, in printed advertising matter shipped and distributed in interstate commerce and used in connection with offer and sale of its said products, that they were of remedial or therapeutic value in the prevention or treatment of skin conditions or disorders because of the hormones or gland extracts therein contained, and that use thereof would nourish and rejuvenate the skin, prevent sagging or wrinkling thereof, and overcome effect of age on the skin and preserve the soft contour and firmness of youthful skin, and that its "Creme Harmonique" was designed, among other things, "to penetrate the outer skin and give new life to the subcutaneous cells;" and

(b) Represented, as aforesaid, that said preparations, as the case might be, would beneficially affect the oil glands and pores of the skin and were of special value in correcting an oily, muddy type of skin, or shrunken and anemic skin, because of the hormones or gland extracts contained therein;

Facts being hormones or glandular extracts are not absorbed through the skin in therapeutically significant amounts, its said products do not enable the users to retain or restore youthful contour and firmness, or the silky smooth texture of the skin, and will not, in any manner, rejuvenate skin and facial contours, and cannot produce the results represented and claimed;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and with result, as direct consequence of such belief, that number of consuming public purchased substantial volume of its products and trade was diverted unfairly to it from its competitors who truthfully represent their respective preparations; 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*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Peyton H. Moore, of Los Angeles, Calif., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that De Kama, 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, De Kama, Inc., 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 at 3255 Wilshire Boulevard in the city of Los Angeles, State of California. Respondent is now, and has been for some time last past, engaged in the business of selling and distributing cosmetics with claimed therapeutic properties.

PAR. 2. Respondent, in the course and conduct of its business, causes said products when sold to be transported from its principal place of business in the State of California to purchasers thereof located at various points in the several States of the United States other than the State of California. Respondent maintains and at all times mentioned herein has maintained a course of trade in said products sold and distributed in commerce between and among the various States of the United States, in the District of Columbia, and in foreign countries.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been for some time last past, in substantial competition with other corporations, and with firms and individuals likewise engaged in the business of selling and distributing cosmetics 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 said business, and for the purpose of inducing the purchase of its said products, respondent has made, and makes, by means of printed advertising matter shipped and distributed in interstate commerce and used in connection with the offering for sale and sale of its said products, representations concerning said products and the results obtained from the use thereof. Among other things, the respondent represents and claims that certain of its cosmetics and preparations made or compounded under secret formula by impregnating its creams and preparations for human facial use with certain hormones or glandular extracts are scientifically sound preparations and have substantial medicinal and therapeutic value as preventives of aging, restoratives of youthfulness in, and nourishers of, the human skin. Specifically, some of the representations and claims so made are:

De Kama's principles were new to the cosmetic world—scientific, logical.

Therefore, it is only logical that the scientific way to overcome the effects of age is to incorporate these hormones which control tissue restoration and hence prolonged youth into a fine face crème, the application of which would tend to produce the results that women are seeking.

In short, it is not enough merely artificially and temporarily to disguise the defects of the skin. The need is to preserve the skin's undertone, its soft, youthful contour and firmness, its silky, smooth texture; briefly—to attack directly the cause of aging and skin blemishes, to arrest for many years to come the merciless process of sagging and wrinkling * * * to make youthful loveliness of complexion immune to the ravages of time. De Kama Preparations are Created to Answer This Need.

De Kama Crème Hormonique, De Kama Crème Vi-Tavo, and De Kama Nature-Tone Crème make a complete group for the treatment of the skin in the scientific manner.

De Kama injected certain active hormone extracts, known only to himself, formulated and produced exclusively by him in his own laboratory, and which therefore cannot be duplicated. So was born the first complete organic beauty treatment in the world—the De Kama original Hormone Facial Preparations.

Crème Hormonique is created to revitalize those tiny, dormant glands within your skin and to make them glow again with their own youthful vigor.

De Kama Cream Hormonique is designed to penetrate the outer skin and give new life to the subcutaneous cells.

Crème Hormonique * * * This is the basic preparation in the De Kama Treatment Group. Its use is essential for all types and ages of skin. It embodies the De Kama active hormone principle previously outlined and combats aging by treating the cause. Its astonishing results have received world-wide acclaim.

Crème Hormonique is also intended to preserve and immunize the youthful charm of a skin that has not yet shown the cruel traces of fleeting time. De Kama Crème Hormonique is producing truly astonishing results. It fulfills its every promise and gives the lasting charm of a youthful complexion to the woman who uses it.

De Kama Creme Vi-Tavo contains a special De Kama Glandular Extract, plus certain elements of ripe avocados which are rich in vitamins.

De Kama Nature-Tone Creme aids the pores in regulating their flow of natural oil, and at the same time, assists the minute oil glands themselves. It contains a gland extract especially prepared for the oily, muddy type of skin.

De Kama Creme Hormonique Special contains a specific hormone extract for devitalized and anaemic skins. This creme is exceptionally beneficial for skins which are undernourished to a marked degree. It contains the same ingredients as Creme Hormonique.

De Kama-De-Kar Mone—De Kama's most recent masterpiece of rejuvenation * * * Contains a special De Kama hormone extract found to have a highly rejuvenative effect on these distressing skin conditions.

PAR. 5. The representations made by the respondent with respect to the character, nature, and effect of its products when used are grossly exaggerated, misleading, deceptive, and false. In truth and in fact, hormones or glandular extracts are not absorbed through the skin in therapeutically significant amounts, and respondent's products cannot produce the results represented and claimed. The use of respondent's products does not enable the users to retain or restore the youthful contour and firmness, or the silky smooth texture of the skin, nor will said products in any manner rejuvenate the skin and facial contours.

PAR. 6. There are among respondent's competitors many who make, sell, and distribute cosmetics 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 respondent in describing its products and their effectiveness when used, as hereinabove set out, were and are calculated to, and have had and now have a tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to respondent from its competitors in said commerce, who truthfully represent their respective products. As a result thereof, 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. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 9, 1938 issued, and on July 15, 1938 served, its complaint in this proceeding upon respondent, De Kama, 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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 said complaint and 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, De Kama, Inc., 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 at 3255 Wilshire Boulevard, in the city of Los Angeles, State of California. Respondent is now, and has been for some time last past, engaged in the business of selling and distributing cosmetics with claimed therapeutic properties.

PAR. 2. Respondent, in the course and conduct of its business, causes said products, when sold by it, to be transported from its principal place of business in the State of California to purchasers thereof located at various points in the several States of the United States other than the State of California. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products sold and distributed in commerce between and among the various States of the United States and in the District of Columbia and in foreign countries.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been for some time last past, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling and distributing cosmetics 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 said business, and for the purpose of inducing the purchasing of its said products, respondent has made, and makes, by means of printed advertising matter shipped and distributed in interstate commerce and used in connection with the offering for sale and sale of its said products, representations concerning said products and the results obtained from the use thereof. Among other things, the respondent represents and claims that certain of its cosmetics and preparations made or compounded under secret formula by impregnating its creams and preparations for human facial use with certain hormones or glandular extracts are scientifically sound preparations and have substantial medical and therapeutic value as preventives of aging, restoratives of youthfulness in, and nourishers of, the human skin. Specifically, some of the representations and claims so made are:

De Kama's principles were new to the cosmetic world—scientific, logical.

Therefore, it is only logical that the scientific way to overcome the effects of age is to incorporate these hormones which control tissue restoration and hence prolonged youth into a fine face creme, the application of which would tend to produce the results that women are seeking.

In short, it is not enough merely artificially and temporarily to disguise the defects of the skin. The need is to preserve the skin's undertone, its soft, youthful contour and firmness, its silky, smooth texture; briefly—to attack directly the cause of aging and skin blemishes, to arrest for many years to come the merciless process of sagging and wrinkling * * * to make youthful loveliness of complexion immune to the ravages of time. De Kama Preparations Are Created to Answer This Need.

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De Kama injected certain active hormone extracts, known only to himself, formulated and produced exclusively by him in his own laboratory, and which therefore cannot be duplicated. So was born the first complete organic beauty treatment in the world—the De Kama original Hormone Facial Preparations.

Creme Hormonique is created to revitalize those tiny, dormant glands within your skin and to make them glow again with their own youthful vigor.

De Kama Cream Hormonique is designed to penetrate the outer skin and give new life to the subcutaneous cells.

Creme Hormonique * * * This is the basic preparation in the De Kama Treatment Group. Its use is essential for all types and ages of skin. It embodies the De Kama active hormone principle previously outlined and combats aging by treating the cause. Its astonishing results have received world-wide acclaim.

Creme Hormonique is also intended to preserve and immunize the youthful charm of a skin that has not yet shown the cruel traces of fleeting time. De Kama Creme Hormonique is producing truly astonishing results. It fulfills its every promise and gives the lasting charm of a youthful complexion to the woman who uses it.

De Kama Creme Vi-Tavo contains a special De Kama Glandular Extract, plus certain elements of ripe avocados which are rich in vitamins.

De Kama Nature-Tone Creme aids the pores in regulating their flow of natural oil, and at the same time, assists the minute oil glands themselves. It contains a gland extract especially prepared for the oily, muddy type of skin.

De Kama Creme Hormonique Special contains a specific hormone extract for devitalized and anaemic skins. This creme is exceptionally beneficial for skins which are undernourished to a marked degree. It contains the same ingredients as Creme Hormonique.

De Kama-De-Kar Mone—De Kama's most recent masterpiece of rejuvenation * * * Contains a special De Kama hormone extract found to have a highly rejuvenative effect on these distressing skin conditions.

PAR. 5. The representations made by the respondent with respect to the character, nature, and effect of its products when used are grossly exaggerated, misleading, deceptive, and false. In truth and in fact, hormones or glandular extracts are not absorbed through the skin in therapeutically significant amounts and respondent's products cannot produce the results represented and claimed. The use of respondent's products does not enable the users thereof to retain or restore the youthful contour and firmness, or the silky smooth texture, of the skin, nor will said products in any manner rejuvenate the skin and facial contours.

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PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in describing its products and their effectiveness when used, as hereinabove set out, were and are calculated to, and have had and now have a tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to respondent from its competitors in said commerce who truthfully represent their respective products. As a result thereof, 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, De Kama, 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 the Federal Trade Commission Act.

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 fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, De Kama, Inc., a corporation, its representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cosmetic preparations in commerce, as defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That any of said preparations is of any remedial or therapeutic value in the prevention or treatment of skin conditions or disorders because of the hormone or gland extracts in such preparation.
2. That the use of any of said preparations will nourish and rejuvenate the skin, prevent the sagging or wrinkling of the skin, overcome

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the effect of age on the skin, or preserve the soft contour and firmness of the youthful skin.

3. That any of said products will penetrate the outer skin and affect the subcutaneous cells.

4. That any of said preparations will beneficially affect the oil glands and pores of the skin because of the hormone or gland extracts in said preparation.

5. That any of said preparations is of special value in correcting an oily, muddy type skin, or a shrunken and anemic skin, because of the hormone or gland extracts in such preparation.

6. That any hormone or gland extracts contained in such preparations are absorbed through the skin in a therapeutically significant amount.

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
GOOD HUMOR CORPORATION OF AMERICA

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

Docket 3516. Complaint, July 28, 1938—Decision, Mar. 15, 1939

Where owner of patents covering subject matter of confections frozen on sticks or handle members, and engaged for short period in sale and distribution to licensees of wooden sticks and paper bags including certain assortments thereof which involved use of a lottery scheme when sold and distributed as frozen confections to consumers thereof, and included assortments in which 10-cent consumer-purchaser securing by chance "lucky stick" concealed in confection, was entitled, without cost, to additional bar—
Sold as aforesaid such assortments to dealers by whom such sticks and bags were employed in sale and distribution of their frozen confections or bars to their customers and awards made as above described, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products as above set forth, under aforesaid and similar plans, contrary to an established public policy of the United States Government and in violation of the criminal laws of several States and in competition with various manufacturers and distributors of such sticks and bags which, when used by retail dealers, do not constitute operation of game of chance, gift enterprise, or lottery scheme, and with many who make and sell various sticks and bags and devices for promoting or increasing sales of retail dealers and are unwilling to offer and sell their said products or devices so designed and arranged as above set forth or otherwise designed and arranged as to involve game of chance, lottery scheme, or gift enterprise and refrain therefrom;
With result that consuming public because of lottery scheme connected with its said sticks and bags was induced to deal with or purchase such frozen confections from dealers using its said devices, in preference to dealers using those of competitors, and dealers were thus induced to purchase its said sticks and bags in preference to devices of competitors, and substantial trade was thus unfairly diverted to it from its competitors aforesaid, and with capacity and tendency unduly to hinder competition or create monopoly through tendency and capacity to exclude competitors who do not use same or equivalent or similar method involving same or equivalent or similar elements of chance, lottery scheme, or gift enterprise:
Held, That such acts and practices are all to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Mr. Daniel G. Albert, of Brooklyn, N. Y., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal

Trade Commission having reason to believe that Good Humor Corporation of America, a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Good Humor Corporation of America, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 64-81 Metropolitan Avenue, Maspeth, Long Island, N. Y. Respondent owns two patents, one No. 1,470,524, being a process patent which teaches a method of inserting wooden handles or sticks into a container of partially frozen liquids, which, when subjected to further refrigeration causes a bond between the frozen confection and the stick, by congelation. The other patent, No. 1,718,997, a product patent, covers claims for the resulting product, to wit: A frozen confection on a wooden stick or handle. Respondent issues licenses to manufactures of ice cream to manufacture and sell frozen confections in accordance with the teachings of said patents. Respondent is now, and for some time last past has been, engaged in the issuing of licenses, as above mentioned, and in the sale and distribution of wooden handles or sticks and paper bags to dealers located in the various States of the United States and in the District of Columbia. Respondent causes and has caused its products, when sold, to be transported from its principal place of business in the State of New York, or from the respective points of location of the manufacturers of said products, to purchasers thereof in the various States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade and commerce by said respondent in said sticks and bags, between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business respondent is in competition with other corporations, and with partnerships and individuals likewise engaged in the manufacture, sale, and distribution of similar or like products and of various containers and holders for frozen confections 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 thereof, respondent sells and has sold to dealers assortments of sticks and paper bags, which sticks, when covered with ice cream as hereinbefore related, and packed in said bags, involve the use of a lottery scheme when sold and distributed to the consumers thereof. Assortments of said frozen confections or bars are sold to

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the consuming public in the following manner: This assortment consists of a number of frozen confections or bars packed in paper bags. Sales are 10 cents each. Through the center of each of said confections or bars is one of the small sticks or handles hereinabove mentioned. On certain of said handles or sticks appear the words "Lucky Stick," which words are effectively concealed until a purchaser has made a purchase and the frozen confection or bar has been consumed or removed from the stick. Purchasers who receive one of the sticks marked "Lucky Stick," are entitled to and do receive an additional frozen confection or bar without additional cost. The additional confections or bars are thus distributed to the purchasing public wholly by lot or chance. Respondent sells various assortments of sticks and bags to be used in the sale and distribution of such frozen confections or bars by lot or chance, but the above-described sales plan is illustrative of the principle involved in all such assortments.

PAR. 3. The dealers to whom respondent sells assortments of said sticks and bags employ them in the distribution of their frozen confections or bars to their customers, and make the awards as above described.

Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products.

PAR. 4. There are in competition with respondent various manufacturers and distributors of such sticks and bags, which, when used by the retail dealers, do not constitute a game of chance, gift enterprise, or lottery scheme. The consuming public is induced to deal with or purchase such products from dealers using respondent's said sticks and bags in preference to dealers using devices of respondent's competitors because of the lottery scheme connected with respondent's said sticks and bags. For that reason dealers are induced to purchase respondent's said sticks and bags in preference to devices of respondent's competitors, and trade is thus unfairly diverted to respondent from its said competitors.

PAR. 5. The use by respondent of said method in designing and arranging its said sticks and bags is a practice of the sort which is contrary to an established public policy of the Government of the United States, and which is in violation of criminal laws. The use by respondent of said method has a capacity and tendency unduly to hinder competition or create a monopoly, in this to wit: That the use thereof has a tendency and capacity to exclude competitors who do not use the same method or an equivalent or similar method, involving the same or an equivalent or similar element of chance, lottery scheme, or gift enterprise. Many persons, firms, and corporations

who make and sell various sticks and bags or devices for promoting or increasing the sales of retail dealers are unwilling to offer for sale and sell sticks and bags or devices designed or arranged so as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

PAR. 6. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 28, 1938, issued, and thereafter served, its complaint in this proceeding upon said respondent Good Humor Corporation of America, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On October 5, 1938, respondent filed its answer in this proceeding. Thereafter, a stipulation in lieu of testimony and other evidence was entered into by and between Daniel G. Albert, counsel for the respondent, and W. T. Kelley, chief counsel for the Federal Trade Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, 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, Good Humor Corporation of America, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 64-81 Metropolitan Avenue, Maspeth, Long Island, N. Y. Respondent owns two patents, No. 1,470,524 and No. 1,718,997, both covering the subject matter of confections frozen on sticks or handle members. Respondent has issued in the past licenses to manufacturers of ice cream to manufacture and sell frozen confections in accordance with the teachings of the said patents, but it no longer issues such licenses and its only business and function now is the collection of royalties from the holders of licenses which have been granted by it in the past. Respondent was engaged for a short period in the past in the sale and distribution of wooden

sticks and paper bags to some of its licensees located in the various States of the United States. Respondent causes its products, when sold, to be transported from the respective points of location of the manufacturers of said products to purchasers thereof in the various States of the United States and in the District of Columbia. There was a course of trade by said respondent in said sticks and bags in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, respondent was in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar or like products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In so carrying on said business as described in paragraph 1 hereof, respondent has sold to dealers assortments of sticks and paper bags, which sticks when covered with ice cream, as hereinbefore described, and packed in said bags, involve the use of a lottery scheme, when sold and distributed to the consumers thereof. One of said assortments showing the method of sale and distribution to the consuming public, was as follows: This assortment consisted of a number of frozen confections or bars packed in paper bags. Sales were 10 cents each. Through the center of each of said confections or bars was one of the small sticks or handles hereinbefore described. On certain of said sticks appeared the words "Lucky Stick," which words were effectively concealed until a purchaser had made a purchase and the frozen confection or bar had been consumed or removed from the stick. Purchasers who received one of the sticks marked "Lucky Stick" were entitled to and did receive an additional frozen confection or bar without additional cost. The additional confections or bars were thus distributed to the purchasing public wholly by lot or chance. Respondent has sold and distributed various assortments of sticks and bags for use in the sale and distribution of such frozen confections or bars by lot or chance, but the above-described sales plan is illustrative of the principle involved in all such assortments.

PAR. 3. The dealers to whom respondent sold assortments of said sticks and bags employed them in the sale and distribution of their frozen confections or bars to their customers, and made the awards as above described. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in the manner hereinbefore described.

PAR. 4. There are in competition with respondent various manufacturers and distributors of such sticks and bags, which, when used

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by retail dealers, do not constitute the operation of a game of chance, gift enterprise, or lottery scheme. Because of the lottery scheme connected with respondent's said sticks and bags, the consuming public was induced to deal with or purchase said products from dealers using respondent's said sticks and bags in preference to dealers using devices of respondent's competitors. As a result thereof, dealers were induced to purchase respondent's said sticks and bags in preference to devices of respondent's competitors, and substantial trade was thus unfairly diverted to respondent from its said competitors.

PAR. 5. The use by respondent of said method in designing and arranging its said sticks and bags is a practice of the sort which is contrary to an established public policy of the Government of the United States, and which is a violation of the criminal laws of several States of the United States. The use by respondent of said method has a capacity and tendency unduly to hinder competition or create a monopoly, in this, to wit: That the use thereof has a tendency and capacity to exclude competitors who do not use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance, lottery scheme, or gift enterprise. Many persons, firms, or corporations who make and sell various sticks and bags or devices for promoting or increasing the sales of retail dealers, are unwilling to offer for sale and sell sticks and bags or devices so designed and arranged as hereinabove described, or otherwise designed and arranged, so as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove set forth 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 the Federal Trade Commission Act.

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, in lieu of testimony and other evidence, entered into between the respondent herein and W. T. Kelley, chief counsel for the Federal Trade Commission, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

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It is ordered, That the respondent Good Humor Corporation of America, its officers, representatives, agents, and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sticks or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing sticks or other merchandise to dealers, which said sticks or other merchandise are to be used or may be used in the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others, sticks or other articles of merchandise, which are used, or which may be used, without alteration thereof, to conduct a lottery, game of chance, or gift enterprise, when distributed to the consuming public.

3. Supplying to, or placing in the hands of, others any lottery device which is to be used, or may be used, in the sale and distribution of merchandise to the consuming public.

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

W. H. BARNARD, TRADING AS W. H. BARNARD RUBBER
COMPANY

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

Docket 3520. Complaint, July 30, 1938—Decision, Mar. 15, 1939

Where an individual engaged in sale of garden hose and other rubber goods to customers in other States and in the District of Columbia, in substantial competition with the others engaged in sale and distribution of such products in commerce and in said District, and including many jobbers and distributors of like and similar products who do not falsely and deceitfully represent to public that they are manufacturers thereof, or that their products have a value, merit, and quality that they do not have—

- (a) Represented to prospective customers and to buying public generally that he was manufacturer of such goods and products by causing to appear on his letterheads word "Manufacturers," along with trade name employed by him and statement of goods dealt in, and such references in correspondence with customers and prospective customers as "* * * We bought a lot of Extra Heavy Yarn, at a price, and used it to make this Hose * * *," and "In order to keep our factory running full time * * *," and "As soon as we have received enough orders to run us full time * * *," etc., and, through such letterheads and aforesaid and other similar statements in correspondence, informed customers that he was a manufacturer of such products and owned or operated a factory, mill, or plant for manufacture thereof;

Facts being all garden hose sold by him for many years last past had been made by another company, to which he transmitted all orders for such goods and which filled same and made shipment thereof in his name from its said factory direct to purchasers, he was only jobber of rubber goods and not manufacturer of such products, for direct purchase of which as from manufacturer there is marked preference on part of substantial portion of purchasing public, as affording better prices, products, and advantages not obtainable from jobbers or other middlemen, and representations made by him as aforesaid were false and misleading; and

- (b) Sent to customers and prospective customers samples of garden hose, together with quoted price thereon, and represented that product offered, and which would be shipped upon order, was of same quality, fabric, material, construction, merit, and value as sample thus enclosed;

Facts being garden hose sold and shipped as result of such solicitation was of an inferior grade and quality to sample originally forwarded to purchaser, in that it contained approximately one-third less fabric;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that all said representations were true, and with effect of leading such public into false and erroneous belief that garden hose and other products sold and distributed by him were made by him and had a greater value, quality, and merit than they actually

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possessed, and with result, as direct consequence of such erroneous and mistaken belief, that number of consuming public purchased substantial volumes of his said product and trade was diverted unfairly to him from competitors likewise engaged in distribution and sale of garden hose and other products and who truthfully advertise the same:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Charles S. Cox for the Commission.

Saul, Ewing, Remick & Saul, of Philadelphia, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that W. H. Barnard, an individual trading and doing business under the name of W. H. Barnard Rubber Co., hereinafter referred to as the respondent, has violated the provisions of the 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. W. H. Barnard is an individual trading and doing business under the name of W. H. Barnard Rubber Co., with his principal office and place of business located at 131 South Fourth Street, Philadelphia, Pa.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the business of selling garden hose and other rubber goods. Respondent causes said products when sold to be transported from the manufacturer in the State of New Jersey to his customers located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein, has maintained, a course of trade in said products sold and distributed by him in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business respondent is in active and substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of garden hose and other rubber products, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of his said products, respondent has

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represented to prospective customers and to the buying public generally that he is a manufacturer of garden hose, mechanical rubber goods, and other rubber products, by causing to appear on his letterheads, which he has transmitted to customers and prospective customers located in the various States of the United States and in the District of Columbia, the following words:

W. H. BARNARD RUBBER CO.
Manufacturers of
Mechanical Rubber Goods
Garden Hose Mats and Mattings

Respondent has further represented that he is a manufacturer of said products by including in his correspondence to customers and prospective customers in the various States of the United States and in the District of Columbia such phrases as:

We have 25,000 ft. of $\frac{5}{8}$ " Extra Heavy One Braid Brown Corrugated Barnard Moulded Garden Hose, like sample enclosed. We bought a lot of Extra Heavy Yarn, at a price, and used it to make this Hose and are giving our customers the benefit of the purchase. Quote you a special price of $5\frac{1}{2}\text{¢}$ per ft. coupled in 50 ft. sections, freight prepaid on full bales (500 ft.) or more;

In order to keep our factory running full time the month of November; and,

As soon as we have received enough orders to run us full time for the month of November.

Respondent's letterheads and all said statements, together with similar statements appearing in respondent's correspondence, inform his customers that respondent is a manufacturer of garden hose and rubber products and owns or operates a factory, mill, or plant for the manufacture of said product.

PAR. 5. The representations thus made by respondent are false and misleading. In truth and in fact, respondent is not a manufacturer of garden hose or other rubber products, and neither owns, operates, nor controls any factory, plant, or mill for the manufacture of such products. Respondent is only a jobber of rubber goods. All the garden hose sold by him for many years last past has been manufactured by the Thermoid Co., a corporation having its offices and factory at Trenton, N. J., and all orders for such goods received by respondent have been, and are, transmitted by him to the Thermoid Co. at its place of business in Trenton, N. J., where the said Thermoid Co. fills all of such orders and makes shipments in respondent's name from the factory of said company in Trenton, N. J., direct to the purchasers in the various States of the United States and in the District of Columbia.

PAR. 6. In the course and conduct of said business and for the purpose of inducing the purchase of his said garden hose, respondent

has sent and is sending to customers and prospective customers, located in the various States of the United States and in the District of Columbia, samples of garden hose, quoting his price thereon and representing that the product thus offered for sale and which will be shipped upon order, is of the same quality, fabric, material, construction, merit, and value as the sample so enclosed. In truth and in fact, the garden hose thus sold and shipped as a result of said solicitation was and is of an inferior grade and quality to the sample originally forwarded to the purchaser, in that the product so sold and shipped by respondent contains approximately one-third less fabric, the fabric portion of same being braided with one end per carrier, each end being composed of a six-ply yarn, while the fabric portions of the sample forwarded by said respondent are braided with two ends per carrier, each end being composed of three strands, and each strand being a two-ply yarn.

PAR. 7. For many years a substantial portion of the purchasing public has shown a marked preference for products sold and distributed to the public by the manufacturers thereof, said preference resulting from the belief that the manufacturer is able to offer better prices, superior products and other advantages not obtainable from jobbers or other middlemen.

There are among the competitors of respondent, many who are jobbers and distributors of like and similar products, who do not falsely and deceitfully represent to the public that they are manufacturers of such products, or that the products they are selling and offering for sale, have a value, merit, and quality that they do not have.

PAR. 8. Each and all of the false and misleading statements and representations made by respondent, as hereinabove alleged, were and are calculated to, and have 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 have led said purchasing public into the false and erroneous belief that the garden hose and other rubber products sold and distributed by respondent are manufactured by him, and that said products have a greater value, quality, and merit than they do actually have.

As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's said product, with the result that trade has been diverted unfairly to respondent from his competitors, likewise engaged in the business of distributing and selling garden hose and other products, who truthfully advertise their respective products. As a result thereof, injury has been and is now being done by respondent to com-

petition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 30, 1938, issued and served its complaint in this proceeding upon respondent, W. H. Barnard, an individual, trading as W. H. Barnard Rubber Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On February 28, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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. W. H. Barnard is an individual, trading and doing business under the name of W. H. Barnard Rubber Co., with his principal office and place of business located at 131 South Fourth Street, Philadelphia, Pa.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the business of selling garden hose and other rubber goods. Respondent causes said products when sold to be transported from the manufacturer in the State of New Jersey to his customers located in other States of the United States and in the District of Columbia.

Respondent now maintains, and has for more than the past 2 years maintained, a course of trade in said products sold and distributed by him in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business respondent is in active and substantial competition with other individuals and

with partnerships and corporations engaged in the sale and distribution of garden hose and other rubber products, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business and for the purpose of inducing the purchase of his said products, respondent has represented to prospective customers and to the buying public generally that he is a manufacturer of garden hose, mechanical rubber goods, and other rubber products, by causing to appear on his letterheads, which he has transmitted to customers and prospective customers located in the various States of the United States and in the District of Columbia, the following words:

W. H. BARNARD RUBBER CO.
Manufacturers of
Mechanical Rubber Goods
Garden Hose Mats and Mattings

Respondent has further represented that he is a manufacturer of said products by including in his correspondence to customers and prospective customers in the various States of the United States and in the District of Columbia such phrases as:

We have 25,000 ft. of 5/8" Extra Heavy One Braid Brown Corrugated Barnard Moulded Garden Hose, like sample enclosed. We bought a lot of Extra Heavy Yarn, at a price, and used it to make this Hose and are giving our customers the benefit of the purchase. Quote you a special price of 5½¢ per ft. coupled in 50 ft. sections, freight prepaid on full bales (500 ft.) or more;

In order to keep our factory running full time the month of November; and,

As soon as we have received enough orders to run us full time for the month of November.

Respondent's letterheads and all said statements, together with similar statements appearing in respondent's correspondence, inform his customers that respondent is a manufacturer of garden hose and rubber products and owns or operates a factory, mill, or plant for the manufacture of said products.

PAR. 5. The representations thus made by respondent are false and misleading. In truth and in fact, respondent is not a manufacturer of garden hose or other rubber products, and neither owns, operates, nor controls any factory, plant, or mill for the manufacture of such products. Respondent is only a jobber of rubber goods. All the garden hose sold by him for many years last past has been manufactured by the Thermoid Co., a corporation having its offices and factory at Trenton, N. J., and all orders for such goods received by respondent have been, and are, transmitted by him to the Thermoid Co. at its place of business in Trenton, N. J., where the said

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Thermoid Co. fills all of such orders and makes shipments in respondent's name from the factory of said company in Trenton, N. J., direct to the purchasers in the various States of the United States and in the District of Columbia.

PAR. 6. In the course and conduct of said business and for the purpose of inducing the purchase of his said garden hose, respondent has sent and is sending to customers and prospective customers, located in the various States of the United States and in the District of Columbia, samples of garden hose, quoting his price thereon and representing that the product thus offered for sale and which will be shipped upon order, is of the same quality, fabric, material, construction, merit, and value as the sample so enclosed. In truth and in fact, the garden hose thus sold and shipped as a result of said solicitation was and is of an inferior grade and quality to the sample originally forwarded to the purchaser, in that the product so sold and shipped by respondent contains approximately one-third less fabric, the fabric portion of same being braided with one end per carrier, each end being composed of a six-ply yarn, while the fabric portions of the sample forwarded by said respondent are braided with two ends per carrier, each end being composed of three strands, and each strand being a two-ply yarn.

PAR. 7. For many years a substantial portion of the purchasing public has shown a marked preference for products sold and distributed to the public by the manufacturers thereof, said preference resulting from the belief that the manufacturer is able to offer better prices, superior products, and other advantages not obtainable from jobbers or other middlemen.

There are among the competitors of respondent, many who are jobbers and distributors of like and similar products, who do not falsely and deceitfully represent to the public that they are manufacturers of such products, or that the products they are selling and offering for sale, have a value, merit, and quality that they do not have.

PAR. 8. Each and all of the false and misleading statements and representations made by respondent, as aforesaid, were and are calculated to, and have 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 have led said purchasing public into the false and erroneous belief that the garden hose and other rubber products sold and distributed by respondent are manufactured by him, and that said products have a greater value, quality, and merit than they do actually have.

As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's said product, with the result that trade has been diverted unfairly to respondent from his competitors, likewise engaged in the business of distributing and selling garden hose and other products, who truthfully advertise their respective products.

CONCLUSION

The aforesaid acts and practices of the 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 the Federal Trade Commission Act.

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 fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, W. H. Barnard, an individual, trading as W. H. Barnard Rubber Co., or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of rubber garden hose and other rubber goods in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly that respondent manufactures said products, unless and until respondent owns and operates or directly and absolutely controls the factory or plant wherein said products are manufactured.

2. Representing that a product similar to sample displayed will be delivered, unless in fact the product delivered is of the same quality, fabric, material, construction, and value as the sample.

3. Representing directly or indirectly that said products are of a quality, fabric, material, construction, or value other than such products are in fact.

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

Syllabus

IN THE MATTER OF

MARTIN M. SLATON, INDIVIDUALLY, AND TRADING AS
ALLIED GIFT SHOPCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3252. Complaint, Oct. 25, 1937—Decision, Mar. 16, 1939*

Where an individual engaged in sale and distribution of various novelties and articles of merchandise, including rotary clocks, electric razors, toasters, and other articles; in soliciting sale of and in selling and distributing his said products—

Furnished with such articles various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for distribution of such merchandise to ultimate consumer, wholly by lot or chance, and which included number of different types of push cards for use in sale and distribution of said products under plan and in accordance with said card's explanatory legends, pursuant to which amount paid by customer or, in case of some, receipt of free chance, was dependent upon number pushed by chance, and receipt of article being thus disposed of was dependent upon success or failure in selecting, from list on card, girl's name corresponding to that concealed under card's master seal and selectors of certain numbers, in case of some, received secondary prizes and under which, failing such contingencies, customers received nothing, and operator handling cards received for his services one of articles without additional charge; and

Supplied thereby and placed in the hands of others, means by which lotteries were conducted in the sale of his said merchandise in accordance with such sales plan, under which various articles were distributed to members of the public wholly by lot or chance and amount that each member of public was required to pay for chance to participate in lottery was also thus determined, and involving game of chance or sale of a chance to procure articles of merchandise for sums much below the prices for which they sell in usual course of trade, contrary to an established public policy of the United States Government and in violation of the laws of several of the States, and in competition with many engaged in sale of articles of like or similar grade and quality and who are not willing to sell such articles by any sales plan involving game of chance, gift enterprise, or lottery scheme, and refrain from use thereof;

With result that many persons were attracted by said sales plan and element of chance involved therein and were thereby induced to purchase articles from him and resell same to consuming public by use of such plan in preference to buying and reselling like or similar articles of merchandise offered by competitors who do not make use of such or equivalent sales plan, and he was thus able to sell substantial quantities of some of the articles dealt in by him and trade was diverted unfairly to him from competitors;

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

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

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, 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 Martin M. Slaton, individually and trading as Allied Gift Shop, 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 Allied Gift Shop, with his principal office and place of business located at 710 Michigan Theatre Building, Detroit, Mich. 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, rotary clocks, electric clocks, electric roasters, washing machines, electric mixers, electric toasters, vacuum cleaners, electric razors, fountain pen and pencil sets, radios, and raincoat combinations, 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 Michigan to purchasers thereof in Michigan 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 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 mer-

chandise 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 cents 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.

The various push cards furnished and distributed by respondent involve the same principle but vary in detail. Such variations cover the merchandise to be distributed, the quantity thereof, the number of pushes on said push cards, and the price or cost of the individual pushes.

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, 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 methods and by the element of chance involved in the sale or distribution thereof 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. 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 an equivalent method.

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 the Federal Trade Commission Act, the Federal Trade Commission, on October 25, 1937, issued and thereafter served its complaint in this proceeding upon the respondent, Martin M. Slaton, individually, and trading as Allied Gift Shop, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the complaint (no answer having been filed by respondent), testimony, and other evidence in support of the allegations of said com-

plaint were introduced by Henry C. Lank and D. C. Daniel, attorneys for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it (no testimony or evidence was tendered by respondent in opposition to the allegations of the complaint). Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, brief in support of the complaint (respondent not having filed brief, and oral argument not having been requested); 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 Martin M. Slaton, for a number of years has carried on business under the name and style of Allied Gift Shop, with his principal place of business in 710 Michigan Theater Building, in Detroit, Mich. He has been engaged in the business of selling and distributing various novelties, and articles of merchandise, including rotary clocks, electric razors, electric roasters, electric toasters, washing machines, rainette combinations, and pen and pencil sets. Respondent has caused said novelties and articles of merchandise when sold to be transported from his place of business in the State of Michigan to the respective purchasers thereof in the State of Michigan and various other States of the United States. In the course and conduct of his said business respondent has been and is now in active competition with various partnerships and corporations and other persons engaged in the sale and distribution of like and similar novelties and articles of merchandise between and among various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent, in soliciting the sale of articles of merchandise, and in the sale and distribution of same, has furnished with such articles of merchandise various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes by means of which the distribution of such merchandise to the ultimate consumer has been accomplished wholly by lot or chance. Said devices and plans of merchandising include a number of different types of push cards, similar in principle but varying in detail, which devices have been operated in the sale and distribution of articles of merchandise sold by respondent substantially as follows:

Each of the cards had printed thereon a number of girls' names, and beneath each name was concealed a number. In the use of the cards members of the public were solicited to select one or more of these names and to pay the number of cents indicated by the number concealed beneath each of the names selected, except that in the operation of one type of card selectors of numbers higher than 29 paid only 29 cents, and with another type of the cards selectors of numbers higher than 35 paid only 35 cents, and with still another type of the cards certain of the numbers were designated as "Free," and selectors of those numbers paid nothing. On each of the cards was a disk in the form of a seal which concealed a name which was the same as one of the names printed on the card. When all of the names on one of the cards had been selected the seal was then removed, and the name concealed thereby was disclosed, and the article of merchandise involved in the operation of the card was then given to the person who had selected the name on the card which was the same as the name concealed by the seal, without further charge, and selectors of names other than the name concealed by the seal received nothing. The cards of the various types furnished by the respondent differed as to the number of names printed thereon, and the articles of merchandise distributed by the use of the several types of cards were of different values, and the cards of some of the types provided for one or more secondary prizes to be given to selectors of certain of the numbers, and in the operation of certain types of cards so furnished by respondent the agent or salesman handling the cards also received for his services one of the articles of merchandise without additional charge. The amount of the value of each article of merchandise so distributed by the use of one of the cards was, in each instance, greater than the amount paid by a member of the public for any one of the names selected. By the use of these cards the various articles of merchandise were distributed to the members of the public wholly by lot or chance, and the amount that each member of the public was required to pay for a chance to participate in the lottery also was determined wholly by lot or chance.

PAR. 3. The persons to whom respondent has furnished the push cards described in paragraph 2 hereof, used same in purchasing merchandise from respondent, and reselling and distributing such merchandise in accordance with the sales plan described in said paragraph 2. Respondent, in this manner has supplied to others, and placed in their hands the means by which lotteries have been conducted in the resale of such merchandise in accordance with such sales plan. The use by respondent of said sales plan in the sale of such merchandise, and the resale of such merchandise by the use of such push

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cards and sales plans, is a practice of a sort which is contrary to an established policy of the Government of the United States, and is in violation of the laws of several of the States of the United States. Many competitors of respondent sell and have sold articles of merchandise of like or similar grade and quality to the articles of merchandise sold by respondent, and in competition with respondent, which competitors are unwilling to sell such articles of merchandise by any sales plan which involves a game of chance, gift enterprise, or lottery scheme, and refrain from the use of such plan, and as a result are placed at a disadvantage in competition. Respondent by means of such push cards and sales plan has sold approximately 3,000 rotary clocks; approximately 400 electric razors; approximately 400 rainette combinations, and smaller numbers of other articles of merchandise offered for sale by him.

PAR. 4. The sale of merchandise to the purchasing public by the sales plan and in the manner herein found, involves a game of chance or the sale of a chance to procure articles of merchandise for sums of money much below the prices at which such articles of merchandise sell in the usual course of retail trade. Many persons are attracted by said sales plan and the element of chance involved therein, and are thereby induced to purchase articles of merchandise from respondent and resell same to the consuming public by the use of such sales plan in preference to buying and reselling like or similar articles of merchandise offered for sale by competitors of respondent who do not make use of the same or an equivalent sales plan, and as a result the respondent has been able to sell substantial quantities of some of the articles of merchandise dealt in by him, which has caused trade to be diverted unfairly to respondent from his competitors.

CONCLUSION

The aforesaid acts and practices of respondent as hereinbefore found, 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (respondent having filed no answer), 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 the complaint (respondent having offered no proof in opposition thereto), brief filed by

the attorney for the Commission (respondent not having filed brief or 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 the Federal Trade Commission Act.

It is ordered, That the respondent Martin M. Slaton, individually and trading as Allied Gift Shop, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of clocks, electric razors, electric roasters, electric toasters, washing machines, Rainette combinations, pen and pencil sets, or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of, others push or pull cards, punchboards, or other lottery devices, for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to agents, or to distributors, or members of the public, push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling, or otherwise disposing of, any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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

VOSS CO., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3490. Complaint, July 13, 1938—Decision, Mar. 16, 1939*

Where a corporation engaged in sale and distribution of pharmaceutical tablets, composed of acetyl salicylic acid or aspirin, and magnesium oxide, to purchasers including, principally, wholesale druggists, in the various States and in District of Columbia, in substantial competition with others engaged in sale and distribution of similar pharmaceutical products or other products designed and intended for similar usage, and including those who do not misrepresent the therapeutic qualities of their products or otherwise misrepresent the same; in advertising its said product in various newspapers and magazines of interstate circulation, and in various other ways—

(a) Represented that said preparation was a new product or new discovery, which was superior to and would give more effective and quicker relief than ordinary aspirin, and counteracted toxic effects and would stop all pain, and that it was unqualifiedly safe for use;

Facts being it had been on the market since 1929, was not superior to and more effective than ordinary aspirin and would not give quicker relief, though it would perform substantially the same analgesic functions as said substance, would not counteract toxic effects or stop all pain, and was not one which could be indiscriminately used with safety by reason of aspirin ingredient of product, and fact that there are many people who are allergic to such substance and for whom said preparation would not be safe, and others cannot safely take such product into their systems beyond prescribed or usual dosage; and

(b) Represented, as aforesaid, that said product was a remedy, cure, or effective treatment for acid condition of the stomach, which would have beneficial alkalizing effect, and that it was also such a cure or remedy for headaches, neuralgia, neuritis, muscular and rheumatic pains, sleeplessness, period pains, nervousness and colds, and possessed therapeutic properties in excess of or different from ordinary aspirin;

Facts being it was not an effective cure or remedy for headaches and various other ailments and conditions above set forth, many of which are caused by systemic or organic disturbances in which its said product would not be a proper or effective treatment, and some of which are, in many cases, symptoms of organic disturbance, in treatment of which its said product would not be indicated or effective, and it would not be a cure or remedy for colds;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that said preparation possessed the properties claimed and represented, and would accomplish results indicated, and of causing substantial portion of such public, because of such erroneous and mistaken belief, to purchase substantial quantities

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of said product, and of thereby diverting unfairly trade to it from competitors who truthfully advertise the effectiveness of their respective preparations:

Held, That such acts and practices were all to the prejudice and injury 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.

Jonas & Neuberger, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Voss Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Voss Co., Inc., is a corporation doing business under the laws of the State of New Jersey. Its principal office and place of business are at 505 Court Street, Brooklyn, N. Y. It is engaged in the sale and distribution of a pharmaceutical product, in tablet form, marketed under the name "Magnespirin." Each $6\frac{2}{3}$ -grain tablet consists of $3\frac{1}{3}$ grains of aspirin and $3\frac{1}{3}$ grains of magnesium oxide.

Respondent now causes, and for approximately 1 year last past has caused, its said product, when sold by it, to be shipped from its said place of business in Brooklyn, N. Y., to the purchasers thereof, principally wholesale druggists, located in the various States of the United States, other than the State of New York, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said pharmaceutical product so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is, and for approximately 1 year last past has been, in substantial competition with other corporations, and with individuals and partnerships, engaged in the sale and distribution of similar pharmaceutical products, or other products designed and intended for similar usage, 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 advertised and now advertises its said product in various newspapers and magazines having an interstate circulation, and in

various other ways. Representative of the respondent's advertising claims with respect to its said product are the following:

Magnespirin is a new, different kind of aspirin.

Aspirin improved 100%.

Acts twice as fast as ordinary aspirin.

It is more effective than ordinary aspirin.

It is safe.

In fact it actually tones * * * the stomach.

Sweetens the breath.

Stops all pains.

Doctors advise it.

Millions praise it.

Counteracts toxic effects.

Magnespirin is aspirin plus magnesium which alkalizes like milk of magnesia—neutralizes the acid.

Fastest relief ever known for headaches, neuralgia, neuritis, muscular and rheumatic pains, colds, sleeplessness, period pains, nervousness.

The aforesaid advertising claims for magnespirin serve as representations on the part of respondent that said product is a new discovery and is an adequate remedy or cure for the various ailments, disorders, and diseases mentioned in said advertising matter; that said product is superior to ordinary aspirin in that it is safer, more effective, gives quicker relief, and that it will stop all pains; that its use is advised by doctors, and that millions use it; that it counteracts toxic effects, and that its alkalizing qualities neutralize acidic conditions of the stomach.

PAR. 3. In truth and in fact, magnespirin is not a new discovery, but has been on the market for several years. It is not superior to ordinary aspirin. It is no more effective and does not relieve pain any quicker than ordinary aspirin. It will not stop all pains. Its use is not advised by doctors, nor is it praised by millions of users. It will not counteract toxic effects and has no appreciable systemic alkalizing effect. Its unsupervised use by persons generally is not safe. There are persons who are allergic to aspirin, consequently, it is not safe for such persons to take said tablets at all. There is also another class of persons who may not safely take into the system amounts of aspirin in excess of the prescribed or usual dose. There are many persons to whom the use of such tablets in excessive amounts is highly dangerous and may prove fatal.

Respondent's said product is not an adequate remedy or cure for the various ailments and disorders mentioned in respondent's said advertising matter. Some of the disorders and ailments listed in said advertising matter arise from many causes, and there is no specific remedy or treatment that is effective in all cases and under all conditions. Such ailments and disorders are, in many instances, caused

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by or associated with a systemic or organic derangement and, in order to treat such cases effectively, it is necessary to ascertain the cause or causes thereof. Nervousness and sleeplessness are, in many instances, merely symptoms or an organic disturbance which may necessitate expert medical treatment. Likewise, there is a wide variety of causes of menstrual pains, some of which may be serious and may require a surgical operation. The common cold and so-called rheumatic aches and pains are conditions for which respondent's product is in no sense adequate. In all disorders and ailments of the human body arising from or associated with systemic or organic disturbance or derangement a thorough diagnosis by an expert is necessary in order to ascertain the cause or causes of the disorder and the proper treatment therefor.

PAR. 4. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, individuals, partnerships, and corporations, engaged in the sale and distribution of pharmaceutical products advertised and sold as remedies for various ailments and disorders of the human body, that do not misrepresent the therapeutic qualities or otherwise misrepresent their products which they offer for sale and sell.

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 respondent's Magnespirin tablets as a result of such erroneous belief. By the representations aforesaid trade is diverted unfairly to respondent from its aforesaid competitors and as a result thereof 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.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 13, 1938, issued and served its complaint in this proceeding upon the respondent, Voss Co., Inc., a corporation, charging it with the use of unfair methods of com-

petition in commerce in violation of the provisions of said act. On August 23, 1938, the respondent filed its answer in this proceeding. Thereafter, at a regularly scheduled hearing the facts were stipulated on the record and it was agreed that said stipulation of facts may be taken as the facts in this proceeding. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, stipulation as to the facts, and brief in support of the allegations of the complaint (respondent not having filed brief and oral argument not having been requested); 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, Voss Co., Inc., is a corporation doing business under the laws of the State of Delaware. Its principal office and place of business are at 505 Court Street, Brooklyn, N. Y. It is engaged in the sale and distribution of a pharmaceutical product, in tablet form, marketed under the name "Magnespirin." Each $6\frac{2}{3}$ -grain tablet consists of $3\frac{1}{3}$ grains of aspirin and $3\frac{1}{3}$ grains of magnesium oxide.

Respondent now causes, and for approximately 1 year last past has caused, its said product, when sold by it, to be shipped from its said place of business in Brooklyn, N. Y., to the purchasers thereof, principally wholesale druggists, located in the various States of the United States, other than the State of New York, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said pharmaceutical product so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is, and for approximately 1 year last past has been, in substantial competition with other corporations, and with individuals and partnerships, engaged in the sale and distribution of similar pharmaceutical products, or other products designed and intended for similar usage, 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 advertised and now advertises its said product in various newspapers and magazines having an interstate circulation, and in various other ways. Representative of the respondent's advertising claims with respect to its said product are the following:

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Magnespirin is a new, different kind of aspirin.

Aspirin improved 100%.

Acts twice as fast as ordinary aspirin.

It is more effective than ordinary aspirin.

It is safe.

In fact it actually tones * * * the stomach.

Sweetens the breath.

Stops all pains.

Doctors advise it.

Millions praise it.

Counteracts Toxic effects.

Magnespirin is aspirin plus magnesium which alkalizes like milk of magnesia—neutralizes the acid.

Fastest relief ever known for headaches, neuralgia, neuritis, muscular and rheumatic pains, colds, sleeplessness, period pains, nervousness.

Through the use of the statements hereinabove set forth, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's product, respondent has represented, and does now represent, that its preparation "Magnespirin" is a new discovery, the use of which is advised and prescribed by doctors, and which is superior to, and will give more effective and quicker relief than, ordinary aspirin; that it is a safe remedy which will stop all pain and counteract toxic effects. Respondent by this means further represents that said preparation is an adequate or effective cure or remedy for headaches, neuralgia, neuritis, muscular and rheumatic pains, colds, sleeplessness, period pains, and nervousness; that it neutralizes acidic conditions of the stomach by reason of its alkalizing qualities.

PAR. 3. In fact magnespirin is a product which consists of the combination of acetyl salicylic acid or aspirin and magnesium oxide. It is not a new discovery as it has been on the market since 1929. This preparation is not superior to ordinary aspirin and is not more effective, and will not give quicker relief than aspirin, though it will perform substantially the same analgesic functions as aspirin. It will not stop all pain, and its use is not generally advised or prescribed by doctors. This preparation will not counteract toxic effects and has no appreciable effect in neutralizing acid conditions of the stomach. This preparation is not one which can be indiscriminately used with safety by reason of the existence of aspirin as an ingredient of this product. There are many persons who are allergic to aspirin and it would not be safe for such persons to take respondent's preparation. There are other persons who cannot safely take aspirin into their systems beyond the prescribed or usual dosage with safety.

Conclusion

Respondent's preparation, magnespirin, is not an adequate or effective cure or remedy for headaches, sleeplessness, period pains, and nervousness. Many of these disorders or ailments are caused by systemic or organic disturbances in which respondent's preparation would not be a proper or effective treatment. Furthermore, nervousness and sleeplessness are in many cases symptoms of an organic disturbance, in the treatment of which respondent's product would not be indicated or effective. Menstrual pains, likewise, have a variety of causes, some of which might be serious and require surgical operation. Respondent's preparation would not be a cure or remedy for any diseases of which the above-mentioned conditions or ailments might be symptomatic. This preparation would not be a cure or remedy for colds.

PAR. 4. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, individuals, partnerships, and corporations, engaged in the sale and distribution in commerce among and between the various States of the United States of pharmaceutical products advertised and sold as remedies for various ailments and disorders of the human body, who do not misrepresent the therapeutic qualities or otherwise misrepresent their products which they offer for sale and sell.

PAR. 5. The use by the respondent of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said preparation, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparation. As a result trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective preparations.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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 the Federal Trade Commission Act.

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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, a stipulation as to the facts entered upon the record, and a brief in support of the allegations of the complaint (no brief having been filed by respondent 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Voss Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a medicinal preparation now designated "Magnespirin," or of any other medicinal preparation containing substantially the same ingredients or possessing the same properties whether sold under that name or any other name, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That said preparation is a new product or a new discovery.
2. That said preparation is superior to or will give more effective or quicker relief than ordinary aspirin.
3. That said preparation is unqualifiedly safe for use.
4. That said preparation counteracts toxic effects or that it will stop all pain.
5. That said preparation is a remedy, cure, or effective treatment for acid conditions of the stomach, or that it will have any beneficial alkalizing effect.
6. That said preparation is a cure or remedy for headaches, neuralgia, neuritis, muscular and rheumatic pains, sleeplessness, period pains, nervousness, or colds, or that it possess therapeutic properties in excess of, or different from, ordinary aspirin.

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

Syllabus

IN THE MATTER OF

SEYMOUR BURN, ARTHUR POLLAK AND FRANZ BEER,
TRADING AS BURN, POLLAK & BEER

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

Docket 3696. Complaint, Jan. 26, 1939—Decision, Mar. 18, 1939

Where partners engaged in soliciting orders for line of fabrics known as "Loden Cloth," for principals without United States, and in importing said cloth into United States and transporting same from warehouses to purchasers in various States and in the District of Columbia, in active and substantial competition with others engaged in sale and distribution of such cloth in commerce and in said District, and including some who sell and distribute such cloth loomed in the Tyrol in that territory formerly part of Austria, and others who sell and distribute such cloth loomed in other Central European localities and countries; with intent that tailoring concerns would use and disseminate such statements and representations in connection with sale and distribution of commodities made by said concerns from such loden cloth—

- (a) Represented, through statements which they disseminated or caused to be disseminated throughout the United States to such concerns purchasing such cloth, that term Tyrolean woven loden cloth can be truthfully applied only to product of one famous Austrian mill, and that genuine Tyrolean loden cloth can be procured in United States only through themselves; and
- (b) Represented, as aforesaid, that the water of the mountain streams of the Tyrol, with its peculiar chemical content, used in finishing Tyrolean loden cloth, gives it magnificent finish and stamp of authenticity which defies imitation elsewhere, and that such cloth is loomed only from the wool of sheep grown in the Tyrol;

Facts being such cloth is made in many countries other than in the Alps in Tyrol in that territory formerly part of Austria, genuine Tyrolean loden cloth is produced by many mills in the Tyrol, and, during times involved, was not offered in the United States exclusively by or through them, waters in Tyrol do not give to such cloth any peculiar or distinctive qualities which cannot be obtained in such cloth produced elsewhere, and loden cloth fabric sold and distributed by them in the United States contained some wool from sheep grown in localities other than in Tyrol;

With effect of causing members of purchasing public situated in the various States and in said District to have an erroneous and mistaken belief that such false and misleading statements and representations were true, and to purchase substantial quantities of such cloth because of such erroneous and mistaken belief, and of thereby unfairly diverting trade to themselves from their said competitors:

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

Mr. Charles S. Cow for the Commission.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Seymour Burn, Arthur Pollak, and Franz Beer, hereinafter referred to as respondents, have violated the provisions of the 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, Seymour Burn, Arthur Pollak, and Franz Beer, are copartners trading as Burn, Pollak & Beer, with their office and principal place of business at 381 Fourth Avenue, New York, N. Y.

PAR. 2. The respondents are now, and for more than 18 months last past have been engaged in the business of soliciting orders for a line of fabrics known as loden cloth for principals located outside the United States. Respondents cause said cloth, when ordered, to be shipped by the foreign principals into the United States from foreign countries and cause said cloth to be transported from warehouses in the State of New York to customers located in other States of the United States and in the District of Columbia.

Respondents sell and have sold said cloth to tailoring concerns and at all times mentioned herein have caused said tailoring concerns to maintain a course of trade in said cloth in commerce between and among the various States of the United States and in the District of Columbia, some of which handle loden cloth loomed in the Province of Tyrol and others of which handle loden cloth loomed in other Central European localities and countries.

PAR. 3. In the course and conduct of their business, respondents are in active and substantial competition with other individuals and with corporations, firms, and other partnerships engaged in the sale and distribution of loden cloth 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 their said business and for the purpose of inducing the purchase of said loden cloth the respondents have made many representations concerning the character and nature of said loden cloth. Respondents, aforesaid, have made representations to tailoring concerns to induce tailoring concerns to purchase said loden cloth and were calculated and intended to induce tailoring concerns to act thereon and that tailoring concerns would republish and use the same representations in advertising and selling commodities made by said tailoring concerns from said loden cloth

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

Among said representations made by the respondents are those of the following import and effect:

(a) Tyrolean woven loden cloth can only be applied to genuine fabric which is only the product of one famous Austrian mill.

(b) Genuine Tyrolean loden cloth can only be procured in the United States through respondents.

(c) That the water of the mountain streams of the Tyrol, with its peculiar chemical content, used in finishing Tyrolean loden cloth, gives it a magnificent finish and a stamp of authenticity that defies imitation by man elsewhere.

(d) Tyrolean loden cloth is loomed only from wool of sheep grown in the Tyrol.

All said statements, together with similar statements, purport to be descriptive of respondents' product.

PAR. 5. The representations made, or caused to be made, by respondents with respect to the nature of its product are grossly exaggerated and untrue. In truth and in fact, loden cloth is made in many countries and is not confined to the Alps in the Tyrol in that territory which was formerly Austria. Genuine Tyrolean loden cloth is produced by many mills in the Tyrol in the territory which was formerly Austria. At the time of the making of said representations by respondents, genuine Tyrolean loden cloth was not offered exclusively in the United States by or through respondents. The waters in the Tyrol do not give to the Tyrolean loden cloth any peculiar or distinctive qualities that defy imitation by man or otherwise. The loden fabrics used and sold by respondents in the United States of America are not woven of fine Tyrolese wool, and in truth and in fact, contain the wool from sheep grown in and from other regions.

PAR. 6. The false and misleading statements and misrepresentations made as alleged in paragraph 4 hereof are calculated to, and have had, and now have, a tendency and capacity to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs that only respondents and those to whom they sell have genuine Tyrolean loden cloth in the United States; that only one mill in the Province of Tyrol produces genuine loden cloth; that only that loden cloth, the fiber of which has been washed in the waters of the Tyrolean streams, has the appearance and finish of genuine loden cloth; and that genuine Tyrolean loden cloth is made only from the wool of sheep grown in the Tyrol; and were, and are, calculated to, and have had, and now have, the tendency and capacity to, cause,

and have caused, business to be unfairly diverted to respondents from their said competitors. As a consequence thereof, injury has been done, and is now being done, by respondents to competition in commerce among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 26, 1939, issued and thereafter served its complaint upon the respondents Seymour Burn, Arthur Pollak, and Franz Beer, copartners, trading as Burn, Pollak & Beer, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On February 23, 1939, respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 matter, 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. Respondents, Seymour Burn, Arthur Pollak, and Franz Beer, are copartners, trading as Burn, Pollak & Beer, and having their office and principal place of business at 381 Fourth Avenue, New York City, N. Y.

PAR. 2. Respondents are now and have been for more than 18 months last past engaged in the business of soliciting orders for a line of fabrics known as "Loden Cloth" for principals located outside the United States. Respondents cause said cloth when ordered to be imported into the United States and to be transported from warehouses in the State of New York to purchasers thereof, in their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have main-

tained, a course of trade in commerce in said loden cloth 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 business, as aforesaid, respondents are in active and substantial competition with other individuals and partnerships and with corporations and firms engaged in the sale and distribution of loden cloth in commerce between and among the various States of the United States and in the District of Columbia. Some of said competitors of the respondents sell and distribute loden cloth loomed in the Tyrol in that territory which was formerly a part of Austria, and others of said competitors sell and distribute loden cloth loomed in other Central European localities and countries.

PAR. 4. In the course and conduct of their said business, and to induce the purchase of said loden cloth, respondents have disseminated, or caused to be disseminated, throughout the United States various statements and representations relative to the quality and nature of said loden cloth. Respondents have made such statements and representations to tailoring concerns, purchasers of said loden cloth, with the intention that said concerns would use and disseminate such statements and representations in connection with the sale and distribution of commodities, made by said concerns from said loden cloth, in commerce between and among the various States of the United States and in the District of Columbia.

The statements and representations by the respondents, used and disseminated in the manner aforesaid, are as follows:

(a) That the term Tyrolean woven loden cloth can be truthfully applied only to the product of one famous Austrian mill.

(b) That genuine Tyrolean loden cloth can be procured in the United States only through respondents.

(c) That the water of the mountain streams of the Tyrol, with its peculiar chemical content, used in finishing Tyrolean loden cloth, gives it a magnificent finish and a stamp of authenticity that defies imitation by man elsewhere.

(d) That Tyrolean loden cloth is loomed only from the wool of sheep grown in the Tyrol.

The aforesaid statements and representations, together with others similar thereto not herein set out, purport to be descriptive of the quality and nature of respondents' products.

PAR. 5. The aforesaid statements and representations by the respondents, used and disseminated as aforesaid, are grossly exaggerated and untrue. In truth and in fact, loden cloth is made in many countries other than in the Alps and Tyrol in that territory which was for-

merly a part of Austria. Genuine Tyrolean woven loden cloth is produced by many mills in that territory known as the Tyrol. During the times mentioned herein genuine Tyrolean loden cloth was not offered in the United States exclusively by or through the respondents. The waters in the Tyrol do not give to the Tyrolean loden cloth any peculiar or distinctive qualities which cannot be obtained in loden cloth produced elsewhere. The loden cloth fabrics sold and distributed by the respondents in the United States contain some wool from sheep grown in localities other than in the Tyrol.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations have the tendency and capacity to, and do, cause members of the purchasing public situated in various States of the United States and in the District of Columbia to have the erroneous and mistaken belief that said false and misleading statements and representations are true and into purchasing substantial quantities of said loden cloth because of said erroneous and mistaken belief. As a result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been, and is now, unfairly diverted to the respondents from their said competitors.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Seymour Burn, Arthur Pollak, and Franz Beer, individually and as copartners, trading as Burn, Pollak & Beer, or under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of loden cloth, or any cloth or fabric of similar weave or

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content, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly:

(a) That any mill or plant located in that European territory known as the Tyrol is the sole producer of Tyrolean woven loden cloth.

(b) That Tyrolean woven loden cloth can be procured in the United States only through or from the respondents.

(c) That the water in the Tyrol gives Tyrolean woven loden cloth distinctive qualities which can not be obtained in loden cloth produced elsewhere.

(d) That said loden cloth is made wholly of Tyrolese wool unless and until said cloth is made wholly and exclusively from the wool of sheep grown in the Tyrol.

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
GRAND GASLIGHT, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2596. Complaint, Oct. 23, 1935—Decision, Mar. 21, 1939

Where a corporation engaged in sale of incandescent lamps for general lighting service and operation in connection with electric current supplied by public service corporations, and in selling its said products through salesmen and the mails to purchasers in other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of such products in commerce and in said District, and including many who correctly brand their said products as to wattage and voltage—

- (a) Represented and implied to purchasers of its said bulbs that it was the manufacturer thereof and owned and operated, or directly and absolutely controlled manufacturing plant in which such products were made, through statement "Manufacturers and importers of electric light bulbs" on folders, statements, and letterheads sent to prospective purchasers and to purchasers, facts being it did not make any such bulbs during period in question, but purchased same from domestic corporation and from foreign sources, and did not own, operate, nor control plant in which such bulbs were manufactured; and
- (b) Caused bulbs offered and sold by it to be marked with figures and letters misleadingly and prejudicially indicative of wattage and voltage of particular product, facts being its said bulbs, marked in accordance with custom and practice in industry, did not, due allowance made for recognized and established tolerances, produce light and consume current as thus indicated, but, excepting those marked "25-W, 120-V," produced less light and consumed more current than indicated, purchasers of such bulbs would, with exception aforesaid, use substantially more electricity and secure substantially less light from bulbs than indicated by markings thereon, bulbs excepted as aforesaid produced less light and consumed less current, and all bulbs tested were, as compared with recognized standards, of inferior quality as producers of light;

With tendency and capacity to mislead and deceive many members of purchasing public and cause them erroneously and mistakenly to believe that it was the manufacturer of the bulbs offered and sold by it, and that said bulbs were of wattage and voltage indicated by letters and figures thereon, on which ordinary purchaser must rely in determining value or efficiency of such products, and to cause such members, because of said erroneous and mistaken belief, to purchase substantial quantities of its said products and thus unfairly divert trade in commerce to it from its competitors who do not misrepresent their business status, and who truthfully brand and mark their products:

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

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

Mr. Clark Nichols 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 Grand Gaslight, 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. Respondent, Grand Gaslight, Inc., is a corporation, incorporated on or about January 24, 1933, under the laws of the State of New York, having a place of business in the city of New York, and it is and has been since on or about the date of its incorporation engaged in the business of the sale of incandescent lamps.

PAR. 2. During all the times since its organization as a corporation the respondent has sold incandescent lamps, made for general lighting service for operation in connection with electric current supplied by public service corporations, including the lamps hereinafter mentioned and referred to, to purchasers, including wholesale dealers or jobbers and retail dealers therein, located in various States of the United States other than New York or the State of origin of the shipment, for resale by the dealers for use or consumption. The respondent has caused the lamps when so sold by it to be transported from New York, or from the State of origin of the shipment, to the purchasers located in other States.

PAR. 3. During all the times above mentioned and for many years prior thereto, other individuals, firms, and corporations, hereinafter referred to as sellers, have been engaged, some of them in the business of the manufacture and sale, and others in the business of the sale of incandescent lamps for operation with electric current supplied by public service corporations for general lighting service to purchasers, wholesale dealers or jobbers and retail dealers therein, located in various States of the United States other than the State of the seller or the State of origin of the shipment, for resale by the dealers for use or consumption. The sellers, respectively, have caused the lamps, 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 other States.

PAR. 4. The respondent, in the sale of incandescent lamps, is and has been in substantial competition in interstate commerce with the other individuals, firms, and corporations, referred to as sellers in

paragraph 3 hereof, during all the times referred to in paragraph 3 hereof.

PAR. 5. There is and has been, during all the times above mentioned and referred to and for many years prior thereto, an established and universal custom in the United States in connection with the manufacture and sale of incandescent lamps manufactured for general lighting service for operation in connection with electric current supplied by public service corporations, that, at the times the lamps are displayed or offered for sale or sold by manufacturers, dealer distributors, or others, to users or consumers, including the Federal and State Governments and their agencies, and municipal and other corporations, and members of the public, the lamps shall be legibly, durably marked or printed, among other things, with the words and figures indicating, respectively, the number of volts and watts that is the measure of their electromotive force and power, allowing for certain tolerances, more or less, in the statement of the number of watts with which they are marked or branded.

The tolerances in the watt measurement above referred to are and have been known to and have been recognized, substantially by all the members of the industries engaged in the manufacture and sale of incandescent lamps in the United States, during all the times above mentioned and referred to. And, the tolerances in the watt measurement of incandescent lamps, manufactured for general lighting service, above referred to, have during said times coincided with the tolerances as set forth in the Federal specifications for the purchase of incandescent lamps by the United States.

PAR. 6. The tolerances in the statement of the number of watts with which incandescent lamps are and have been marked or branded, mentioned and referred to in paragraph 5 hereof, for example, for the years beginning July 1, 1932, and ending June 30, 1933; beginning July 1, 1933, and ending June 30, 1934; and beginning July 1, 1934, and ending June 30, 1935, for large tungsten filament lamps for general lighting service, for standard bulbs marked 25, 40, 60, 75, and 100 watts, were as follows:

For the year beginning July 1, 1932, and ending June 30, 1933

| Watts | Bulb | Total watts above or below standard |
|-------|------|-------------------------------------|
| | | <i>Percent</i> |
| 25 | A-19 | 4 |
| 40 | A-19 | 4 |
| 60 | A-21 | 4 |
| 75 | A-23 | 4 |
| 100 | A-23 | 4 |

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*For the years July 1, 1933 to June 30, 1934,
and July 1, 1934 to June 30, 1935*

| Watts | Bulb | Total watts above or below rating |
|-------|------|-----------------------------------------|
| | | <i>Percent</i> |
| 25 | A-19 | 4 |
| 40 | A-19 | 4 |
| 60 | A-21 | 4 |
| 75 | A-21 | 4 |
| 100 | A-23 | 4 |

PAR. 7. During all the times above mentioned and referred to in paragraphs 2 and 4 hereof, the respondent in offering for sale and in the sale of incandescent lamps, sold by it as set forth in paragraphs 2 and 4 hereof, has represented on its letterheads and invoices and verbally by statements of its agents to dealers, who purchase such lamps for resale to the public for use or consumption, that respondent was a manufacturer of incandescent lamps and the manufacturer of the lamps sold by it; and it has caused such representation to be made by dealers, who purchased its lamps for resale, to the public to whom the lamps were resold for use or consumption by the dealers.

The respondent also caused its incandescent lamps mentioned and referred to above to be offered for sale and sold during all the times above-mentioned and referred to with the number of watts of their electromotive power marked or branded thereon by such method and in such manner that the marking or branding thereof was easily erased in handling the lamps, contrary to the customary method and manner recognized and used by the industries engaged in the manufacture and sale of such lamps, and with the watt measurement that was in some instances in excess of and in other instances less than their actual watt measurement, after allowing for the tolerances above-mentioned.

PAR. 8. The respondent during all the times above-mentioned and referred to was not a manufacturer of incandescent lamps, and was not the manufacturer of the lamps sold by it as above set forth, and the statements and representations above-mentioned that it was a manufacturer of incandescent lamps and the manufacturer of the incandescent lamps sold by it, and the marking or branding of the lamps sold by it as above set forth with the watt measurement that was in excess of or less than the actual watt measurement of the lamps, had the capacity and tendency to deceive and mislead dealers and the members of the public who purchase incandescent lamps for use or consumption into the belief that the respondent was the manufacturer of the lamps offered for sale and sold by it, and, that when

purchasing respondent's lamps from respondent they obtain a direct from factory price and save a middleman's profit; and, that the lamps were of the watt measurement with which they were marked or branded, and in reliance upon such belief, into purchasing respondent's lamps in place of incandescent lamps sold by respondent's competitors, and the dealers and members of the public were deceived and misled thereby into purchasing respondent's lamps in preference to and in place of lamps sold by respondent's competitors and trade in incandescent lamps was thereby diverted from respondent's competitors to the respondent.

PAR. 9. The above acts and things done and caused to be done by the respondent were and are each and all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 23, 1935, issued, and subsequently served, its complaint upon respondent, Grand Gaslight, Inc., charging it with the use of unfair methods in commerce in violation of the provisions of said act. After the issuance of said complaint, no answer having been filed by the respondent, testimony, and other evidence in support of the allegations of the said complaint were introduced by Clark Nichols, attorney for the Commission, and in opposition to the allegations of the complaint by the respondent through its president, Samuel Rudefer, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, testimony, and other evidence, brief in support of the complaint, no brief having been filed by 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 its findings as to the facts and conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Grand Gaslight, Inc., is a corporation organized under and by virtue of the laws of the State of New York.

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Findings

It has its principal office and place of business in New York, N. Y. It is engaged in the sale of incandescent lamps made for general lighting service and for operation in connection with electric current supplied by public service corporations. When said products are sold, respondent causes the same to be transported from its said place of business in New York, N. Y., to the purchasers thereof located in various States of the United States other than New York and in the District of Columbia. In the course and conduct of its business respondent is in substantial competition with other corporations and with firms and individuals likewise engaged in the sale and distribution of electric light bulbs or incandescent lamps in commerce between and among the various States of the United States and the District of Columbia. Among said competitors are many who correctly brand their products as to wattage and voltage.

PAR. 2. Respondent makes use of salesmen and the United States mails in connection with the sale and distribution of its said products. It does no newspaper advertising. It mails to prospective purchasers, and purchasers, folders, statements, and letterheads which, for a considerable period of time prior to October 1935, contained the following statement:

Manufacturers and importers of electric light bulbs.

By this means the respondent represented and implied to purchasers of its said products that it was the manufacturer thereof and owned and operated, or directly and absolutely controlled, the manufacturing plant wherein such products were made and manufactured.

In truth and in fact the respondent did not manufacture any of the light bulbs offered for sale and sold by it during the period in which it made the representations aforesaid, but purchased said bulbs in part from the Lednew Corporation, a domestic corporation, and from foreign sources. Respondent did not own, operate, nor control the manufacturing plant wherein the bulbs were made or manufactured. The representation that respondent was a manufacturer of bulbs was false, misleading, and deceptive.

PAR. 3. Respondent, as is the custom and practice in the industry, caused the bulbs offered for sale and sold by it to be marked with figures and letters to indicate the wattage and voltage of the particular bulb on which the figures and letters were placed. Figures and letters, such as 25-W, 40-W, and 60-W, are used to indicate the number of watts of electricity consumed by the bulb when attached to a current of the voltage likewise indicated on the bulb by figures and letters, such as 110-V, 115-V, and 120-V, indicating the voltage of the electrical current on which the bulb should be used. The wattage

of a bulb indicates the amount of light which should be produced by such bulb when attached to a current of the voltage indicated on the bulb.

Recognized scientific tests by the National Bureau of Standards of the United States Department of Commerce, of a representative number of bulbs, marked, "25-W, 120-V," "40-W, 120-V," "60-W, 120-V," "75-W, 120-V," and "100-W, 120-V," respectively, sold by the respondent and delivered to a retailer in Chicago, Ill., disclosed that a great majority of the bulbs consume, after making due allowance for the generally recognized tolerances permitted in the marking of such bulbs, a substantially greater wattage of electricity and produced substantially less light than indicated and represented by the markings on the bulbs. Some of the bulbs consumed less electricity but gave less light than indicated by the markings thereon. The results of this test show, and the Commission finds, that the bulbs marked, "25-W, 120-V" used less electricity but gave approximately 20 percent less light than indicated by the markings thereon; that the bulbs marked, "40-W, 120-V" and "60-W, 120-V" used substantially more watts of electricity and produced approximately 20 percent less light than indicated by the markings thereon; and that bulbs marked "75-W, 120-V" and "100-W, and 120-V" used substantially more watts of electricity and gave approximately 25 percent less light than indicated by the markings thereon.

Purchasers of these bulbs would, in all instances, except as to the 25-W bulbs, be using substantially more electricity and securing substantially less light than indicated by the markings thereon or which should be secured by the amount of electricity used. All of the bulbs tested are of inferior quality, insofar as producing light is concerned, when compared to recognized standards.

The acts and practices of the respondent in misbranding its said bulbs as to the wattage are misleading and deceptive as the ordinary purchaser must rely on the markings found on a bulb in determining the value or efficiency thereof.

PAR. 4. The acts and practices of the respondent, as aforesaid, in connection with the sale and distribution of its products in commerce between and among the various States of the United States and in the District of Columbia are false, misleading, and deceptive and had, and now have, a tendency and capacity to mislead and deceive many members of the purchasing public and cause them erroneously and mistakenly to believe that the respondent is the manufacturer of bulbs offered for sale and sold by it, and that the bulbs are of the wattage and voltage indicated by the letters and figures placed thereon, and to cause them, because of said erroneous and mistaken

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belief, to purchase substantial quantities of respondent's said products, and, as a result, to unfairly divert trade in said commerce to the respondent from its competitors who do not misrepresent their business status and who truthfully brand and mark their products.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 William W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Grand Gaslight, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of incandescent lamp bulbs in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

1. That it is a manufacturer of incandescent lamp bulbs, unless or until said respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are manufactured.

2. That incandescent lamp bulbs are of any designated number of watts or designed to operate on any designated voltage other than the actual wattage and voltage of such bulbs.

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
ROBERT C. TAYLOR TRADING AS MARVEL PRODUCTS
COMPANY

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

Docket 3316. Complaint, Jan. 27, 1938—Decision, Mar. 21, 1939

Where an individual engaged in manufacturing hair and scalp lotions including product designated as "Hair Marvel," and in selling same through wholesale barber supply houses, department stores, barber shops, beauty shops, drug stores, and by mail direct—

- (a) Represented, through statements circulated through newspapers, booklets, and labels, including therein purported testimonial quotations, directly and by implication, that said product was not a hair dye or was something other than a hair dye, and would restore the natural color of the hair, and that it did not have the detrimental qualities usually attributed to hair dyes and was unqualifiedly safe, and would stimulate the growth of the hair, and rejuvenate, invigorate, and nourish hair roots, and restore scalp to natural healthy condition; and
- (b) Represented, as aforesaid, that said preparation possessed germicidal antiseptic properties and would stop falling hair and eradicate dandruff, and constituted effective cure or remedy for alopecia, psoriasis, itch, eczema, and blotchy scalp;

Facts being said product was a dye and not harmless, by virtue of lead acetate ingredient therein, which might prove harmful under some conditions of use, or used by certain persons, either children or adults, and said preparation would not effectively restore natural color of hair, stimulate growth thereof, etc., and aforesaid representations were false; and

- (c) Represented that he owned or controlled laboratory used in connection with scientific experiment, analyses, or manufacture of said "Hair Marvel," through use on letterheads, stationery, and other printed matter of legend including word "Laboratory," together with trade name employed, and address, facts being he neither owned, operated, nor controlled any such laboratory used as aforesaid;

With result that members of consuming public believed true such representations and statements as to said product not being dye and bought and used same in such belief, and with effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and of inducing members of such public to buy and use said "Hair Marvel" because of such erroneous belief, and of diverting thereby trade to him from competitors engaged in sale in interstate commerce of hair color restorers and like and similar preparations and treatments for scalp and hair, and who, in sale of their said products, in no wise misrepresent their scientific or experimental equipment or efficiency or therapeutic value thereof; to the substantial injury and prejudice of competitors:

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

Before *Mr. Edward J. Hornabrook*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. Norval B. Fast, 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 Robert C. Taylor, an individual, trading as Marvel Products Co., hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Robert C. Taylor, is an individual doing business under the trade name of Marvel Products Co., with his principal office and place of business located at 1604 E. Jarvis Avenue, Hazel Park, Mich., a suburb of Detroit, Mich. Respondent is now, and has been for some years, engaged in the business of manufacturing, distributing, and selling in commerce, as herein set out, hair and scalp lotions, including a product designated "Hair Marvel."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said products, when sold, to be transported from his office and place of business in the State of Michigan to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been for several years, a course of trade and commerce in said products so manufactured, distributed, and sold by the respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent is now, and has been, in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the business of manufacturing, distributing, and selling hair and scalp lotions or similar products designed, intended, and sold for the purpose of treating various conditions of the hair or scalp, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business, and for the purpose of inducing the purchase of said product, designated as

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"Hair Marvel," respondent has caused his said product to be packed in bottles labeled in part as follows:

HAIR MARVEL
Promotes a Healthy Scalp
FREE FROM DANDRUFF
and Irritation
REVIVES LIFE—LUSTRE
and
NATURAL COLOR
to
GRAY HAIR
When used Consistently

PAR. 5. In the course of the operation of said business, respondent causes the interstate distribution of an advertising booklet, on the front page of which are set forth statements identical with those appearing on the label as hereinbefore set forth. Said booklet also contains many statements with respect to respondent's product, of which the following are typical:

Hair Marvel has proven very effective in stimulating the growth of new hair.

Hair Marvel contains several ingredients which are found in the human body, and it is our belief that the color cells which are nourished through the central shaft of hair are invigorated and nourished by Hair Marvel. Other Hair Marvel ingredients would break down the film or bubbles which surround the color pigment in the hair, thereby restoring natural color.

Many dyes, rinses, tints, etc. used in coloring the hair have proven detrimental in the giving of Permanent Waves. Where only Hair Marvel has been used Permanent Waves have been very successful.

For Restoration of Natural Color.

For Dandruff, Irritation and Falling Hair.

Hair Marvel is Very Effective in Eradicating Dandruff and Companionate Ailments, Restoring the Scalp to a Natural Healthy Condition.

Hair Marvel's germicidal effectiveness has been proven through its use in clearing up many apparently hopeless cases of Alopecia (Spotted baldness), Psoriasis (Itch), Eczema, Blotchy Scalps, etc. where hundreds of dollars had previously been spent without results.

A number of alleged testimonials are printed in the booklet. Certain of them represent:

Hair Marvel restored the natural color to my white hair. * * * removed the dandruff.

Now it has regained its natural dark brown color, bald spots are fast disappearing as new hair is starting to come in, and at the same time all of my hair is nearly back to its original color of black.

By the said means and in the manner aforesaid, the respondent makes and has made to the general public many false and misleading statements with reference to the alleged therapeutic value of said

product and its effect upon the users thereof, and through the statements herein set out, and others of similar import and effect, the respondent represents, either directly or through implication, that the use of said preparation—

1. Will effectively restore the natural color of the hair.
2. Stops falling hair and eradicates dandruff.
3. Acts on gray hair without the aid of harmful dyes that ruin the health and beauty of the hair and scalp.
4. Has a rejuvenating, invigorating, and nourishing effect upon the roots of the hair.
5. Stimulates the growth of new hair and restores the scalp to a natural healthy condition.
6. Is effective as a cure or remedy for alopecia, psoriasis, itch, eczema, and blotchy scalps, and possesses germicidal or antiseptic properties; and
7. Is not a dye and achieves the results claimed for it in restoring natural color because of its nourishing and invigorating effect on the color cells of the hair.

PAR. 6. The representations made by the respondent with respect to the nature and effect of his product are grossly exaggerated, false, misleading, and untrue. In truth and in fact, said product when applied to the hair, will not impart nourishment to such hair through the "central shaft" or the roots of the hair so as to revive or bring back to its original natural color the hair which has turned gray, white, or faded. To date medical science has not found a means of restoring natural color to hair. The only method of lending color to hair is by process of dyeing. There is no preparation known to medical science at the present time which can be truthfully claimed to restore the natural color to hair. In fact, "Hair Marvel" is a dye, and will not color or restore color to gray, white, or faded hair, except in the sense that it may dye the hair. It contains lead acetate, sulphur, and ammonia among its ingredients. Ammonia with sulphur forms ammonium sulphide, which reacts with lead acetate and results in the formation of lead sulphite, which is a black precipitate, and an application of this preparation will give or tend to give a black color to hair. Application of "Hair Marvel" to persons originally with blonde, red, brown, or black hair will in all cases tint the hair black, and does not restore the natural color to hair. "Hair Marvel" is therefore a dye, and the lead acetate contained therein is an accumulative poison which may prove harmful under some conditions of its use, or when used by certain persons, either children or adults. The consequences of lead poisoning may be rheumatic and arthritic pains, digestive disturbances, painter's colic, and other ailments.

Said preparation does not possess germicidal or antiseptic properties and its use will not promote a healthy scalp or restore the scalp

to a healthy condition. Said preparation will not stop falling hair or eradicate dandruff nor will it stimulate the growth of new hair or restore new life to hair. Said preparation does not contain "several ingredients that are found in the human body" and does not contain ingredients capable of replacing the natural oils of the hair and scalp, and will not prevent or stop falling hair or grow new hair. Said preparation is not a competent and effective cure or remedy for alopecia, psoriasis, eczema, or dandruff. Psoriasis is a chronic skin disease, the cause of which is unknown, but there is no specific cure or remedy for psoriasis. Eczema may be due to a number of causes such as digestive disturbances and cannot be remedied by respondent's preparation. There is no known preparation for external application that serves as a competent and effective cure or remedy for dandruff. Alopecia is in most cases due to some internal disorder or maladjustment of the nervous system and there is no preparation for external application to the scalp that will cure alopecia.

PAR. 7. Through statements such as—

MARVEL PRODUCTS CO.

Detroit, Michigan

Office and Laboratory

the respondent represents that he owns and operates or controls the laboratory used in connection with scientific experimentation and analysis.

In truth and in fact said respondent does not own and operate or directly and absolutely control any laboratory or place devoted to experimental study in any branch of science by the application of scientific principles in making tests and analyses of said preparation so as to warrant the representation that he owns and operates a laboratory.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondent in designating or describing his product and the effectiveness of said product for treating hair and scalp conditions, as hereinabove set out, in offering for sale and selling his product known as "Hair Marvel" was, and is, calculated to, and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of the said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs induced by the misrepresentations of respondent as hereinabove enumerated, a number of the consuming public purchases a substantial volume of respondent's preparation known as "Hair Marvel," with the result that trade has been unfairly diverted to the respondent from individuals, partnerships, firms, and corporations likewise engaged in the

business of manufacturing, distributing, and selling hair-color restorers and like and similar preparations and treatments for the scalp and hair, who truthfully advertise their respective products and the effectiveness thereof in use. As a result thereof, substantial injury has been, and is now being, done by 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 herein have been, and are, all to the prejudice and injury of the public and of respondent's competitors as aforesaid, and have been, and are, unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued and served its complaint upon respondent, Robert C. Taylor, an individual, trading as Marvel Products Co., charging respondent with the use of unfair methods of competition in interstate commerce in violation of section 5 of said act. After the issuance of said complaint respondent entered his appearance and filed his answer herein. Hearings were held and testimony was introduced by Merle P. Lyon, attorney for the Commission in support of the allegations of the complaint, and by Norval B. Fast, attorney for respondent in opposition to the allegations of the complaint, before Edward J. Hornibrook, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence 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 testimony and other evidence, the brief of counsel for the Commission in support of the complaint, and respondent's exceptions to the report of the trial examiner upon the evidence; and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Robert C. Taylor is an individual doing business under the trade name of Marvel Products Co. with his office

and principal place of business located at 1604 East Jarvis Avenue, Hazel Park, Mich., a suburb of Detroit, Mich., is now, and has been for more than 1 year last past, engaged in the business of manufacturing, distributing, and selling in commerce through the medium of wholesale barber supply houses, department stores, barber shops, beauty shops, drug stores, and by direct mail, hair and scalp lotions including the product designated as "Hair Marvel."

PAR. 2. Respondent in the regular course and conduct of his business, upon receipt of orders, causes and has caused his products to be transported, from his place of business in Hazel Park, Mich., to the purchasers thereof located in California, Arkansas, Ohio, and other States of the United States, and in the District of Columbia. There is now and has been for more than 1 year last past a course of trade in said product so sold, distributed, and transported by respondent in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his business respondent is now and has been in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the business of manufacturing, distributing, and selling hair and scalp lotions or similar products designed, intended and sold for the purpose of treating various conditions of the hair or scalp, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his business as set forth in paragraph 1, respondent has, for the purpose of inducing the purchase of the product "Hair Marvel," offered for sale and sold by him, published representations and statements with reference to the manufacture and quality of the said product. Such representations, among others, set forth and circulated through the medium of newspapers, booklets, and labels, are as follows:

HAIR MARVEL

Promotes a Healthy Scalp
FREE FROM DANDRUFF
and Irritation
REVIVES LIFE—LUSTRE
and
NATURAL COLOR
to
GRAY HAIR
When used Consistently

Findings

Hair Marvel has proven very effective in stimulating the growth of new hair.

Hair Marvel contains several ingredients which are found in the human body, and it is our belief that the color cells which are nourished through the central shaft of hair are invigorated and nourished by Hair Marvel. Other Hair Marvel ingredients would break down the film or bubbles which surround the color pigment in the hair, thereby restoring natural color.

Many dyes, rinses, tints, etc. used in coloring the hair have proven detrimental in the giving of Permanent Waves. Where only Hair Marvel has been used Permanent Waves have been very successful.

For Restoration of Natural Color.

For Dandruff, Irritation and Falling Hair.

Hair Marvel is Very Effective in Eradicating Dandruff and Companionate Ailments, Restoring the Scalp to a Natural Healthy Condition.

Hair Marvel's germicidal effectiveness has been proven through its use in clearing up many apparently hopeless cases of Alopecia, (Spotted baldness), Psoriasis (Itch), Eczema, Blotchy Scalps, etc. where hundreds of dollars had previously been spent without results.

Hair Marvel restored the natural color to my white hair. * * * removed the dandruff.

Now it has regained its natural dark brown color, bald spots are fast disappearing as new hair is starting to come in, and at the same time all of my hair is nearly back to its original color of black.

Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's product, the respondent represents either directly or through implication that the use of said preparation will effectively restore the natural color of the hair; stop falling hair and eradicate dandruff; act on gray hair without the aid of harmful dyes that ruin the health and beauty of the hair and scalp; that it has a rejuvenating, invigorating, and nourishing effect upon the roots of the hair; that it stimulates the growth of new hair and restores the scalp to a natural healthy condition; that it is effective as a cure or remedy for alopecia, psoriasis, itch, eczema, and blotchy scalps, and possesses germicidal or antiseptic properties; that it is not a dye and achieves the results claimed for it in restoring natural color because of its nourishing and invigorating effect on the color cells of the hair.

Furthermore, the respondent represents that he owns or controls a laboratory used in connection with scientific experiment analyses or manufacture of said product, "Hair Marvel," by use of the following legend on letterheads, stationery, and other printed matter.

MARVEL PRODUCTS CO.

Detroit, Michigan

Office and Laboratory

PAR. 5. The formula used by the respondent in the manufacture of 6½ gallons of "Hair Marvel" is as follows:

| | | | |
|----|---------|----|----------------------|
| 18 | ounces | of | glycerin |
| 32 | " | " | bay rum |
| 4 | " | " | 5½% ammonia |
| 18 | " | " | chloride of sodium |
| 3¼ | " | " | precipitated sulphur |
| 1¾ | " | " | lead acetate |
| ¾ | " | " | perfume |
| 6 | gallons | of | distilled water |

PAR. 6. The testimony shows and the Commission so finds as a fact that the product "Hair Marvel" is a dye and will not effectively restore the natural color of the hair; stimulate the growth of new hair and restore the scalp to a natural healthy condition; rejuvenate, invigorate and nourish the roots of the hair; stop falling hair and eradicate dandruff; act as an effective cure or remedy for alopecia, psoriasis, itch, eczema, or blotchy scalp; and it is not a harmless preparation because the lead acetate contained in the product "Hair Marvel" is an accumulative poison which may prove harmful under some conditions of its use or when used by certain persons, either children or adults.

PAR. 7. Respondent neither owns, operates, nor controls any laboratory used in connection with scientific experiment analysis or manufacture of the product "Hair Marvel."

PAR. 8. The testimony is to the effect and the Commission so finds as a fact that members of the consuming public believed the representations and statements of respondent that "Hair Marvel" is not a dye and bought and used same under such belief.

PAR. 9. The representations of respondent, as aforesaid, have had, and now have, a tendency and capacity to mislead and deceive, and did deceive, a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, said representations of respondent have had and do have a tendency and capacity, to induce, and have induced, members of the purchasing public to buy and use respondent's "Hair Marvel" because of the erroneous belief as set forth above, and to divert and have diverted, trade to the respondent from competitors engaged in the sale, in interstate commerce, of hair color restorers and like and similar preparations and treatments for the scalp and hair who, in the sale of their products, in no wise misrepresent their scientific experimental equipment or the efficiency or the therapeutic value of their competing products; and respondent's acts and practices are to the substantial injury and prejudice of his competitors.

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CONCLUSION

The aforesaid acts and practices of the respondent have been, and are, all to the prejudice and injury of the public and said respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before Edward J. Hornibrook, 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 of counsel for the Commission in support of the complaint, no brief having been filed on behalf of the respondent and no oral arguments 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Robert C. Taylor, individually and trading as Marvel Products Co., or trading under any other name, his agents, servants, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of hair and scalp lotion or preparation now designated by the name of "Hair Marvel," or any other preparation composed of substantially similar ingredients, or possessing substantially similar properties, whether sold under that name or under any other name, do forthwith cease and desist from:

1. Representing through the use of the word "laboratory" or any other word or words of similar import and meaning, in advertising, circulars, letterheads, and other printed matter, or in any other manner, that the respondent owns, operates or controls a scientific laboratory, employs trained scientists and technicians, and is equipped to test his products in the manner and with the methods used by recognized scientific laboratories.

2. Representing that said preparation is not a hair dye or is something other than a hair dye or that it will restore the natural color of the hair.

3. Representing that said preparation will stimulate the growth of hair or restore the scalp to a natural, healthy condition.

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4. Representing that said preparation will rejuvenate, invigorate, or nourish the roots of the hair.

5. Representing that said preparation will stop falling hair or eradicate dandruff.

6. Representing that said preparation is an effective cure or remedy for alopecia, psoriasis, itch, eczema, or blotchy scalp.

7. Representing that said preparation possesses germicidal or anti-septic properties.

8. Representing directly or indirectly that said preparation does not have the detrimental qualities usually attributed to hair dyes or that it is unqualifiedly safe for use.

It is further ordered, That the respondent shall, within 10 days after service upon him of this order, file with the Commission an interim report in writing stating whether he intends to comply with this order, and, if so, setting forth in detail the manner and form in which he intends to comply; and that, within 60 days after service upon him of this order, said respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF
K & K SUPPLY COMPANY, INC.

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

Docket 3454. Complaint, June 11, 1938—Decision, Mar. 21, 1939

Where a corporation engaged in importing, and in buying from local sources, bicycles and bicycle frames, parts, and accessories, and in selling and distributing such products and, as thus engaged, in (1) importing from Japan bicycle parts, accessories, and frames upon which were marked name of country of origin and, in many cases, upon which were set forth, stamped, or marked by decalomania in said country, words "Made in Japan," in accordance with tariff law and custom regulations of the United States requiring disclosure of source of origin, and in (2) selling and distributing, as aforesaid, bicycle frames and parts and, after assembly, complete bicycles and accessories to purchasers in the various States and in the District of Columbia from its place of business in New York, and including among such products made in Japan, completely assembled bicycles there made and others with frames and essential parts of Japanese origin, to which had been added some American parts, and (3) possessed of number of name plates or emblems, purchased by it from New York manufacturer of such products who had made same for American manufacturer and for wholesale distributor upon order, for use on American-made bicycles;

In selling its Japanese-made bicycle frames, parts and accessories, and bicycles composed of frame and other parts of Japanese origin combined with some American parts, and for purpose of inducing public to purchase such frames and bicycles—

- (a) Placed thereon name plates of American manufacturers and distributors in such manner as to completely cover up notice of origin denoted by words "Made in Japan" or other designation placed thereon in said country; and
- (b) Removed, in many instances, notice of origin denoted by words "Made in Japan" placed thereon as aforesaid, and attached to such bicycles and frames name plates or emblems of American manufacturers, over part on said frames from which notice of origin denoted by words "Made in Japan," had been erased or otherwise obliterated; and
- (c) Furnished, in other instances, name plates or emblems of said American manufacturer, or made for use by New York distributor on American-made bicycles, to customers or dealers to whom it had sold and shipped bicycles and bicycle frames, and by whom such name plates or emblems were placed upon such Japanese bicycle frames in exactly same manner in which said corporation had placed name plates or emblems on bicycles which it had, in many instances, sold and shipped from its place of business to the dealers;

With result of thereby placing in the hands of its retail dealer customers instruments and means of deceiving and misleading public, and with effect of deceiving and misleading prospective purchasers of such bicycles and members of purchasing public, on part of substantial portion of which there is decided preference for such products made in the United States over those

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made in foreign countries and imported, because of superior quality of former over latter, into erroneous belief that products in question, made in Japan and imported, with source of origin thereon in all cases, were product of American manufacturers, and with result, as direct consequence of such mistaken and erroneous belief induced by such representations, acts, and practices, that substantial portion of said public was induced to purchase such bicycles and frames and purchased substantial number thereof from it and its dealers, and trade was unfairly diverted from others likewise engaged in sale and shipment in commerce in the various States of such products, frames, and accessories, and who truthfully represent the same and do not in any manner use any misrepresentation calculated to deceive trade or purchasing public; to the injury of competition in commerce; and

- (d) Represented as of American manufacture said bicycles or frames which it, in many instances, imported from Japan and, in other instances, purchased from other importers, and which (1) in all instances at time of receipt by it disclosed source of origin by name plate or by decalomania placed upon head of such frames in Japan, and which (2) at time of sale by it to dealers or by dealers to general public could not be distinguished from those of American origin:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. Jacques D. Del Monte, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that K & K Supply Co., Inc., a corporation, hereinafter referred to as the respondent, has violated the provisions of the 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, K & K Supply 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 146 Chambers Street in the city of New York, State of New York. Respondent is now, and has been for many years last past, engaged in the business of buying, selling, and distributing bicycles and bicycle parts and accessories. In the course and conduct of its business respondent imports bicycle frames and bicycle parts manufactured in Japan and sells and distributes said products to purchasers thereof in the various States of the United States. There is now,

and has been at all times mentioned herein, a course of trade and commerce by respondent between and among the various States of the United States, in said bicycle frames and parts manufactured in Japan.

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 firms, partnerships, and individuals likewise engaged in the sale and distribution of bicycles, bicycle frames, and parts 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 said business, respondent assembles said bicycle frames and parts imported by it from Japan together with other parts manufactured in the United States and sells and ships the completed bicycles thus assembled to purchasers thereof located in various States of the United States other than the State from which shipment is made.

Section 304 of the United States Tariff Act of 1930, in force now and at all times herein referred to, governing the importation of foreign-made goods, requires imported bicycle frames to be properly marked at the time of importation to indicate the country of origin. The bicycle frames imported by respondent from Japan in many instances bore no name plates, and the words "Made in Japan" were marked on the head of the frame by decalcomania or other similar process which could easily be covered, obliterated, or removed so as to escape the notice and attention of prospective purchasers.

At various times during the year 1936, respondent purchased large quantities of brass name plates or bicycle emblems bearing the name and insignia of the Shapleigh Hardware Co., St. Louis, Mo.; and in many instances respondent placed said brass name plates or emblems on the imported bicycle frames in such manner and with such effect as to cover or conceal the words "Made in Japan" placed thereon by decalcomania mark pursuant to the provisions of the Tariff Act of 1930 heretofore set forth. In many other instances, where said brass name plates or emblems were of insufficient size to cover the mark "Made in Japan," said mark was erased or otherwise obliterated or removed by respondent. Said brass name plates or emblems are oval in shape, with a large letter "S" and the words "Shapleigh Special," "Shapleigh Hardware Co., St. Louis, U. S. A.," thereon.

PAR. 4. The use by respondent of the name plates or emblems bearing the words "Shapleigh Special," "Shapleigh Hardware Co., St. Louis, U. S. A." on the frames of the bicycles offered for sale and sold by it, served, and now serves, as a representation to the purchasing

public that said bicycles or bicycle frames were and are the products of the Shapleigh Hardware Co. of St. Louis, Mo.; and the obliteration, removal, or concealment by respondent of the mark "Made in Japan" on said bicycle frames as hereinabove described, served and now serves as a representation to the purchasing public that said bicycles or bicycle frames were and are manufactured in the United States; when in truth and in fact said bicycles or bicycle frames were and are neither products of the Shapleigh Hardware Co. of St. Louis, Mo., nor products manufactured in the United States.

PAR. 5. A substantial portion of the purchasing public has indicated and has a decided preference for bicycles and bicycle frames and parts manufactured in the United States over such articles manufactured in foreign countries and imported into the United States.

PAR. 6. There are now and have been competitors of respondent selling and distributing bicycles and bicycle frames and parts in commerce among and between the various States of the United States and in the District of Columbia who do not misrepresent in any manner whatsoever the nature, character, origin, or manufacturer or distributor of the products offered for sale and sold by them.

PAR. 7. The use by respondent of a name plate or emblem of the Shapleigh Hardware Co. of St. Louis, Mo., on the frames of the bicycles or bicycle frames offered for sale and sold by it, and the obliteration or concealment in any manner whatsoever of the words "Made in Japan" or other words to indicate that said articles are imported and not of domestic manufacture, had and has a capacity and tendency to, and did and does, deceive and mislead prospective purchasers and purchasers of its bicycles and bicycle frames into the erroneous belief that said articles are the products of the Shapleigh Hardware Co. of St. Louis, Mo., and that they are of domestic manufacture.

On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been and is induced to purchase bicycles and bicycle frames from respondent, and thereby trade has been, and is, diverted unfairly to respondent from competitors named in paragraphs 2 and 6 hereof. As a result thereof, injury has been, and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, under date of June 11, 1938, issued and served its complaint in this proceeding upon the respondent, K & K Supply Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of the said act.

After the issuance of said complaint, the respondent having entered its appearance by its attorney, Jacques D. Del Monte, Esq., of 80 Wall Street, city of New York, N. Y., respondent thereafter filed its answer to the complaint in which it in part admitted and in part denied the various allegations of the complaint. Thereafter hearings were had and evidence was thereupon introduced in support of the allegations of the complaint and on behalf of the respondent before John J. Keenan, a trial examiner of the Federal Trade Commission, theretofore duly appointed. The evidence was duly recorded and filed in the office of the Commission. A brief was filed on behalf of the Commission in support of the allegations in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, answer and evidence adduced at said hearings, and the Commission having duly considered the same and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, K & K Supply 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 located at 146 Chambers Street in the city of New York, State of New York. Respondent is now, and has been for many years last past, engaged in the business of importing, buying from local sources, selling, and distributing in commerce bicycles, bicycle frames, parts, and accessories. In the course and conduct of its business, respondent imports from Japan bicycle frames and bicycle parts and accessories manufactured in Japan; the said bicycle frames are marked with the name of the country of origin and in many instances said bicycle frames carry on said frames, stamped or marked by decalcomania, the words "Made in Japan" which were placed thereon in Japan in accordance with the Tariff Law and Customs Regulations of the United States requiring disclosure of the source of origin. Respondent sells and distributes said bicycle frames, bicycle parts and, after assembly, complete bicycles and accessories to purchaser thereof in

and among various States of the United States and the District of Columbia, from its place of business at 146 Chambers Street, in the city of New York, State of New York. There is now and has been at all times mentioned herein a continuous course of trade in commerce by respondent between and among various States of the United States in said bicycle frames, bicycle parts, and accessories manufactured in Japan, completely assembled bicycles manufactured in Japan and others with the frame and essential parts of Japanese origin, to which some American parts have been added.

PAR. 2. In the course and conduct of its business, respondent purchased from a manufacturer of name plates or emblems in New York City, N. Y., a large quantity of name plates or emblems which said manufacturer had made for the Shapleigh Hardware Co. of St. Louis, Mo., and a large quantity of other name plates or emblems bearing the name "Motor Bike" thereon which had been made for a wholesale distributor in New York City, N. Y. All of the said name plates or emblems were manufactured upon order for use on American-made bicycles.

The respondent, in the sale of its Japanese-manufactured bicycle frames, bicycles, parts, and accessories, and bicycles composed of frames and other parts of Japanese origin combined with some American parts and for the purpose of inducing the public to purchase said bicycle frames and bicycles, placed thereon name plates of American manufacturers and distributors in such manner as to completely cover up the notice of origin denoted by the words "Made in Japan" or other designation placed thereon in Japan; in many instances respondent has removed the notice of origin denoted by the words "Made in Japan" placed thereon by decalcomania, and attached to said bicycles and bicycle frames the name plates or emblems of American manufacturers over the part on the said bicycle frames from which the notice of origin denoted by the words "Made in Japan" had been erased or otherwise obliterated; in other instances, respondent had furnished its customers or dealers to whom it had sold and shipped bicycles and bicycle frames name plates or emblems of the Shapleigh Hardware Co. or the plates or emblems manufactured for use by a New York distributor on American-made bicycles, which name plates or emblems were placed upon the Japanese bicycle frame by the said retail dealers in exactly the same manner as the respondent had placed the name plates or emblems on the bicycles which it had, in many instances, sold and shipped from its place of business to the dealers; all of the said bicycle frames and bicycles upon which the name plates or emblems were placed by the respondent or its dealers had been manufactured in Japan and im-

ported into the United States with the source of origin on the same. The acts and practices hereinbefore set forth placed in the hands of its retail dealer customers instruments and means of deceiving and misleading the public.

PAR. 3. A substantial portion of the purchasing public has indicated and has a decided preference for bicycles and bicycle frames and parts manufactured in the United States of America because of their superior quality over similar articles manufactured in foreign countries and imported into the United States.

PAR. 4. The use by the respondent of the name plates or emblems of Shapleigh Hardware Co. of St. Louis, Mo., or other American manufacturers representing that the said imported bicycles to which they were attached were products of an American manufacturer or distributor and the obliteration or concealment by the respondent of the Japanese notice of origin denoted by the words "Made in Japan" or other words indicating the Japanese manufacture and origin and the placing thereon of the American manufacturers' name plates or emblems by respondent has a capacity to, and tendency to, and did and does deceive and mislead members of the purchasing public and prospective purchasers of said bicycles into the erroneous belief that said bicycles are the product of American manufacturers; and, as a direct consequence of such mistaken and erroneous beliefs induced by the representations, acts, and practices of respondent as aforesaid, a substantial portion of the purchasing public has been and is induced to purchase bicycles and bicycle frames and have purchased a substantial number of said bicycles and bicycle frames from the respondent and its dealers. As a consequence of the acts and practices of respondent, trade has been unfairly diverted from other individuals, firms, partnerships, and corporations likewise engaged in the sale and shipment in commerce into and among the various States of the United States of bicycles, bicycle frames, and accessories who truthfully represent their products and who do not in any manner use any misrepresentation calculated to deceive the trade or the purchasing public; and, as a result of the acts and practices of respondent, 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 the District of Columbia.

PAR. 5. In the course and conduct of respondent's business it represented the said bicycles or bicycle frames to be of American manufacture, whereas, in truth and in fact the said bicycles were not of American manufacture, the same having been manufactured in Japan and, in many instances, imported by the respondent from Japan and in other instances purchased by it from other importers in the United

States. And on all of said bicycles at the time of the receipt by respondent the source of origin was disclosed either by a name plate or by decalcomania placed upon the head of said bicycle frames in Japan, and when offered for sale by the respondent or its dealers to the general public the said general public had no means of discovering or knowing that the said bicycles or bicycle frames were of Japanese origin and could not be distinguished from bicycles of American origin.

CONCLUSION

The aforesaid acts, practices and representations of the respondent, K & K Supply Co., Inc., a corporation, have been, and are, to the prejudice and injury of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the brief of counsel for the Commission in support of the complaint (no brief having been filed on behalf of the respondent and no oral arguments 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 the Federal Trade Commission Act.

It is ordered, That the respondent, K & K Supply Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of bicycles, bicycle frames, parts, and accessories in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or indirectly, from:

1. Representing, by the use of misleading, fictitious, or obsolete nameplates or emblems, or in any other manner, that the bicycles sold and distributed by the respondent are wholly of American manufacture, when such products, or the frames thereof, or a substantial portion of the parts thereof, are of foreign manufacture.

2. Causing the brands or marks on imported bicycle frames or other parts, or other similar products, which indicate the foreign origin or manufacture of such merchandise, to be removed, erased,

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or concealed so as to mislead or deceive purchasers and prospective purchasers with reference to the foreign origin or manufacture thereof, unless the removal or erasure or concealment of said brands or marks is necessary to the further manufacture or processing of said merchandise.

3. Furnishing to dealers or distributors any brands, emblems, or any other devices which enable such dealers or distributors to cover up, erase or conceal brands or marks indicating foreign origin of bicycles, bicycle frames, or other parts, or other similar products, or which enable such dealers or distributors to represent bicycles, bicycle frames, or other parts, or other similar merchandise of foreign manufacture as being of American manufacture.

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

CHARLES E. KNAPP TRADING AS MODERN AMERICAN CO.; MODERN AMERICAN CORPORATION; BLANCHE WYNNE TRADING AS MODERN AMERICAN CO.; AND A. J. RIVENBARK, JR., CLEO SAMDAHL AND A. B. LANDRUM

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

Docket 3503. Complaint, July 20, 1938—Decision, Mar. 21, 1939

Where five individuals engaged, personally and through various agents, salesmen, solicitors, and employées, in offering, selling and distributing, under name "Modern American Encyclopedia," eight-volume reference set, together with "Quarterly Loose-Leaf Extension Service" for use in connection therewith, to purchasers in the various States and in the District of Columbia, in substantial competition with others engaged in offer, sale, and distribution of reference books, encyclopedias, and extension services of same general character in commerce among the States and in said District, and including many who truthfully represent the nature of their business and do not make to the general public such false and misleading representations as made use of by them in conduct of their said business as below set forth, and do not use deceptive and misleading sales methods as made use of by individuals aforesaid;

In soliciting, as above set forth, and in selling said books and services, under trade name "Modern American Company" or otherwise, and through various agents, solicitors and representatives whom they employed, and who (1) were authorized and directed to solicit and sell such books and services and traveled from place to place throughout the United States in so doing, and whom (2) they furnished with prospectuses, order blanks, contracts, and other literature, and who (3) on making sale, required purchaser's signature to printed order blank or contract which was transmitted to individuals aforesaid, and through whom (4) they collected, at said time, part of agreed purchase price as down payment, with balance payable on delivery or in monthly installments—

- (a) Represented, in course of their business as aforesaid, directly and through such agents, etc., and by means of said order blanks, prospectuses and other literature used and distributed as aforesaid, that said so-called "Modern American Encyclopedia" was a new, modern and up-to-date encyclopedias and reference work, facts being it was an old work and substantially the same as prior sets put out at various times from 1893 to 1933 under various other names and titles, and, while revised in certain respects in 1936, it had not been for many years and was not then modern or up-to-date reference work which in any reasonable degree met needs and requirements of purchasing and using public for reliable work of such character, and the many and rapid scientific, historical and other changes and discoveries which had occurred since 1893 and the making of the original plates, from which said so-called "Modern American Encyclopedia" was printed, rendered it practically valueless for its supposed purpose as

such work; with tendency to and with effect of confusing and misleading public, which generally rely implicitly upon such works as furnishing up-to-date facts, revised to date of actual issue, into believing, through aforesaid false, fraudulent, misleading, deceptive, and injurious claims, representations and implications, that they were buying and obtaining for use new and useful up-to-date reference work;

- (b) Represented, as aforesaid, that the material in said "Modern American Encyclopedia" was "prepared by a large number of experts and specialists in the various fields of human knowledge", and that "further assistance was given by eminent scholars, scientists, and men of affairs, who reviewed and revised various articles," and in preface, for ostensible purpose of attesting to the "authenticity" of such encyclopedia, listed names of 37 persons prominent in particular fields of learning, and represented the same as substantial contributors to preparation of said work, facts being not one of the persons listed as above set forth had made any contribution to such work or done anything in connection therewith to make it new and modern, excepting only some very slight contributions by a few to original 1893 work, and the earlier revisions thereof, and some of those listed had been dead for a number of years; with tendency to and effect of furthering deception of members of purchasing public into belief they were receiving a work which was new and modern and product of eminent specialists and experts named as aforesaid;
- (c) Represented, as aforesaid, to prospective and actual purchasing public, that said "Modern American Encyclopedia" had been sold at prices far in excess of those at which it was then being offered, and that latter prices were special or introductory, and that after such introductory campaign had ceased publication would sell for considerably, or much, higher prices, as variously named, and also that said work was being specially offered free to certain selected purchasers without cost, except for nominal binding charge, and that it had been decided, instead of purchasing advertising space in newspapers and radio time, to place few sets in selected homes, under plan by which those selected would pay only actual cost of binding and cost of 10-year supplemental or revision service, and in consideration of the use of the names of such "privileged" customers in the later regular sales campaign, facts being prices, as variously charged under various forms of contracts at different times and in different localities, were the regular and usual prices of said books, which were available to any one of public generally who could be induced to purchase same, were not simply introductory or special, but regular, as was campaign being conducted in usual course of business, prospective purchasers were not selected to receive books at special price, which was greatly in excess of actual cost of binding volumes and of actual cost of 10-year revision service, and names of such customers were not used or intended to be used as references in later regular sales campaign, which was not ever planned or carried out;
- (d) Represented, as aforesaid, that extension or supplemental revision service was free or without extra cost, facts being guarantee certificate furnished in connection with sale of books, and to which were attached set of ten coupons covering such 10-year extension service, provided that \$1.85 must be remitted with each coupon before service would be furnished, which was never given free or without extra cost, but always charged for, as aforesaid, and

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(e) Represented further that said work was sponsored by the Carnegie Foundation, and that such Modern American Co. was the selling agent of such foundation or institute, and that members of latter were largely responsible for preparation thereof, facts being work in question was not sponsored as above set forth, there was no such connection or responsibility, and said statements relating to Carnegie Foundation or Institute were wholly false; and

Where a corporation which, under name "The Modern American Corporation," functioned chiefly as the owner and holder of the plates from which said reference work was printed, and officers of which, including particularly one of individuals here involved and above set forth, had knowledge of sales methods above enumerated and engaged in by said individuals—

(f) Loaned its name to said old reference work, and through thus furnishing and supplying said name, cooperated with and served said individuals in furthering their scheme of selling said encyclopedias as new and modern; With tendency and capacity to mislead and deceive, through such acts, practices and scheme to foist upon purchasing public at a profit old and obsolete set of reference books of little or no value as such, through reprints poorly made on inferior paper from plates cast originally in 1893 and issued and sold under its deceptive and misleading title aforesaid, substantial portion of purchasing public into erroneous belief that said representations were true, and with result that, as direct consequence of such mistaken and erroneous beliefs thus induced, number of purchasing public bought substantial quantity of their merchandise and trade was unfairly diverted to them from others likewise engaged in sale of reference books and who truthfully advertise and represent their said products; to the substantial injury of competition in commerce:

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

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

Mr. Merle P. Lyon for the Commission.

Hickey, Hall & Junge, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Charles E. Knapp, an individual, trading as and in the name of Modern American Co., Charles E. Knapp, Inc., a corporation, Modern American Corporation, a corporation, Blanche Wynne, an individual, trading as and in the name of Modern American Co., and A. J. Rivenbark, Jr., Cleo Samdahl, and A. B. Landrum, hereinafter referred to as the respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Charles E. Knapp is an individual trading as and in the name of Modern American Co., with his principal office and place of business located at 201 North Wells Street, Chicago, Ill. Respondent Charles E. Knapp, Inc., is a corporation organized 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 201 North Wells Street, Chicago, Ill. Respondent Modern American Corporation is a corporation organized 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 201 North Wells Street, Chicago, Ill. Respondent Blanch Wynne is an individual trading as and in the name of Modern American Co., with her principal office and place of business located at 1508 Main Street, Dallas, Tex. Respondents A. J. Rivenbark, Jr., Cleo Samdahl, and A. B. Landrum, are salesmen, agents, and representatives of respondent Charles E. Knapp, with their principal office and place of business at 201 North Wells Street, Chicago, Ill. Respondents are now, and have been for more than one year last past, engaged in the business of offering for sale, selling and distributing to the general public a certain set of reference books or encyclopedias entitled and known as "Modern American Encyclopedia," in eight volumes, together with a "Quarterly Loose-Leaf Extension Service" to be used in connection therewith. All of said respondents have acted together and in cooperation with each other during all the times herein mentioned in doing the acts and things hereinafter alleged in connection with the sale and distribution of said books and extension services.

PAR. 2. In the course and conduct of their said business, respondents, through various agents, salesmen, solicitors, and employees, and personally, offer to sell, sell, and distribute the said reference books or encyclopedias and extension services to persons located at points in the various States of the United States and in the District of Columbia. They cause said reference books or encyclopedias and extension services, when so sold, to be transported from the city of Chicago, Ill., to, into, and through other States of the United States and the District of Columbia, to the purchasers thereof at their respective locations. Respondents maintain and, during the times mentioned herein, have maintained, a course of trade in said products so sold and distributed by them in commerce among and between the various States of the United States.

PAR. 3. Respondents, in the course and conduct of their said business, are in substantial competition with other corporations, firms, partnerships and individuals likewise engaged in offering for sale, selling, and distributing reference books and encyclopedias and ex-

tension services of the same general character as those distributed by the respondents to the general public in commerce among and between the various States of the United States and in the District of Columbia. Among said competitors there are many who truthfully represent the nature of their business and who do not make to the general public the false and misleading representations hereinafter alleged to have been made and used by the respondents in the conduct of their said business, and who do not make any other false representations in the conduct of their business and who do not use the deceptive and misleading sales methods hereinafter alleged as having been used by the respondents.

PAR. 4. In the course and conduct of their business in said commerce, respondents employ various agents, solicitors, and representatives, who are authorized and directed to solicit orders for and to sell said reference books or encyclopedias and loose-leaf extension services to prospective purchasers throughout the United States. These agents, solicitors and representatives ordinarily travel from place to place throughout the United States, canvassing prospective purchasers at the various places visited. Respondents furnish such agents, solicitors, and representatives with prospecti, order blanks, contracts, and other literature and paraphernalia, which are exhibited, distributed and used in connection with the sale and in the solicitation of the sale of said books and extension services. When a sale is made, the purchaser is required to sign a printed order blank or contract, which is then transmitted to one of the respondents in Chicago, Ill. Respondents thereupon cause the shipment of said books to be made to such purchaser from Chicago, Ill., and transmit from Chicago, Ill., to such purchaser from time to time the loose-leaf extension service. At the time the order or contract is signed, respondents, through their agents, solicitors, and representatives, collect a part of the agreed purchase price as a down payment and the order or contract ordinarily requires the balance to be paid upon delivery of the books or that payment be made in monthly installments until the total purchase price is paid in full.

PAR. 5. In the course and conduct of their business as aforesaid, respondents, directly and through said agents, solicitors, and representatives, and by means of the order blanks, prospecti and other literature used and distributed and exhibited to prospective purchasers, have made to purchasers and prospective purchasers, many false, misleading, and deceptive statements and representations, as hereinafter set forth.

1. They have represented, and now represent, to the prospective and actual purchasing public throughout the United States that said

so-called "Modern American Encyclopedia" is a new, modern, and up-to-date encyclopedia and reference work.

The truth and facts are that said encyclopedia is a descendant of a two-volume set first published in 1893 under the name of "The Student's Cyclopedia." In 1901, after several revisions and additions had been made, the name of the encyclopedia was changed to "The Student's Reference Work" and it was increased to four volumes. No revisions or additions were made until 1909, when the number of volumes was increased to six, and the name was again changed to that of "The New Student's Reference Work." Subsequently the encyclopedia was increased to eight volumes, although the name was not changed. In 1933 the respondent Charles E. Knapp and two associates, Walter H. Gorham and Edwin P. Rucker, purchased the plates of said "The New Student's Reference Work" from the trustee or receiver in bankruptcy of the owner of same, and subsequently on November 14, 1933, organized the respondent Modern American Corporation under the laws of the State of Illinois, to which corporation title to said plates was transferred by said respondent Charles E. Knapp and said associates. Said parties owned and controlled and now own and control all the stock in said respondent Modern American Corporation, and an agreement was entered into between said stockholders that either of them would have the privilege of selling the encyclopedia free of any royalty payments upon payment of the printing and binding cost. The name of the encyclopedia was then changed from "The New Student's Reference Work" to "Modern American Encyclopedia," and an eight volume set was published under the latter name, and has been and now is sold by the various respondents herein in commerce as above set out. Said encyclopedia was revised in certain respects in 1936, but it has not been for many years and is not now a modern or up-to-date reference work which in any reasonable degree meets the needs and requirements of the purchasing and using public for a reliable reference work. Respondents have failed and neglected in any proper way to disclose to or inform prospective purchasers of the fact that the so-called Modern American Encyclopedia is an old work, and is substantially the same as prior sets of reference works put out at various times from 1893 to 1933 under the various other names and titles above stated.

The chief value of any reference book or set is that it is in fact "modern" and contains the latest facts and data available on each subject treated. The purchasing public generally buy such reference books or encyclopedias for the purpose of procuring such up-to-date facts, data and information, and generally rely implicitly upon them

as furnishing such facts revised up to the date of actual issue. Reference books which purport to be, but are not of that character, are not only in themselves misleading, deceptive and of little or no value for the purpose for which purchased, but are in fact injurious to the purchasing public who consult and read them, by reason of the misguided reliance placed on the antiquated data, erroneous facts, and superseded theories and processes therein set forth or treated. The many and rapid scientific, historical and other changes and discoveries that have occurred since 1893, the date of the original plates from which the so-called "Modern American Encyclopedia" is printed, render it practically valueless as a reference work.

For these reasons, all claims, representations, and implications, as above described, made by respondents, have been and are false, fraudulent, misleading, deceptive, and injurious to the purchasing public in that they tend to and do confuse and mislead the public into the belief that they are buying and obtaining for use a new and useful up-to-date reference work.

2. Respondents have represented, and now represent, to the prospective and actual purchasing public that the material in said "Modern American Encyclopedia" was "prepared by a large number of experts and specialists in the various fields of human knowledge," and that "further assistance was given by eminent scholars, scientists and men of affairs, who reviewed and revised various articles." In the preface to said encyclopedia, for the ostensible purpose of attesting to the "Authenticity of the Modern American Encyclopedia," there are listed the names of 37 persons, each prominent in some particular field of learning or industry, and said persons are represented as having contributed substantially to the preparation of the "Modern American Encyclopedia."

In truth and in fact, not one of the persons named in said list has made any contribution to the "Modern American Encyclopedia" or does anything in connection therewith to make it a new and modern encyclopedia, save that some few of the persons named did contribute very slightly to the said original work in 1893 and the earlier revisions thereof. Some of the persons listed have been dead for a number of years. The use and circulation of such a list of alleged contributors is false, deceptive, and misleading, and tends to and does further the deception of the members of the purchasing public into the belief that they are receiving a work which is new and "modern," and is the work of the eminent specialists and experts named in said list.

3. Respondents further have represented, and now represent, to the prospective and actual purchasing public that said "Modern

American Encyclopedia" has been sold at prices far in excess of those at which it is being offered by the respondents, that the prices at which it is being offered are "special" or "introductory" prices, and that the publication had sold, and, after the "introductory" campaign had ceased, would sell, for considerably higher prices.

Several different forms of contract have been used by respondents at various times in the sale of said reference books. Under one form of contract, the publication is sold for \$19.50, \$9.50 of which is collected as a cash deposit, and \$10 plus transportation charges upon delivery of the books. Another contract requires an initial payment of \$10, the balance of \$13.50, plus delivery charges being due upon delivery of the books. Another contract calls for the payment of \$5 as a deposit, \$6.60 on delivery of the books, and, \$4 per month thereafter, until a total of \$27.60 has been paid. Under a fourth form of contract, the cost to the purchaser is \$29.60 under terms optional with him. Under a fifth form of contract, the reference books together with a choice of certain premiums are sold for \$39.60.

In their efforts to sell said Modern American Encyclopedia, respondents and their agents and salesmen have made and do make representations that the aforesaid prices were and are simply introductory and that the publication ordinarily and usually sells, has sold, and would sell for much higher prices. Some of the figures used in this connection ranged anywhere from \$79 to \$100 for the set. Some agents made the representation that the price of the books was \$59 and if a revision service was desired separately, the cost would be something like \$50 additional.

4. Respondents further have represented, and now represent, to the prospective and actual purchasing public that said Modern American Encyclopedia is being specially offered free to certain selected purchasers without cost except for a nominal binding charge. They represented and do represent that, instead of the purchase of advertising space in newspapers and time on radio stations, it has been decided to place a few sets of the encyclopedias in selected homes, and that the individuals selected to receive the books were being asked to pay only the actual cost of binding and the cost of a ten-year supplemental or revision service. These "privileged" customers were and are advised that their names would be used later in the regular sales campaign in return for their obtaining such a low price on the special introductory offer. In some cases the books were and are offered for \$19.50, in others, \$23.50, and in others, \$29.60. Furthermore, the respondents represented and do represent that the extension or supplemental revision service was free or without extra cost,

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whereas the guaranty certificate furnished in connection with the sale of the books and to which were attached a set of coupons, one for each year extending over a ten-year period, provided and provide that \$1.85 must be remitted with each coupon before the service would be furnished.

5. Respondents further have represented, and now represent, to the prospective and actual purchasing public that the Modern American Encyclopedia was and is sponsored by the Carnegie Foundation, and that the Modern American Co. was and is the selling agent of the Carnegie Foundation or Institute, and that members of said institute were largely responsible for the preparation of the Modern American Encyclopedia.

PAR. 6. In truth and in fact, all of said statements and representations set forth in paragraph 5 herein were and are false, misleading, and untrue. Said Modern American Encyclopedia has never been sold at prices far in excess of those at which it has been and is now being sold by respondents. The prices set under the various forms of contracts used by the respondents at different times and in different localities were and are the regular and usual prices of said books, and the books are available to anyone of the public generally who can be induced to purchase same. The prices asked were not simply "introductory" or "special" prices, and the campaign being conducted was not in fact an introductory campaign, but was and is a sales campaign in the usual course of business and the prices asked were regular prices, and the said books never sold for or were priced at prices ranging from \$79 to \$100.

The prospective purchasers were not and are not in fact "selected" from the general public to receive the books at a "special" price, and the price asked for the books was greatly in excess of the actual cost of binding the volumes and in excess of the actual cost of the 10-year revision service. The names of such customers were not used, or intended to be used, as references in a later "regular" sales campaign, and in fact there never was such a later campaign ever planned or carried out. The extension service was never given free or without extra cost but there always was a charge of \$1.85 for each year's service.

Furthermore, the Modern American Encyclopedia was not and is not in fact sponsored by the Carnegie Foundation or Institute, and the Modern American Co. was not and is not the selling agent of the Carnegie Foundation or Institute, and members of said institute were not and are not largely or in any way responsible for the preparation of the Modern American Encyclopedia.

The whole plan and methods employed by the respondents constitute merely a scheme to foist upon the purchasing public, at a profit, an old and obsolete set of reference books of little or no value as reference books, by reprints poorly made on an inferior quality of paper, from plates originally cast in 1893, and now issued and sold under the deceptive and misleading title "Modern American Encyclopedia."

PAR. 7. The aforesaid acts and practices of the respondents 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 said representations are true. Furthermore, as a direct consequence of such mistaken and erroneous beliefs, induced by the misrepresentations of the respondents as aforesaid, a number of the purchasing public has purchased a substantial quantity of said merchandise, with the result that trade has been unfairly diverted from other individuals, corporations, firms, and partnerships likewise engaged in the sale of reference books who truthfully advertise and represent their merchandise. As a result thereof, substantial injury has been, and is now being done by the respondents herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts, practices, and representations of the respondents as herein alleged have been, and are, all to the prejudice of the public and of respondents' competitors as aforesaid, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 20th day of July 1938, issued and served its complaint in this proceeding upon said respondents, Charles E. Knapp, an individual, trading as and in the name of Modern American Co.; Charles E. Knapp, Inc., a corporation, Modern American Corporation, a corporation, Blanche Wynne, an individual, trading as and in the name of Modern American Co.; and A. J. Rivenbark, Jr., Cleo Samdahl, and A. B. Landrum, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 12, 1938, answers were filed by the respondents Charles E. Knapp, an individual, trading as and in the name of Modern American Co.; Charles E. Knapp, Inc., a corporation; Modern American Corporation, a corporation; A. J. Rivenbark, Jr.; and Cleo Samdahl. Thereafter, a stipulation

was entered into by all of the respondents whereby it was stipulated and agreed that a statement of facts signed and executed by the said respondents by their counsel, Hickey and Hall, 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, answers and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Charles E. Knapp is an individual trading as and in the name of Modern American Co., with his principal office and place of business located at 201 North Wells Street, Chicago, Ill. Respondent Charles E. Knapp, Inc., is a corporation organized 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 201 North Wells Street, Chicago, Ill. Respondent Modern American Corporation is a corporation organized 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 201 North Wells Street, Chicago, Ill. Respondent Blanche Wynne is an individual, formerly trading as and in the name of Modern American Co., with her principal office and place of business located at 1508 Main Street, Dallas, Tex.

Respondents A. J. Rivenbark, Jr., and Cleo Samdahl have never been salesmen, agents, nor representatives of the respondent Charles E. Knapp. At the present time, and for some time past, said respondents purchased certain books from Charles E. Knapp which they sold as independent dealers to members of the public. The contracts of sale of such books were delivered by said respondents to Charles E. Knapp, and he handled the collections and retained the contracts of sale, notes, and collections as security and as payment for the books sold to said respondents. The principal books involved in the above-mentioned transactions were a set of reference books known as Mod-

ern American Encyclopedia, published and bound in eight volumes together with a quarterly loose-leaf extension service to be used as a supplement to the books.

Respondents, with the exception of the respondents Charles E. Knapp, Inc., a corporation, and Modern American Corporation, a corporation, are now, or have been engaged in the business of offering for sale, selling, and distributing to the general public a certain set of reference books or encyclopedias entitled and known as "Modern American Encyclopedia" in eight volumes, together with a "Quarterly Loose-Leaf Extension Service" to be used in connection therewith. The respondent Charles E. Knapp, Inc., a corporation, has not been engaged in offering for sale, selling, or distributing to the general public the set of books known as Modern American Encyclopedia, but is a publisher and vendor of an entirely different set of books. The respondent A. B. Landrum about a year and a half ago, and for a short period previous to that time, was an agent and salesman of the respondent Charles E. Knapp in the sale of the Modern Encyclopedia on a commission basis, with his principal office and place of business at 201 North Wells Street, Chicago, Ill.

PAR. 2. In the course and conduct of their said business, all of the respondents except Charles E. Knapp, Inc., a corporation, and Modern American Corporation, a corporation, personally and through various agents, salesmen, solicitors and employees, offer to sell, sell and distribute the said reference books or encyclopedias and extension services to persons located at points in the various States of the United States and in the District of Columbia. They cause said reference books or encyclopedias and extension services, when so sold, to be transported from the city of Chicago, Ill., to, into, and through other States of the United States and the District of Columbia, to the purchasers thereof at their respective locations. Said respondents maintain, and during the times mentioned herein, have maintained, a course of trade in said products so sold and distributed by them in commerce among and between the various States of the United States. The word "respondents" as hereinafter set forth in Paragraphs Three to Seven, inclusive, shall be understood to include all of the respondents except Charles E. Knapp, Inc., a corporation, and Modern American Corporation, a corporation.

PAR. 3. Said respondents, in the course and conduct of their said business, are in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in offering for sale, selling, and distributing reference books and encyclopedias and extension services of the same general character as those distributed by the respondents to the general public in commerce among and

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between the various States of the United States and in the District of Columbia. Among said competitors there are many who truthfully represent the nature of their business and who do not make to the general public the false and misleading representations made and used by the respondents in the conduct of their said business, and who do not use the deceptive and misleading sales methods used by said respondents.

PAR. 4. In the course and conduct of their business in said commerce, said respondents employ various agents, solicitors, and representatives, who are authorized and directed to solicit orders for and to sell said reference books or encyclopedias and loose-leaf extension services to prospective purchasers throughout the United States. These agents, solicitors, and representatives ordinarily travel from place to place throughout the United States, canvassing prospective purchasers at the various places visited. Respondents furnish such agents, solicitors, and representatives with prospecti, order blanks, contracts, and other literature and paraphernalia, which are exhibited, distributed, and used in connection with the sale and in the solicitation of the sale of said books and extension services. When a sale is made, the purchaser is required to sign a printed order blank or contract, which is then transmitted to one of the said respondents in Chicago, Ill. Said respondents thereupon cause the shipment of said books to be made to such purchaser from Chicago, Ill., and transmit from Chicago, Ill., to such purchaser from time to time the loose-leaf extension service. At the time the order or contract is signed, said respondents, through their agents, solicitors, and representatives, collect a part of the agreed purchase price as a down payment and the order or contract ordinarily requires the balance to be paid upon delivery of the books or that payment be made in monthly installments until the total purchase price is paid in full.

PAR. 5. In the course and conduct of their business as aforesaid, said respondents, directly and through said agents, solicitors, and representatives, and by means of the order blanks, prospecti, and other literature used and distributed and exhibited to prospective purchasers, have made to purchasers and prospective purchasers many false, misleading, and deceptive statements and representations, as hereinafter set forth.

1. They have represented, and now represent, to the prospective and actual purchasing public throughout the United States that said so-called "Modern American Encyclopedia" is a new, modern, and up-to-date encyclopedia and reference work.

The truth and facts are that said encyclopedia is a descendant of a two-volume set first published in 1893 under the name of "The

Student's Cyclopedia." In 1901, after several revisions and additions had been made, the name of the encyclopedia was changed to "The Student's Reference Work" and it was increased to four volumes. No revisions or additions were made until 1909, when the number of volumes was increased to six, and the name was again changed to that of "The New Student's Reference Work." Subsequently the encyclopedia was increased to eight volumes, although the name was not changed. In 1933 the respondent Charles E. Knapp and two associates, Walter H. Gorham and Edwin P. Rucker, purchased the plates of said "The New Student's Reference Work" from the trustee or receiver in bankruptcy of the owner of same, and subsequently on November 14, 1933, organized the respondent Modern American Corporation under the laws of the State of Illinois, to which corporation title to said plates was transferred by said respondent Charles E. Knapp and said associates. Said parties owned and controlled and now own and control all the stock in said respondent Modern American Corporation, and an agreement was entered into between said stockholders that either of them would have the privilege of selling the encyclopedia free of any royalty payments upon payment of the printing and binding cost. The name of the encyclopedia was then changed from "The New Student's Reference Work" to "Modern American Encyclopedia," and an eight volume set was published under the latter name, and has been and now is sold by the various respondents herein in commerce as above set out. Said encyclopedia was revised in certain respects in 1936, but it has not been for many years and is not now a modern or up-to-date reference work which in any reasonable degree meets the needs and requirements of the purchasing and using public for a reliable reference work. Respondents have failed and neglected in any proper way to disclose to or inform prospective purchasers of the fact that the so-called Modern American Encyclopedia is an old work, and is substantially the same as prior sets of reference works put out at various times from 1893 to 1933 under the various other names and titles above stated.

The chief value of any reference book or set is that it is in fact "modern" and contains the latest facts and data available on each subject treated. The purchasing public generally buy such reference books or encyclopedias for the purpose of procuring such up-to-date facts, data and information, and generally rely implicitly upon them as furnishing such facts revised up to the date of actual issue. Reference books which purport to be, but are not of that character, are not only in themselves misleading, deceptive and of little or no value for the purpose for which purchased, but are in fact injurious to the

purchasing public who consult and read them, by reason of the misguided reliance placed on the antiquated data, erroneous facts, and superseded theories and processes therein set forth or treated. The many and rapid scientific, historical, and other changes and discoveries that have occurred since 1893, the date of the original plates from which the so-called "Modern American Encyclopedia" is printed, render it practically valueless as a reference work.

For these reasons, all claims, representations, and implications, as above described, made by said respondents, have been and are false, fraudulent, misleading, deceptive, and injurious to the purchasing public in that they tend to and do confuse and mislead the public into the belief that they are buying and obtaining for use a new and useful up-to-date reference work.

2. Said respondents have represented, and now represent, to the prospective and actual purchasing public that the material in said "Modern American Encyclopedia" was "prepared by a large number of experts and specialists in the various fields of human knowledge," and that "further assistance was given by eminent scholars, scientists and men of affairs, who reviewed and revised various articles." In the preface to said encyclopedia, for the ostensible purpose of attesting to the "Authenticity of the Modern American Encyclopedia," there are listed the names of 37 persons, each prominent in some particular field of learning or industry, and said persons are represented as having contributed substantially to the preparation of the "Modern American Encyclopedia."

In truth and in fact, not one of the persons named in said list has made any contribution to the "Modern American Encyclopedia" or does anything in connection therewith to make it a new and modern encyclopedia, save that some few of the persons named did contribute very slightly to the said original work in 1893 and the earlier revisions thereof. Some of the persons listed have been dead for a number of years. The use and circulation of such a list of alleged contributors is false, deceptive, and misleading, and tends to and does further the deception of the members of the purchasing public into the belief that they are receiving a work which is new and "modern", and is the work of the eminent specialists and experts named in said list.

3. Said respondents further have represented, and now represent, to the prospective and actual purchasing public that said "Modern American Encyclopedia" has been sold at prices far in excess of those at which it is being offered by the said respondents, that the prices at which it is being offered are "special" or "introductory" prices,

and that the publication had sold, and, after the "introductory" campaign had ceased, would sell, for considerably higher prices.

Several different forms of contract have been used by said respondents at various times in the sale of said reference books. Under one form of contract, the publication is sold for \$19.50, \$9.50 of which is collected as a cash deposit, and \$10 plus transportation charges upon delivery of the books. Another contract requires an initial payment of \$10, the balance of \$13.50, plus delivery charges being due upon delivery of the books. Another contract calls for the payment of \$5 as a deposit, \$6.60 on delivery of the books, and \$4 per month thereafter until a total of \$27.60 has been paid. Under a fourth form of contract, the cost to the purchaser is \$29.60 under terms optional with him. Under a fifth form of contract, the reference books together with a choice of certain premiums are sold for \$39.60.

In their efforts to sell said Modern American Encyclopedia, said respondents and their agents and salesmen have made and do make representations that the aforesaid prices were and are simply introductory and that the publication ordinarily and usually sells, has sold, and would sell for much higher prices. Some of the figures used in this connection ranged any where from \$79 to \$100 for the set. Some agents made the representation that the price of the books was \$59 and if a revision service was desired separately, the cost would be something like \$50 additional.

4. Said respondents further have represented, and now represent, to the prospective and actual purchasing public that said Modern American Encyclopedia is being specially offered free to certain selected purchasers without cost except for a nominal binding charge. They represented and do represent that, instead of the purchase of advertising space in newspapers and time on radio stations, it had been decided to place a few sets of the encyclopedias in selected homes, and that the individuals selected to receive the books were being asked to pay only the actual cost of binding and the cost of a 10-year supplemental or revision service. These "privileged" customers were and are advised that their names would be used later in the regular sales campaign in return for their obtaining such a low price on the special introductory offer. In some cases the books were and are offered for \$19.50, in others, \$23.50, and in others, \$29.60. Furthermore, the said respondents represented and do represent that the extension or supplemental revision service was free or without extra cost, whereas the guaranty certificate furnished in connection with the sale of the books and to which were attached a set of coupons, one for each year extending over a 10-year period,

provided and provide that \$1.85 must be remitted with each coupon before the service would be furnished.

5. Said respondents further have represented, and now represent, to the prospective and actual purchasing public that the Modern American Encyclopedia was and is sponsored by the Carnegie Foundation, and that the Modern American Co. was and is the selling agent of the Carnegie Foundation or Institute, and that members of said Institute were largely responsible for the preparation of the Modern American Encyclopedia.

PAR. 6. In truth and in fact, all of said statements and representations set forth in paragraph 5 herein were and are false, misleading and untrue. Said Modern American Encyclopedia has never been sold at prices far in excess of those at which it has been and is now being sold by said respondents. The prices set under the various forms of contracts used by the said respondents at different times and in different localities were and are the regular and usual prices of said books, and the books are available to anyone of the public generally who can be induced to purchase same. The prices asked were not simply "introductory" or "special" prices, and the campaign being conducted was not in fact an introductory campaign, but was and is a sales campaign in the usual course of business and the prices asked were regular prices, and the said books never sold for or were priced at prices ranging from \$79 to \$100.

The prospective purchasers were not and are not in fact "selected" from the general public to receive the books at a "special" price, and the price asked for the books was greatly in excess of the actual cost of binding the volumes and in excess of the actual cost of the 10-year revision service. The names of such customers were not used, or intended to be used, as references in a later "regular" sales campaign, and in fact there never was such a later campaign ever planned or carried out. The extension service was never given free or without extra cost but there always was a charge of \$1.85 for each year's service.

Furthermore, the Modern American Encyclopedia was not and is not in fact sponsored by the Carnegie Foundation or Institute, and the Modern American Co. was not and is not the selling agent of the Carnegie Foundation or Institute, and members of said Institute were not and are not largely or in any way responsible for the preparation of the Modern American Encyclopedia.

The whole plan and methods employed by the said respondents constitute merely a scheme to foist upon the purchasing public, at a profit, an old and obsolete set of reference books of little or no value as reference books, by reprints poorly made on an inferior

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quality of paper, from plates originally cast in 1893, and now issued and sold under the deceptive and misleading title "Modern American Encyclopedia."

PAR. 7. The Modern American Corporation, a corporation, was organized, and has functioned chiefly as the owner and holder of the plates from which the Modern American Encyclopedia is printed. It, however, has loaned its name to the printed encyclopedia and by furnishing and supplying the said name, has cooperated with and served the other respondents in furthering their scheme of selling the encyclopedias as a new and modern encyclopedia. Its officers, particularly Charles E. Knapp, have had knowledge of the sales methods hereinbefore enumerated engaged in by the respondents.

PAR. 8. The aforesaid acts and practices of the said respondents with the exception of Charles E. Knapp, Inc., a corporation, 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 said representations are true. Furthermore, as a direct consequence of such mistaken and erroneous beliefs, induced by the misrepresentations of the said respondents as aforesaid, a number of the purchasing public has purchased a substantial quantity of said merchandise, with the result that trade has been unfairly diverted from other individuals, corporations, firms and partnerships likewise engaged in the sale of reference books who truthfully advertise and represent their merchandise. As a result thereof, substantial injury has been, and is now being done by the said respondents herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts, practices and representations of the said respondents with the exception of Charles E. Knapp, Inc., a corporation, have been, and are, all to the prejudice and injury of the public and said respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Com-

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mission, which provides, among other things, that the statement of facts contained therein may be made a part of the record herein, and 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 stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based therein, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs; and the Commission having made its findings as to the facts and conclusion that said respondents, with the exception of Charles E. Knapp, Inc., a corporation, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Charles E. Knapp, an individual, trading as and in the name of Modern American Co.; Modern American Corporation, a corporation, and its officers; Blanche Wynne, an individual, trading as and in the name of Modern American Co.; and A. J. Rivenbark, Jr., Cleo Samdahl, and A. B. Landrum; individually, or in combination or conspiracy with each other, their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a set of books, now known as, and sold under the name, "Modern American Encyclopedia," whether sold under that name or under any other name, and the extension services sold in connection therewith, in commerce as commerce is defined in the Federal Trade Commission Act; do forthwith cease and desist from:

1. Representing, through the use of the word "Modern" or any other word or words of similar import and meaning in the title of said books, or in the corporate or trade name used in connection with the sale thereof, or in any other manner, that said books are a new, modern, up-to-date encyclopedia or reference work.

2. Representing any person as being a contributor to or editor of any set of books or publications who has not performed services in making or preparing contributions to or who has not performed services in the editing of such books or publications and consented that he may be held out to the public as a contributor or as an editor or assistant editor.

3. Representing that any price is a special reduced or introductory price for respondents' set of books or publications when such price is the usual and customary price charged by the respondents for said set of books or publications.

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4. Representing that the usual price at which respondents' set of books or publications is sold is higher than the price at which they are offered, when such is not the fact.

5. Using the term "free" or any other term of similar import or meaning to designate or describe articles of merchandise regularly included in a combination offer with identical, similar or other articles of merchandise.

6. Representing that purchasers or prospective purchasers of respondents publications are only paying the cost of binding and buying or paying for loose-leaf supplements intended to keep the set of books up-to-date and revised for a period of 10 years or any other period of time, when such is not the fact.

7. Representing that the set of books or publications sold and distributed by the respondents is sponsored by the Carnegie Foundation or Institute, or any other organization, unless the set of books or publications sold by the respondents is so sponsored by such organization.

8. Representing that the respondents are agents for or have any connection with the Carnegie Foundation or Institute, or any other organization, unless they are in fact agents for or have a connection with such organization.

9. Representing that the members of the Carnegie Foundation or Institute are in any way responsible for the preparation of the "Modern American Encyclopedia."

It is further ordered, That 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 herein be, and the same is, hereby dismissed as to the respondent Charles E. Knapp, Inc., a corporation.

IN THE MATTER OF

H. S. McCracken Box & Label Company

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

Docket 3606. Complaint, Sept. 23, 1938—Decision, Mar. 21, 1939

Where a corporation engaged in manufacture of boxes, cartons, and labels, and in sale thereof to manufacturing, wholesale, and retail drug trade for the packaging of drugs, proprietary remedies and prescription preparations, and in selling as aforesaid such products to purchasers in other States and in the District of Columbia, and principally retail druggists, in substantial competition with others engaged in sale and distribution of articles which were similar and designed to be used for like purposes in commerce as aforesaid, and with various manufacturers and distributors of boxes, containers, and circulars descriptive of medicinal preparations which were not designed, when used by retailer of drugs and medicinal preparations, to permit the deceiving and defrauding of purchasing public thereby—

- (a) Sold certain boxes, upon which were set forth design and label "ENGLISH CROWN Female (representation of a crown) Pills—A Boon to Suffering Womanhood, Price \$2.00. Will positively remove the most obstinate obstructions and irregularities of menstruation. Guaranteed, the most powerful and effective emmenagogue on earth. PREPARED ONLY BY CROWN CHEMICAL CO., LONDON, ENG.," or with said price shown as \$3 or \$5, at election of buyer; and
- (b) Furnished to purchasers of such boxes, circulars printed in English and German, for use in connection therewith and containing at top thereof words "Female Pills" and, at bottom, "Prepared by Crown Chemical Co., London, Eng.," and such statements and representations as "Caution—Women in a state of pregnancy should avoid the use of these pills as they are liable to induce a miscarriage," "Commence taking these pills—until the desired effect is produced," and "When arrest of menses is feared—using the pills—will in most cases produce the natural function of the organ," and others to effect that pills therein contained had been used with decided success in "* * * cases of impotency, sterility, seminal weakness and other diseases and conditions of the genital organs * * *" and that "* * * by exercising a reasonable amount of perseverance the valuable curative properties of these pills will soon be felt, and a perfect restoration to health, strength and vigor will be sure to follow," and that they were also effective on liver and bowels, affording speedy relief in cases of biliousness, constipation, headache, etc;

Facts being boxes were empty at time of sale, it did not at any time supply purchasers with "Female Pills" prepared by Crown Chemical Co., London, Eng., nor with any other pills, but such boxes and aforesaid circulars were sold to purchasers who desired to package therein and sell to purchasing public pills either of their own compounding or purchased from some other source, within such purchasers' sole discretion and in no way subject to its control, and pills offered and sold therein were not made, prepared, compounded or supplied by such English company, or in England;

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With effect of misleading public into false belief that said boxes, when filled and offered, contained pills prepared or compounded in London, England, and by an English company, known as Crown Chemical Co., and was one of English drug and medicinal preparations for which there is preference among many purchasers and prospective purchasers, as of superior quality, and of inducing purchasing public to believe that pills placed therein were boon to suffering womanhood, and would accomplish results, and had qualities and properties indicated, and had undergone severe tests and given universal satisfaction when properly employed, and with consequence that many purchased drugs and preparations packaged in said boxes and referred to in said advertising matter, in preference to those not misbranded and misrepresented; and

With result that it thus supplied to and placed in the hands of purchasers of said boxes and circulars means and instrumentalities designed to, and capable of permitting them to mislead and deceive purchasing and consuming public as to price, source, place of origin, and therapeutic value of, and results to be obtained from use of, drug or medical preparation placed therein for sale to purchasing and consuming public, and whereby said public could be and was defrauded, and many retail druggists were induced, by reason of designed possibilities of deception and fraud inherent in such boxes and circulars, to purchase substantial volume thereof in preference to those of competitors, and trade was thereby unfairly diverted to it from competitors aforesaid; to the substantial injury of competition in commerce:

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

Mr. W. L. Taggart for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that H. S. McCracken Box & Label Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, H. S. McCracken Box & Label Co., is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 2640 South Shields Avenue in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of manufacturing and selling boxes, cartons and labels to the manufacturing, wholesale, and retail drug trade for the packaging of drugs, proprietary remedies and prescription preparations. Respondent causes, and has caused, the said

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boxes, cartons and labels, when sold, to be transported from its principal place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois, and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been for more than 2 years last past, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of articles similar to those sold and distributed by the respondent, and designed to be used for like purposes, 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 said business, respondent manufactures and sells, and has sold, certain boxes designed and lettered as follows:

ENGLISH CROWN

Female (representation of a crown) Pills

A Boon to Suffering Womanhood—Price \$2.00.

Will positively remove the most obstinate obstructions and irregularities of menstruation. Guaranteed, the most powerful and effective emmenagogue on earth.

PREPARED ONLY BY CROWN CHEMICAL CO., LONDON, ENG.

On the said boxes the price, shown above as \$2, may appear as \$2, \$3 or \$5 at the election of the purchaser.

Respondent also, in the course and conduct of its said business, furnishes to the purchasers of the said boxes, circulars printed in the English and German languages for use in connection with the said boxes. The said circulars, which bear at the top the words "Female Pills" and at the bottom the words "Prepared by Crown Chemical Co., London, Eng.," contain directions, given both directly and by implication, for the use of the said "Female Pills" as an emmenagogue, as an abortifacient, and in connection with the treatment of other ailments, and also contains certain claims, made both directly and by implication, with respect to the therapeutic value of the said "Female Pills." Included among, and typical of, said directions and claims are the following:

Caution—Women in a state of pregnancy should avoid the use of these pills as they are liable to induce a miscarriage.

Commence taking these pills—until the desired effect is produced.

To aid these pills in effecting a cure—

When arrest of menses is feared—using the pills—will in most cases produce the natural function of the organ.

These pills have also been used with decided success in cases of impotency, sterility, seminal weakness and other diseases and conditions of the genital

organs—by exercising a reasonable amount of perseverance the valuable curative properties of these pills will soon be felt, and a perfect restoration to health, strength and vigor will be sure to follow.

These pills have undergone some of the most severe tests and have given universal satisfaction in all cases when properly employed.

In addition—these pills act with remarkable effect on the liver and bowels, promoting the natural functions of these organs and thereby affording speedy relief in cases of biliousness, constipation, headache, etc.

PAR. 5. Said boxes and circulars have been, and are, sold by respondent principally to retail druggists. At the time of sale the said boxes are empty, and at no time does the respondent supply the purchasers with "Female Pills" prepared by "Crown Chemical Co., London, Eng.," nor with any other pill, the said boxes together with the circulars being sold to purchasers who desire to package therein and sell to the purchasing public pills either of their own compounding or purchased from some other source, the composition and the source of the said pills being solely in the discretion of the purchasers of the said boxes and in no way subject to control by respondent.

PAR. 6. The use of the statements "Prepared only by Crown Chemical Co., London, Eng.," "Prepared by Crown Chemical Co., London, Eng.," and the name "English Crown Female Pills" independently or in connection with a simulation of a crown, on the box and circular as herein set forth, has a tendency to, and does, mislead the public into the belief that the box, when filled and offered for sale, contains pills prepared or compounded in London, England, by an English company known as "Crown Chemical Co." There has been, and is, a widespread belief among purchasers and prospective purchasers of drugs and medicinal preparations that certain drugs and medicinal preparations compounded or prepared in England are superior to those compounded or prepared in the United States of America, and many such persons have had, and have, a preference for English drug and medicinal preparations because of said belief in their superiority. Such preference includes preparations of the type described by the respondent on said boxes and in said printed matter sold in connection therewith.

PAR. 7. The belief engendered in the minds of purchasers and prospective purchasers of the pills contained in the box hereinbefore described by the statements set forth in paragraph 6 hereof, is false, misleading, and untrue, since in truth and in fact the pills so offered and sold are not made, prepared, compounded, or supplied by Crown Chemical Co., London, England, nor made, prepared or compounded in England.

PAR. 8. The use of the statements, directions, and claims as set forth in paragraph 4 hereof, made directly and by implication, as to

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the character and the therapeutic effect of, and results to be obtained from, the use of the pills placed in the said boxes by the purchasers of the said boxes, has a tendency to, and does, induce the purchasing public to believe that the said pills: are a boon to suffering womanhood; will remove the most obstinate obstructions and irregularities of menstruation; are the most powerful and effective of emmenagogues; are effective as a treatment for impotency, sterility, seminal weakness and other diseases and conditions of the genital organs, and will restore them to health, strength and vigor; have undergone severe tests and have given universal satisfaction when properly employed; are effective in promoting the natural functions of the liver and bowels, affording speedy relief in cases of biliousness, constipation, and headache; will induce a miscarriage if taken by a pregnant woman; and that the price as stated on the said boxes is one established by Crown Chemical Co. As a result of this mistaken and erroneous belief many persons purchase the drugs and preparations packaged in said boxes and referred to in said advertising matter in preference to drugs and preparations not so misbranded and misrepresented.

PAR. 9. Respondent thus supplies to and places in the hands of purchasers of said boxes and circulars, means and instrumentalities designed to permit, and capable of permitting said purchasers to mislead and deceive the purchasing and consuming public as to the price, source, place of origin and the therapeutic value of, and the results to be obtained from the use of, the drug or medical preparation placed in said boxes for sale to the purchasing and consuming public, thereby placing in the hands of said purchasers of said boxes and circulars, the means and instrumentalities whereby the purchasing public can be, and is, defrauded.

PAR. 10. There are in competition with respondent various manufacturers and distributors of boxes and containers and circulars descriptive of medicinal preparations which are not designed, when used by retailers of drugs and medicinal preparations, to permit such retailer to deceive and defraud the purchasing public. Because of the designed possibilities of deception and fraud inherent in the boxes and circulars sold by respondent, many retail druggists are induced to purchase respondent's boxes and circulars in preference to those of respondent's competitors, and trade is thus diverted unfairly to respondent from its said competitors. As a consequence thereof, 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. 11. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 23, 1938, issued, and on September 26, 1938, served its complaint in this proceeding upon respondent, H. S. McCracken Box & Label Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On November 1, 1938, respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said fact. 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 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, H. S. McCracken Box & Label Co., is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 2640 South Shields Avenue in the city of Chicago, State of Illinois.

PAR. 2. The respondent is now, and has been for more than 2 years last past, engaged in the business of manufacturing and selling boxes, cartons, and labels to the manufacturing wholesale and retail drug trade for the packaging of drugs, proprietary remedies, and prescription preparations.

In the conduct of its business respondent causes, and has caused, the said boxes, cartons, and labels, when sold, to be transported from its principal place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois, and in the District of Columbia.

PAR. 3. In the operation of its said business, respondent is now, and has been for more than 2 years last past, in substantial competition with other corporations and with individuals and partnerships en-

gaged in the sale and distribution of articles similar to those sold and distributed by the respondent, and designed to be used for like purposes, 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 said business, respondent manufactures and sells, and has sold, certain boxes designed and lettered as follows:

ENGLISH CROWN

Female (representation of a crown) Pills

A boon to suffering womanhood—Price \$2.00.

Will positively remove the most obstinate obstructions and irregularities of menstruation. Guaranteed, the most powerful and effective emmenagogue on earth.

PREPARED ONLY BY CROWN CHEMICAL CO., LONDON, ENG.

On the said boxes the price, shown above as \$2 may appear as \$2, \$3 or \$5 at the election of the purchaser.

Further, in the conduct of its business respondent furnishes to the purchasers of the said boxes, circulars printed in the English and German languages for use in connection with the said boxes. The said circulars, which bear at the top the words "Female Pills" and at the bottom the words "Prepared by Crown Chemical Co., London, Eng.," contain directions, given both directly and by implication, for the use of the said "Female Pills" as an emmenagogue, as an abortifacient, and in connection with the treatment of other ailments, and also contains certain claims, made both directly and by implication, with respect to the therapeutic value of the said "Female Pills."

Included among, and typical of, said directions and claims are the following:

Caution—Women in a state of pregnancy should avoid the use of these pills as they are liable to induce a miscarriage.

Commence taking these pills—until the desired effect is produced.

To aid these pills in effecting a cure—

When arrest of menses is feared—using the pills—will in most cases produce the natural function of the organ.

These pills have also been used with decided success in cases of impotency, sterility, seminal weakness and other diseases and conditions of the genital organs—by exercising a reasonable amount of perseverance the valuable curative properties of these pills will soon be felt, and a perfect restoration to health, strength and vigor will be sure to follow.

These pills have undergone some of the most severe tests and have given universal satisfaction in all cases when properly employed.

In addition—these pills act with remarkable effect on the liver and bowels, promoting the natural functions of these organs and thereby affording speedy relief in cases of biliousness, constipation, headache, etc.

PAR. 5. The Commission finds that said boxes and circulars have been, and are, sold by respondent principally to retail druggists.

The Commission further finds that at the time of sale the said boxes are empty, and at no time does the respondent supply the purchasers with "Female Pills" prepared by "Crown Chemical Co., London, Eng.," nor with any other pill, the said boxes together with the circulars being sold to purchasers who desire to package therein and sell to the purchasing public pills either of their own compounding or purchased from some other source, the composition and the source of the said pills being solely in the discretion of the purchasers of the said boxes and in no way subject to control by respondent.

PAR. 6. The Commission finds that the use of the statements "Prepared only by Crown Chemical Co., London, Eng.," "Prepared by Crown Chemical Co., London, Eng.," and the name "English Crown Female Pills" independently or in connection with a simulation of a crown, on the box and circular as herein set forth, has a tendency to, and does, mislead the public into the belief that the box, when filled and offered for sale, contains pills prepared or compounded in London, England, by an English company known as "Crown Chemical Co."

There has been, and is, a widespread belief among purchasers and prospective purchasers of drugs and medicinal preparations that certain drugs and medicinal preparations compounded or prepared in England are superior to those compounded or prepared in the United States of America, and many such persons have had, and have, a preference for English drug and medicinal preparations because of said belief in their superiority. Such preference includes preparations of the type described by the respondent on said boxes and in said printed matter sold in connection therewith.

PAR. 7. The Commission finds that the belief engendered in the minds of purchasers and prospective purchasers of the pills contained in the box hereinbefore described by the statements set forth in paragraph 6 hereof, is false and untrue.

In truth and in fact the pills so offered and sold are not made, prepared, compounded or supplied by Crown Chemical Company, London, England, nor made, prepared or compounded in England.

PAR. 8. The use of the statements, directions, and claims as found in paragraph 4 hereof, made directly and by implication, as to the character and the therapeutic effect of, and results to be obtained from, the use of the pills placed in the said boxes by the purchasers of the said boxes, has a tendency to, and does, induce the purchasing public to believe that the said pills: are a boon to suffering womanhood; will remove the most obstinate obstructions and irregularities

of menstruation; are the most powerful and effective of emmenagogues; are effective as a treatment for impotency, sterility, seminal weakness and other diseases and conditions of the genital organs, and will restore them to health, strength, and vigor; have undergone severe tests and have given universal satisfaction when properly employed; are effective in promoting the natural functions of the liver and bowels, affording speedy relief in cases of biliousness, constipation, and headache; will induce a miscarriage if taken by a pregnant woman; and that the price as stated on the said boxes is one established by Crown Chemical Co. As a result of this mistaken and erroneous belief many persons purchased the drugs and preparations packaged in said boxes and referred to in said advertising matter in preference to drugs and preparations not so misbranded and misrepresented.

PAR. 9. Respondent thus supplies to and places in the hands of purchasers of said boxes and circulars, means and instrumentalities designed to permit, and capable of permitting said purchasers to mislead and deceive the purchasing and consuming public as to the price, source, place of origin and the therapeutic value of, and the results to be obtained from the use of, the drug or medical preparation placed in said boxes for sale to the purchasing and consuming public, thereby placing in the hands of said purchasers of said boxes and circulars, the means and instrumentalities whereby the purchasing public can be, and is, defrauded.

PAR. 10. In the course of the operation of its business respondent is in competition with various manufacturers and distributors of boxes and containers and circulars descriptive of medicinal preparations which are not designed, when used by retailers of drugs and medicinal preparations, to permit such retailer to deceive and defraud the purchasing public.

Because of the designed possibilities of deception and fraud inherent in the boxes and circulars sold by respondent, many retail druggists were and are induced to purchase a substantial volume of respondent's boxes and circulars in preference to those of respondent's competitors, with the result that trade has been unfairly diverted to respondent from its said competitors. As a consequence 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 as herein found are all to the prejudice of the public and of respondent's competitors and

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constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, H. S. McCracken Box & Label Co., a corporation, its officers, representatives, agents, servants, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of boxes, cartons, labels, circulars or other printed matter in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Furnishing to dealers or distributors boxes, cartons, containers, circulars or other printed matter which enable said dealers or distributors to mislead and deceive the purchasing public with reference to the place of origin of the products sold and distributed by them, or the name of the manufacturer or compounder thereof, or the remedial or therapeutic value of such products.

2. Representing, by any name or address designating the manufacturer, or by seals, emblems, or any other device, or in any other manner, that said products, or the contents of said boxes, cartons, or containers are manufactured at any place other than the place of manufacture or that they are manufactured by or for any person, corporation, or partnership, other than the person, corporation, or partnership by whom or for whom said boxes, cartons or containers or the contents thereof are actually manufactured.

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
SAMUEL COHEN, INDIVIDUALLY, AND TRADING AS
S. & C. SALES

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

Docket 3698. Complaint, Feb. 3, 1939—Decision, Mar. 21, 1939

Where an individual engaged in sale and distribution of cameras, sports jackets, pencils, and other articles of merchandise; in soliciting sale of and in selling and distributing his said merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of said products to ultimate consumers, wholly by lot or chance, and which involved distribution to purchasing public of certain literature and instructions, including push cards, order blanks, illustrations of said merchandise and circulars explaining his plan of selling same and allotting it as premiums or prizes to operators of said push cards, by which and in accordance with said card's explanatory legends amount, if any, paid for chance by customer was dependent upon number selected by chance, certain numbers secured selectors Eversharp pencil thus disposed of, and receipt by customer of camera or other article being thus disposed of was dependent upon success or failure in selecting from list of feminine names displayed, name corresponding with that concealed under card's master seal, and by which, failing such contingency, customer received nothing; and

Supplied thereby and placed in the hands of others means of conducting lotteries in sale of his merchandise in accordance with sales plan above described, under which receipt by purchaser of article or nothing for amount of money paid, and which article, if any, purchaser was to receive, and whether person receiving such article received same without cost was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government, and in violation of the criminal laws, 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 something by chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his merchandise and were thereby induced to buy or sell same in preference to buying or selling like or similar articles of merchandise offered by competitors who do not use such or equivalent method, and with effect, by reason of use of such method and game of chance of unfairly diverting trade to him from his competitors, who do not so do, to the substantial injury of competition in commerce:

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

Mr. D. C. Daniel for the Commission.

Zukernick & Zukernick, of Miami Beach, Fla., for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Samuel Cohen, individually and trading as S. & C. Sales, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Samuel Cohen, is an individual trading as S. & C. Sales, with his principal office and place of business located at 4949 D Street, Philadelphia, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of cameras, sports jackets, pencils, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from his aforesaid place of business in Pennsylvania to purchasers thereof in the various other States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise 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 in said commerce as described in paragraph 1 hereof, respondent in soliciting the sale of and in selling and distributing his merchandise furnishes, and 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 sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method of sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push

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cards. One of respondent's push cards bears 54 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 54 small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

NAME UNDER SEAL RECEIVES A CANDID CAMERA

S P A R T U S

Do not remove until all sold.

Nos. 1 to 25, Pay 1 to 25. Nos. over 25, Pay only 25.

Numbers 31 and 41 Each Receive a Guaranteed Eversharp PENCIL.

NUMBERS 11-12-13-14-16 are FREE!

Write Your Name on Reverse Side Opposite Name You Select.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends and instructions. Said prices or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, or whether a person receives an article of merchandise without cost, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push card is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof

and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 an article of merchandise at a price much less than the normal retail price thereof. 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 3, 1939, issued and served its complaint in this proceeding upon respondent, Samuel Cohen, individually and trading as S. & C. Sales, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 1, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. 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 matter and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Samuel Cohen, is an individual trading as S. & C. Sales, with his principal office and place of business located at 4949 D Street, Philadelphia, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of cameras, sports jackets, pencils, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from his aforesaid place of business in Pennsylvania to purchasers thereof in the various other States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise 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 in said commerce, as described in paragraph 1 hereof, respondent in soliciting the sale of and in selling and distributing his merchandise furnishes, and 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 sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of the respondent's push cards bears 54 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push

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card has 54 small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

NAME UNDER SEAL RECEIVES A CANDID CAMERA

S P A R T U S

Do not remove until all sold.

Nos. 1 to 25 pay 1 to 25. Nos. over 25, Pay only 25.
Numbers 31 and 41 Each Receive a Guaranteed Eversharp PENCIL
NUMBERS 11-12-13-14-16 are FREE!

Write Your Name on Reverse Side Opposite Name You Select.

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, or whether a person receives an article of merchandise without cost, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push card is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 described. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondent as above 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, 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 aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Samuel Cohen, individually and trading as S. & C. Sales, or under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale

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and distribution of cameras, sports jackets, pencils or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others punchboards, push or pull cards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping, or transporting to agents or to distributors or members of the public punchboards, push or pull cards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of punchboards, push or pull cards, or other lottery devices.

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

**JACK KING, ALIAS ORRIS DeMATTEIS, TRADING AS
ARTISTIC TAILORING COMPANY AND ARTISTIC
UNIFORM & TAILORING CO.**

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

Docket 3621. Complaint, Oct. 4, 1938—Decision, Mar. 22, 1939

Where an individual engaged in sale and distribution of workmen's service suits, uniforms, shirts, caps, and other wearing apparel to purchasers thereof in other States and in the District of Columbia, in substantial competition with others engaged in sale of apparel similar in kind and character to that sold and distributed by him, and including many who do not in any manner misrepresent the nature, character, and equipment of their business and the quality of their products, and do not make any other false statements in connection with sale and distribution thereof—

- (a) Represented, through statements disseminated in newspapers and other periodicals, leaflets, pamphlets, and other printed matter distributed among prospective purchasers in various States and in said District, that products which he sold and distributed were made or manufactured by him, and that he owned, operated, and maintained tailoring plants for manufacture of clothing, and latest up-to-date tailoring equipment and machines, and employed workmen or tailors who were thoroughly experienced in use of such machinery or equipment, through use of word "Tailoring" in trade names employed by him, and statements therein made, and "Our workmanship is unsurpassed by machine or human hands. Every member of our organization is thoroughly experienced in the use of our latest up-to-date machinery and equipment," and "Mail orders direct to factory now," and "We guarantee every garment to be * * * tailored the size as your order specifies"; and—
- (b) Represented, as aforesaid, that he had branch offices in various localities and was manufacturer of "the world's finest Shield Brand Uniforms, caps, trousers," etc., and that he or his business were "Tailors of the world's finest uniforms," through statements aforesaid and such statements, among others, as "We guarantee every garment to be exactly as described and illustrated in our catalog," and "Shipment to be made from Kansas City or your nearest branch factory";

Facts being he did not own, operate, or maintain tailoring plant or establishment at which products sold and distributed were made or manufactured, own, operate, or maintain latest up-to-date tailoring equipment, etc., or any tailoring equipment and machinery, or have in his employ expert workmen or tailors, or own or operate or maintain clothing factories or branch factories in Kansas City, Los Angeles, or New York, did not tailor garments sold and distributed by him to individual size and measurement of purchaser, and his products were not of quality or nature illustrated and described in his catalog or other advertisements, but were inferior thereto in quality and material, and his statements and representations as above set forth were otherwise false and misleading;

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With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that his business status was as represented, and that his products possessed qualities claimed and represented, and of causing substantial portion of such public, because of such erroneous and mistaken beliefs, to purchase substantial quantities of his said products, and of thus diverting unfairly trade to him from his competitors who truthfully advertise their business status and nature and quality of their products:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Jack King, alias Orris DeMatteis, an individual, trading as Artistic Tailoring Co. and Artistic Uniform & Tailoring Co. hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Jack King, alias Orris DeMatteis, is an individual trading as Artistic Tailoring Co. and Artistic Uniform & Tailoring Co. and having his office and principal place of business at 2107 Grand Avenue, in the city of Kansas City, State of Missouri.

PAR. 2. The respondent is now and has been for more than 1 year last past engaged in the business of selling and distributing workmen's service suits, uniforms, shirts, caps, and other wearing apparel. Respondent sells said products to members of the purchasing public situated in various States of the United States and the District of Columbia, and causes said products, when sold by him, to be transported from his aforesaid place of business in the State of Missouri to the purchasers thereof at their respective points of location in various States of the United States, other than the State of Missouri, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said products among and between the various States of the United States and the District of Columbia.

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PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other individuals and with corporations, partnerships, and firms selling and distributing articles of wearing apparel of a similar kind and character to those sold and distributed by the respondent, as aforesaid. Among such competitors in said commerce are many who do not in any manner misrepresent the nature, character, and equipment of their business and of the quality of their products and who do not make any other false statements in connection with the sale and distribution of their said products.

PAR. 4. In the course and conduct of his said business, and for the purpose of inducing the purchase of his products, respondent has caused advertisements containing representations and claims with respect to his business status and the quality and nature of his products to be disseminated in commerce, as defined in the Federal Trade Commission Act, through the use of advertisements inserted in newspapers and other periodicals having a general circulation throughout the various States of the United States and through the use of booklets, leaflets, pamphlets, and other printed matter distributed among prospective purchasers in the various States of the United States and in the District of Columbia.

Among others, and typical of the representations and claims contained in said false advertising so used and disseminated as aforesaid, are the following:

Tailors of the world's finest uniforms
New York City—Los Angeles, Cal.
2107 Grand Avenue, Kansas City, Mo.

We guarantee every garment to be exactly as described and illustrated in our catalog and tailored the size as your order specified.

We are tailors of the world's finest uniforms.

The Artistic Uniform & Tailoring Company
Manufacturers of

the world's finest Shield Brand Uniforms, caps, trousers, shirts, jackets, etc., also smocks and dresses.

Terms: Net 10 days F.O.B. Factory

Our workmanship is unsurpassed by machine or human hands. Every member of our organization is thoroughly experienced in the use of our latest up-to-date machinery and equipment.

Mail orders direct to factory now.

Shipment to be made from Kansas City or your nearest branch factory.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all

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of which purport to be descriptive of the nature, character, and equipment of the business of the respondent and of the quality of respondent's products, respondent has represented directly and indirectly, among other things, that respondent owns, operates, or maintains the tailoring plant or establishment at which the products which are sold and distributed by the respondent, as aforesaid, are made or manufactured, that respondent owns, operates and maintains the latest up-to-date tailoring equipment and machinery and has in his employ expert workmen or tailors who are thoroughly experienced in the use of such machinery or equipment, that respondent is a tailor of the world's finest uniforms, that respondent owns, operates, or maintains a clothing factory to which prospective purchasers can directly send mail orders for wearing apparel, that respondent owns, operates or maintains clothing factories, or branch factories, in Kansas City, Mo., Los Angeles, Calif., and New York City, N. Y., that respondent tailors the garments which he sells and distributes to the individual size and measurement of the purchaser thereof, that respondent's products are of the quality and material as illustrated and described in the catalog and other advertisements of respondent, that respondent's workmanship is unsurpassed by machine or human hands and that respondent is a manufacturer of the world's finest Shield Brand uniforms, caps, trousers, shirts, etc.

PAR. 6. In truth and in fact, respondent does not own, operate, or maintain the tailoring plant or establishment at which the products which are sold and distributed are made or manufactured. He does not own, operate, or maintain the latest up-to-date tailoring equipment and machinery or any tailoring equipment or machinery. He does not have in his employ expert workmen or tailors who are thoroughly experienced in the use of such machinery or equipment, nor does he have in his employ any expert workmen or tailors. He is not a manufacturer of the world's finest Shield Brand uniforms, caps, trousers, shirts, etc. He does not own, operate, or maintain a clothing factory to which prospective purchasers can directly send mail orders for wearing apparel. He does not own, operate, or maintain clothing factories or branch factories in Kansas City, Mo., Los Angeles, Calif., and New York City, N. Y. He does not tailor the garments which he sells and distributes to the individual size and measurement of the purchaser thereof. His products are not of the quality and nature as illustrated and described in his catalog and other advertisements but are inferior thereto in quality and material. His workmanship is not unsurpassed by machine or human hands.

Respondent purchases the said products which he sells and distributes from the manufacturers and same are not tailored or cut to

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the individual measure of the purchaser but are from regular stock and of regular sizes. Respondent removes the manufacturer's label from said products and places thereon his own label.

PAR. 7. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid, with respect to respondent's business status and the quality and nature of his products, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and that respondent's business status is as represented and his products possess the qualities claimed and represented and cause a substantial portion of the purchasing public because of such erroneous and mistaken beliefs to purchase substantial quantities of respondent's said product. As a result trade has been and is now being diverted unfairly to the respondent from his competitors in commerce who truthfully advertise their business status and the nature and quality of their products. In consequence thereof injury has been 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.

PAR. 8. The aforesaid acts and practices as herein alleged are all to the prejudice and injury of the public and the respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 4, 1938, issued, and on October 11, 1938, served, its complaint in this proceeding upon respondent, Jack King, alias Orris DeMatteis, an individual trading as Artistic Tailoring Co., and Artistic Uniform & Tailoring Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing be-

fore the Commission, on said complaint and 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. The respondent, Jack King, alias Orris DeMatteis, is an individual, trading as Artistic Tailoring Co., and Artistic Uniform & Tailoring Co., and having his principal place of business at 6738 Montgall Street in the city of Kansas City, State of Missouri.

PAR. 2. Said respondent is now and has for more than 1 year last past engaged in the business of selling and distributing workmen's service suits, uniforms, shirts, caps, and other wearing apparel. Respondent sells said products to members of the purchasing public situated in various States of the United States and in the District of Columbia and causes said products, when sold by him, to be transported from his aforesaid place of business in the State of Missouri to the purchasers thereof in various States of the United States, other than the State of Missouri, and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in commerce in said products among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other individuals, corporations, partnerships, and firms selling and distributing articles of wearing apparel of a similar kind and character to those sold and distributed by the respondent as aforesaid. Among such competitors in said commerce are many who do not in any manner misrepresent the nature, character, and equipment of their business and of the quality of their products and who do not make any other false statements in connection with the sale and distribution of their said products.

PAR. 4. In the course and conduct of the said business and for the purpose of inducing the purchase of his products, respondent has caused advertisements containing representations and claims with respect to his business status and the quality and nature of his products to be disseminated in commerce, as defined in the Federal Trade Commission Act, through the use of advertisements inserted in newspapers and other periodicals having a general circulation throughout the various States of the United States and through the

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use of booklets, leaflets, pamphlets, and other printed matter distributed among prospective purchasers in various States of the United States and in the District of Columbia. Among others and typical of the representations and claims contained in said false advertising so used and disseminated, as aforesaid, are the following:

Tailors of the world's finest uniforms
New York City—Los Angeles, Cal.
2107 Grand Avenue, Kansas City, Mo.

We guarantee every garment to be exactly as described and illustrated in our catalog and tailored the size as your order specifies.

We are tailors of the world's finest uniforms.

The Artistic Uniform & Tailoring Company
Manufacturers of

the world's finest Shield Brand Uniforms, caps, trousers,
shirts, jackets, etc. also smocks and dresses.

Terms: Net 10 days F. O. B. Factory.

Our workmanship is unsurpassed by machine or human hands. Every member of our organization is thoroughly experienced in the use of our latest up-to-date machinery and equipment.

Mail orders direct to factory now.

Shipment to be made from Kansas City or your nearest branch factory.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar hereto not herein set out, all of which purport to be descriptive of the nature, character, and equipment of the business of the respondent and of the quality of respondent's products, respondent has represented, directly and indirectly, among other things, that he owns, operates, or maintains the tailoring plant or establishment at which the products, which are sold and distributed by the respondent as aforesaid, are made or manufactured; that respondent owns, operates, and maintains the latest up-to-date tailoring equipment and machinery and has in his employ expert workmen or tailors who are thoroughly experienced in the use of such machinery or equipment; that respondent is the tailor of the world's finest uniforms; that respondent owns, operates, or maintains a clothing factory to which prospective purchasers can directly send mail orders for wearing apparel; that respondent owns, operates, or maintains clothing factories or branch factories in Kansas City, Mo., Los Angeles, Calif., and New York, N. Y.; that respondent tailors the garments which he sells and distributes to the individual size and measurement of the purchaser thereof; that respondent's products are of the quality and material as illustrated and described in the catalog and other advertisements of respondent; that respondent's workmanship is unsurpassed by machinery or human hands; and that respondent is a manufac-

turer of the world's finest Shield Brand Uniforms, caps, trousers, shirts, etc.

PAR. 6. In truth and in fact, respondent does not own, operate, or maintain the tailoring plant or establishment at which the products which are sold and distributed are made or manufactured. He does not own, operate, or maintain the latest up-to-date tailoring equipment and machinery or any tailoring equipment or machinery. He does not have in his employ expert workmen or tailors. He is not a manufacturer of the world's finest Shield Brand uniforms, caps, trousers, shirts, etc. He does not own, operate, or maintain a clothing factory to which prospective purchasers can directly send mail orders for wearing apparel. He does not own, operate, or maintain clothing factories or branch factories in Kansas City, Mo., Los Angeles, Calif., and New York, N. Y. He does not tailor the garments which he sells and distributes to the individual size and measurement of the purchaser thereof. His products are not of the quality and nature as illustrated and described in his catalog and other advertisements but are inferior thereto in quality and material. His workmanship is not unsurpassed by machine or human hands.

PAR. 7. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid, with respect to respondent's business status and the quality and nature of his products, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and the respondent's business status is as represented and his products possess the qualities claimed and represented and cause a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase substantial quantities of respondent's said products. As a result trade has been, and is now being, diverted unfairly to the respondent from his competitors in commerce who truthfully advertise their business status and the nature and quality of their products.

CONCLUSION

The aforesaid acts and practices of the respondent, Jack King, alias Orris DeMatteis, an individual, trading as Artistic Tailoring Co., and Artistic Uniform & Tailoring Co., are to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Jack King, alias Orris DeMatteis, individually and trading as Artistic Tailoring Co. and Artistic Uniform & Tailoring Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of workmen's service suits, uniforms, shirts, caps, and other wearing apparel in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing through the use of the word "tailoring" or any word of similar import or meaning in his trade name or through any other means or device or in any manner that the products sold and distributed by respondent are made or manufactured by him, or that he owns, operates, or maintains a tailoring plant for the manufacture of clothing, unless and until such respondent actually owns and operates or directly and absolutely controls a manufacturing plant wherein said products are manufactured by him.

2. Representing that he owns, operates, or maintains the latest up-to-date tailoring equipment and machines, or that he employs workmen or tailors who are thoroughly experienced in the use of such up-to-date machinery or equipment when such are not the facts.

3. Representing through the use of fictitious addresses or any other manner that respondent has branch offices in various localities where in fact no such branch office exists.

4. Representing that respondent is a manufacturer of Shield Brand or any other brand of uniforms, caps, trousers, shirts, jackets and other articles of wear which the respondent does not in fact manufacture.

5. Representing that respondent is a tailor of the world's finest uniforms.

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

JOSEPH SCULLER, INC., AND JOSEPH SCULLER, MRS.
JOSEPH SCULLER AND HAMEL GURWIN, INDIVIDU-
ALLY AND AS OFFICERS OF JOSEPH SCULLER, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3701. Complaint, Feb. 7, 1939—Decision, Mar. 22, 1939*

Where a corporation, and three officers thereof who formulated, controlled, and directed its policies, acts, and practices and acted together and in cooperation with one another in such acts and practices as below described, engaged in selling and distributing watches, rings, diamonds, and a variety of jewelry and gift articles at wholesale and retail—

Represented, through use of word "Manufacturing" in phrase "Manufacturing Jeweler Wholesale," displayed with trade name employed by them on letter-heads, invoices, and other printed matter for distribution by traveling salesmen and otherwise to customers and prospective customers in other States, that they owned, operated, or controlled plant or factory wherein, or machinery whereby, articles sold by them were made or manufactured;

Facts being they did not own, operate, or control, and had not thus owned, operated, or controlled for some time past, plant or machinery for manufacture of the articles sold and distributed by them as above set forth, but filled orders for such articles with products made in plant or factory and by machinery which they neither owned, operated, nor controlled, and they were not manufacturer or plant operator of such articles, for the purchase of which direct there is a preference on part of certain buyers and prospective buyers, as affording, in their belief, saving of middleman's profit, more uniform line of jewelry, and other advantages;

With effect of causing members of purchasing public situated in various States to have erroneous and mistaken belief that they actually owned and operated, or controlled, plants or factories wherein, or machinery whereby, such merchandise was made or manufactured, and into purchase of substantial amounts of their said products by reason thereof:

Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. B. G. Wilson for the Commission.

Mr. E. J. Schanfarber, of Columbus, Ohio, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Joseph Sculler, Inc., a corporation, and Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin, individuals and officers of Joseph Sculler, Inc., hereinafter

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referred to as respondents, have violated the provisions of 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, Joseph Sculler, Inc., 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 at 35 East Gay Street in the city of Columbus, State of Ohio. Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin are respectively president, vice president, and secretary of said corporate respondent, and have their business offices at the same address of said Joseph Sculler, Inc.

Respondents, Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin, as officers of said corporation, formulate, control, and direct the policies, acts, and practices thereof. Respondents act together and in cooperation with each other in doing the acts and things herein-after alleged. Respondents are now, and for some time last past have been, engaged in the business of selling and distributing at wholesale and retail, watches, rings, diamonds, and a variety of jewelry and gift articles in commerce between and among various States of the United States. Respondents cause, and have caused, said articles when sold to be shipped from their aforesaid place of business in Columbus, State of Ohio, to purchasers thereof located in various other States of the United States.

PAR. 2. In the course and conduct of their business as aforesaid, respondents, in soliciting the sale of, and in selling, their products as above described, have caused letterheads, invoices, and other printed matter to be distributed through traveling salesmen and by other means to customers and prospective customers located in States other than the State of Ohio. Said printed matter includes the following:

JOSEPH SCULLER

Manufacturing JEWELER Wholesale

Third Floor 35 East Gay Street

COLUMBUS, OHIO

The use of the word "manufacturing" within the phrase "Manufacturing Jeweler Wholesale" serves as a representation that respondents own, operate, or control the plant or factory wherein, or machinery whereby, the articles they sell are made or manufactured.

PAR. 3. In truth and in fact, respondents do not own, operate, or control, and have not owned, operated, or controlled for some time last past, a plant, factory, or machinery for the manufacture of the

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articles, jewelry, or watches they sell and distribute as hereinabove alleged, but respondents have filled, and now fill, orders for such articles of merchandise with products which are made or manufactured in a plant or factory or by machinery which they neither own, operate, nor control.

PAR. 4. There is a preference on the part of certain purchasers and prospective purchasers located in the various States of the United States, for buying said articles and like or similar articles directly from the manufacturer or factory producing the same. There is an impression and belief existing among certain of said purchasers or prospective purchasers of said articles that a saving of the middleman's profit may be obtained; that a more uniform line of jewelry may be purchased, and that other advantages may be obtained by purchasing goods directly from a manufacturer or plant operator.

The use by respondents of the word "manufacturing" within the phrase "Manufacturing Jeweler Wholesale" as hereinabove alleged, has the tendency and capacity to mislead and deceive, and has misled and deceived, purchasers by causing them to mistakenly and erroneously believe that the respondents actually own and operate or control the plants or factories wherein, or the machinery whereby, said articles are made or manufactured, and to purchase substantial amounts of respondents' articles on account of such mistaken and erroneous beliefs.

PAR. 5. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 7, 1939, issued and thereafter served its complaint in this proceeding upon respondents, Joseph Sculler, Inc., a corporation, Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin, individually and as officers of Joseph Sculler, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 6, 1939, the respondents filed their answer, in which answer, they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly con-

sidered 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, Joseph Sculler, Inc., 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 35 East Gay Street, in the city of Columbus, State of Ohio. Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin are, respectively, president, vice president, and secretary of said corporate respondent and have their business offices at the same address of said Joseph Sculler, Inc. Respondents Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin, as officers of the said corporation, formulate, control, and direct the policies, acts, and practices thereof. Respondents act together and in cooperation with each other in doing the acts and practices hereinafter described.

Respondents are now, and for some time last past have been, engaged in the business of selling and distributing at wholesale and retail, watches, rings, diamonds, and a variety of jewelry, and gift articles in commerce between and among the various States of the United States. Respondents cause, and have caused, said articles when sold to be shipped from their aforesaid place of business in Columbus, State of Ohio, to purchasers thereof located in various other States of the United States.

PAR. 2. In the course and conduct of their business, as aforesaid, respondents, in soliciting the sale of and in selling their products, as above described, have caused letter-heads, invoices, and other printed matter to be distributed by traveling salesmen, and by other means, to customers and prospective customers located in States other than the State of Ohio. Said printed matter includes the following:

JOSEPH SCULLER

Manufacturing JEWELER Wholesale

Third Floor 35 East Gay Street

COLUMBUS, OHIO

The use of the word "manufacturing" in the phrase "Manufacturing Jeweler Wholesale" serves as a representation that respondents own, operate, or control the plant or factory wherein, or machinery whereby, the articles they sell are made or manufactured.

PAR. 3. In truth and in fact, respondents do not own, operate, or control, and have not owned, operated, or controlled for some time last

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past, a plant, factory, or machinery for the manufacture of the articles, jewelry, or watches they sell and distribute as hereinabove found, but respondents have filled, and now fill, orders for such articles of merchandise with products which are made or manufactured in a plant or factory or by machinery which they neither own, operate, nor control.

PAR. 4. There is a preference on the part of certain purchasers and prospective purchasers located in the various States of the United States for buying said articles and like or similar articles directly from the manufacturer or factory producing the same. There is an impression and belief existing among certain of said purchasers or prospective purchasers of said articles that a saving of the middleman's profit may be obtained, that a more uniform line of jewelry may be purchased, and that other advantages may be obtained by purchasing goods directly from a manufacturer or plant operator.

PAR. 5. The use by respondents of the word "manufacturing" in the phrase "Manufacturing Jeweler Wholesale," disseminated as aforesaid, has the tendency and capacity to, and does, cause members of the purchasing public situated in various States of the United States to have the erroneous and mistaken belief that respondents actually own and operate or control the plants or factories wherein, or machinery whereby, said merchandise is made or manufactured, and into purchasing substantial amounts of respondents' merchandise because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Joseph Sculler, Inc., its officers, and respondents Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin,

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the representatives, agents, and employees of said respondents, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of watches, rings, diamonds, jewelry, and other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly, or indirectly, that they manufacture such merchandise unless and until they own and operate or directly and absolutely control, the plant or factory wherein such merchandise is manufactured.

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
ILLINOIS BAKING CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3495. Complaint, July 16, 1938—Decision, Mar. 27, 1939*

Where a corporation engaged in manufacture of ice cream cones and in sale and distribution thereof and in selling and distributing certain of its cones by means of a lottery scheme, gift enterprise, or game of chance under which retail dealer assembling from coupons, of which it enclosed and concealed one with each 250 cone-package, letters to spell legend "S-A-F-E-T C-O-N-E-S," became entitled to receive from his jobber-seller 1,000 additional cones without additional cost—

Sold assortments as aforesaid to wholesaler and jobber customers by whom coupons, in accordance with aforesaid plan and explanatory legends enclosed, were redeemed for retailer customers in accordance with such plan, and thereby supplied to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in sale of its products in accordance with such sales plans, contrary to public policy as long considered, and to an established public policy of the United States Government, and in competition with many who make and sell such products and are unwilling to offer or sell such cones by said or equivalent or similar method involving same or equivalent or similar element of chance or lottery scheme and refrain therefrom;

With capacity and tendency to induce retail dealers to purchase its said products in preference to those made and offered and sold by its competitors and with result that many dealers were attracted by its said method and manner of selling its said ice cream cones and by element of chance involved in sale thereof as above described and were thereby induced to buy and sell such products in preference to those offered and sold by competitors who do not use such or equivalent methods, and with effect, through use of such method and because of said element of chance, of unfairly diverting trade and custom to it from its competitors aforesaid who are unwilling to and do not use such or equivalent method as unlawful, to their substantial injury:

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

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

Mr. D. C. Daniel for the Commission.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Illinois Baking Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized 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 some time last past has been, 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 and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be shipped or transported from its place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. 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 ice cream cones 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 has, for the past several months, sold and distributed, and is now selling and distributing, certain of its said ice cream cones by means of a lottery scheme, gift enterprise, or a game of chance. Respondent packs and assembles its "Safe-T Cones" in packages containing 250 of said cones and also packs and assembles in each of said packages containing 250 cones, a coupon containing the following statements and legends, among others:

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SAFE-T CONES COUPON

Save these "SAFE-T CONE" Coupons.
Each coupon bears a letter from the name
"SAFE-T CONES"

After you have saved ten coupons to
spell the name "S-A-F-E-T C-O-N-E-S",
you will receive one thousand

"SAFE-T CONES" absolutely free.
There is a coupon packed in every box of
"SAFE-T CONES".

— Look for it! —

MR. DEALER! Ten "SAFE-T CONE" COUPONS which spell the name
"SAFE-T CONES" will be redeemed ONLY BY YOUR JOBBER for one
thousand "SAFE-T CONES".

There *is* a difference in ice cream cones
"SAFE-T CONES" are better. They will not drip *inside* or *outside*.

ILLINOIS BAKING CORPORATION

2230 S. Union Avenue,

Chicago, Ill.

Phone MONroe 4051

The letters in the corners of said coupons are one of the letters in the words "Safe-T Cones" and retail dealers obtaining coupons the letters on which spell the words "Safe-T Cones" are entitled to receive and are to be given by the jobber from whom said cones were purchased one thousand additional cones free of charge or without additional cost. The said printed coupons are sealed in the packages containing 250 cones and the letters in the corners of the coupons cannot be ascertained until the package of cones has been delivered and opened by the retail dealer. Retail dealers thus secure additional cones wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the above described packages of ice cream cones containing the above described printed slip, resell such packages of cones as packed by respondent to retail dealers and redeem the said coupons in accordance with the above described legends. The respondent thus supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance 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 retail dealers to purchase respondent's said products in preference to ice cream cones manufactured and offered for sale and sold by its competitors.

PAR. 4. The sale of ice cream cones in the manner above described involves a game of chance, gift enterprise, or a lottery scheme, and 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 has long been 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 the respondent as above described are unwilling to offer for sale or sell ice cream cones by said method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme and such competitors refrain therefrom. Many dealers are attracted by respondent's said method and manner of selling its ice cream cones 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 products in preference to products offered for sale and sold by competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent because of said element of chance has the capacity and tendency to and does unfairly divert trade and custom to respondent from its said competitors who are unwilling to and who do not use the same or equivalent method because the same is unlawful. As a result thereof, substantial injury is being, and has been, done to said competitors of respondent.

PAR. 5. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 16, 1938, issued and thereafter served its complaint in this proceeding upon respondent Illinois Baking 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the 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 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 some time last past has been, 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 and in the District of Columbia. Respondent causes, and has caused, said products, when sold, to be shipped or transported from its place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. 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 ice cream cones 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 has, for the past several months, sold and distributed, and is now selling and distributing, certain of its said ice cream cones by means of a lottery scheme, gift enterprise, or a game of chance. Respondent packs and assembles its "Safe-T Cones" in packages containing 250 of said cones and also packs and assembles in each of said packages containing 250 cones, a coupon containing the following statements and legends, among others:

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T ————— "SAFE-T CONES" COUPON ————— T

Save these "SAFE-T CONE" Coupons.
Each coupon bears a letter from the name
"SAFE-T CONES"

After you have saved ten coupons to
spell the name "S-A-F-E-T C-O-N-E-S",
you will receive one thousand
"SAFE-T CONES" absolutely free

There is a coupon packed in every box of
"SAFE-T CONES"
—Look for it!—

MR. DEALER! Ten "SAFE-T CONE" COUPONS which spell the name
"SAFE-T CONES" will be redeemed ONLY BY YOUR JOBBER for one
thousand "SAFE-T CONES."

There *is* a difference in ice cream cones
"SAFE-T CONES" are better. They will not drip *inside* or *outside*

ILLINOIS BAKING CORPORATION
2230 S. Union Avenue, Chicago, Ill. Phone MONroe 4051

T ————— T

The letters in the corners of said coupons are one of the letters in the words "Safe-T Cones" and retail dealers obtaining coupons the letters on which spell the words "Safe-T Cones" are entitled to receive and are to be given by the jobber from whom said cones were purchased one thousand additional cones free of charge or without additional cost. The said printed coupons are sealed in the packages containing 250 cones and the letters in the corners of the coupons cannot be ascertained until the package of cones has been delivered and opened by the retail dealer. Retail dealers thus secure additional cones wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells the above described packages of ice cream cones containing the above described printed slip, resell such packages of cones as packed by respondent to retail dealers and redeem the said coupons in accordance with the above described legends. The respondent thus supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale of its products in accordance with the sales plan hereinabove described and said sales plan has the capacity and tendency to induce retail dealers to purchase respondent's said products in preference to ice cream cones manufactured and offered for sale and sold by its competitors.

PAR. 4. The sale of ice cream cones in the manner above described involves a game of chance, gift enterprise, or a lottery scheme, and

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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 has long been 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 the respondent as above described are unwilling to offer for sale or sell ice cream cones by said method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme and such competitors refrain therefrom. Many dealers are attracted by respondent's said method and manner of selling its ice cream cones 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 products in preference to products offered for sale and sold by competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent because of said element of chance has the capacity and tendency to and does unfairly divert trade and custom to respondent from its said competitors who are unwilling to and who do not use the same or equivalent method because the same is unlawful. As a result thereof, substantial injury is being, and has been, done to said competitors of respondent.

CONCLUSION

The aforesaid acts and practices of respondent as herein found 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 the Federal Trade Commission Act.

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 all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Illinois Baking Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale,

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sale and distribution of ice cream cones or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing ice cream cones so packed and assembled that sales of such cones are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Selling or distributing ice cream cones together with coupons so designed or printed that the use of said coupons in the sale or distribution of said cones constitutes the operation of a game of chance, gift enterprise, or lottery scheme.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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
COLUMBIA REFINING CO.

COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914¹

Docket 3517. Complaint, July 30, 1938—Decision, Mar. 27, 1939

Where a corporation engaged, as wholesale dealer in motor oils and lubricants, in selling and distributing such products to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such products as aforesaid, and including dealers therein who are not refiners or manufacturers of such products and who sell and offer the same in commerce and do not in any way misrepresent that they are refiners or otherwise misrepresent their business or products—

Caused its corporate name, including word "Refining," to appear variously in its catalogs and other advertising matter and on its letterheads, invoices and other printed matter and on its containers, issued and circulated by it through the mails, transportation facilities and otherwise to its customers and prospective customers in the various other States and in said District, and represented thereby and otherwise to members of purchasing public, dealers and others, that it owned, controlled and operated a refinery, and that purchasers of its products were dealing directly with the manufacturer or refiner of such motor oils and lubricants, for purchase of which oils direct from refiner thereof there is a preference on part of substantial number among members of purchasing public, as securing them, in their belief, better prices, superior quality, and other advantages not ordinarily obtainable when purchasing through middlemen or others who are not actual refiners of such motor oils being purchased;

Facts being it did not manufacture or refine motor oils and lubricants advertised and sold by it as aforesaid, and did not own, operate, or control a refinery, and did not refine any of products which it sold, and said representations were false, misleading, and untrue;

With tendency and capacity to mislead and deceive substantial portion of purchasing public, and purchasers for resale, into erroneous belief that such representations were true, and with result, as direct consequence of such erroneous and mistaken belief induced by its advertising and representations, that number of consuming public and purchasers for resale bought substantial quantities of its said motor oils and lubricants, and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution of such products and who truthfully advertise the same and their business status:

Held, That such acts, practices, and representations were to the prejudice and injury of the public and competitors and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

Before *Mr. John J. Keenan*, trial examiner.

Mr. John M. Russell for the Commission.

Chamberlin, Kafer, Wilds & Jube and *Mr. Frederick G. Weisser*, of New York City, for respondent.

¹ Original findings and order, issued as of January 18, 1939, not published.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Columbia Refining Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Columbia Refining Co., 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 4402 Twenty-third Street, Long Island City, in said State, and with an oil blending and grease compounding plant located at 1 Westside Avenue, Jersey City, N. J.

PAR. 2. Respondent has been for many years last past, and now is, engaged in business as a wholesale dealer in motor oils and lubricants and in the sale and distribution thereof in commerce between and among the various States of the United States and in District of Columbia. Respondent causes said products, when sold, to be transported from its principal place of business in the State of New York and its said branch in the State of New Jersey to the purchasers thereof located in States of the United States other than the States of New York and New Jersey, and in the District of Columbia.

In the course and conduct of its said business, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations and with partnerships, firms, and individuals engaged in the sale and distribution of motor oils and lubricants, 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 and for the purpose of inducing the purchase of its products, respondent causes its said corporate name, to wit: Columbia Refining Co. of New York, to appear variously in its catalogs and other advertising material and also on its letterheads, invoices, and other printed matter, all of which are issued and circulated by the respondent, through the United States mails and otherwise, to its customers and prospective customers located in the various States of the United States and in the District of Columbia.

Through the use of respondent's corporate name, in the manner hereinabove stated, and through other means, the respondent represents to members of the purchasing public that it owns, controls, and

operates a refinery and that purchasers of its products are dealing direct with the manufacturer or refiner of said products.

The products so advertised and sold in commerce, as herein described, by the respondent are not in fact manufactured or refined by the respondent. Respondent does not own, operate, or control a refinery and does not refine the products sold by it.

There are among the members of the purchasing public a substantial number who prefer to purchase motor oils directly from the refiner thereof, believing that in so doing they secure better prices, superior quality and other advantages not ordinarily obtainable when purchasing through middlemen or others who are not the actual refiners of the motor oils being purchased.

PAR. 4. There are dealers in motor oils and lubricants who are not refiners or manufacturers of said products and who sell and offer for sale their products in commerce between and among the various States of the United States, and who do not in any way misrepresent that they are refiners, or otherwise misrepresent their business or products.

The aforesaid acts, practices, and representations of the respondent in the course of its advertising, offering for sale, and selling of its products in commerce, as aforesaid, were and are calculated to have, and now have, a tendency and capacity to mislead and deceive a substantial part of the purchasing public into the erroneous belief that said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's products, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing motor oils and lubricants who truthfully advertise their respective products and their business status. In consequence thereof, injury has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The above alleged acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 30, 1938, issued and on August 1, 1938, served its complaint in this proceeding upon respond-

ent, Columbia Refining Co., a corporation, charging it with the use of unfair methods of competition and with unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance and service of said complaint the respondent herein, on September 10, 1938, filed an answer in which it in part admitted and in part denied the allegations of the complaint. Subsequent thereto, on December 7, 1938, respondent, with the approval of the Commission, withdrew its original answer and filed herein a substitute answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter, and having found that the proceeding was in the interest of the public, made and entered its findings as to the facts and conclusion on January 18, 1939, and the Commission now being desirous of modifying its said findings, as is provided for under the provision of said Act of Congress, makes this its modified findings as to the facts and conclusion drawn therefrom.

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Columbia Refining Co. is a corporation duly 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 4402 Twenty-Third Street, Long Island City, N. Y., and with an oil blending and grease compounding plant located at 1 Westside Avenue, Jersey City, N. J. Respondent's grease compounding operations are not involved in this proceeding.

PAR. 2. Respondent has for many years last past, and now is, engaged in business as a wholesale dealer in motor oils and lubricants and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes said products, when sold, to be transported from its principal place of business in the State of New York and its said branch in the State of New Jersey to the purchasers thereof located in States of the United States other than the States of New York and New Jersey and in the District of Columbia.

In the course and conduct of its said business, respondent is now and has been at all times mentioned herein, in substantial competition with other corporations and with partnerships, firms, and in-

dividuals engaged in the sale and distribution of motor oils and lubricants 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 and for the purpose of inducing the purchase of its products, respondent causes its said corporate name, to wit, Columbia Refining Co. of New York, to appear variously in its catalogs and other advertising material, and also on its letterheads, invoices and other printed matter, and on its containers, all of which are issued and circulated by the respondent through the United States mails, transportation facilities and otherwise, to its customers and prospective customers located in the various States of the United States other than the States of New York and New Jersey and in the District of Columbia.

Through the use of the said corporate name in the manner hereinabove stated, and through other means, the respondent represents to the members of the purchasing public, to dealers and others, that it owns, controls, and operates a refinery, and that purchasers of its products are dealing directly with the manufacturer or refiner of such motor oils and lubricants.

PAR. 4. The representations made by the respondent with respect to its business as set out in paragraph 3 hereof, are false, misleading, and untrue. The motor oils and lubricants advertised and sold in commerce, as hereinbefore described, by the respondent, are not manufactured or refined by it. Respondent does not own, operate, or control a refinery and does not refine any of the products sold by it.

There are, among the members of the purchasing public, a substantial number who prefer to purchase motor oils directly from the refiner thereof, believing that in so doing they secure better prices, superior quality and other advantages not ordinarily obtainable when purchasing through middlemen or others who are not the actual refiners of the motor oils being purchased.

There are dealers in such motor oils and lubricants who are not refiners or manufacturers of said products and who sell and offer for sale their products in commerce between and among the various States of the United States and who do not in any way misrepresent that they are refiners or otherwise misrepresent their business or products.

PAR. 5. The aforesaid acts, practices, and representations of the respondent, in the course of its advertising, offering for sale and selling of its products in commerce as aforesaid, were and are calculated to have, and had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public and purchasers for resale into the erroneous belief that said representations

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are true. As a direct result of such erroneous and mistaken belief induced by the advertising and representations of respondent, a number of the consuming public and purchasers for resale have purchased a substantial quantity of respondent's motor oils and lubricants with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of selling and distributing motor oils and lubricants who truthfully advertise their respective products and their business status.

CONCLUSION

The acts, practices and representations of the respondent, Columbia Refining Co., as herein found, have been and are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent in which answer respondent admits all the material allegations of fact set forth in the complaint and states that it waives all intervening procedure and further hearings as to said facts, and the Commission, on January 18, 1939, having made its findings as to the facts and conclusion that said respondent had violated the provisions of the Federal Trade Commission Act, and having issued its order to cease, and the Commission having on this date modified its said findings as to the facts and now being desirous of modifying its order to cease and desist so as to conform with its said modified findings as to the facts and conclusion, and being advised in the premises.

It is ordered, That the order to cease and desist issued on January 18, 1939, be, and the same is hereby, modified to read as follows:

It is ordered, That the respondent, Columbia Refining Co., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of its motor oils and lubricants in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing through the use of the word "Refining" or any word or term of similar import and meaning in its corporate name, cata-

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logs, advertising material, or in any other manner or through any means or device, that it is a refiner or manufacturer of motor oils and lubricants (other than greases) until and unless it owns and operates or directly and absolutely controls a refinery or plant wherein such motor oils and lubricants are manufactured or refined 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.

IN THE MATTER OF
TRAFFIC INSPECTORS TRAINING CORPORATION AND
FRED J. KAVANAGH AND CHARLES VAN BUREN

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

Docket 3562. Complaint, Aug. 29, 1938—Decision, Mar. 27, 1939

Where a corporation and two individuals, who were general officers and principal stockholders thereof and jointly managed, controlled, and directed its policies and operation, engaged in sale and distribution in commerce among States of correspondence course of study and instruction to prepare students for positions as traffic inspectors or checkers, in substantial competition with others engaged in sale and distribution of similar correspondence courses in commerce and in District of Columbia, and including many who do not in any manner use misrepresentations in connection with sale and distribution of their courses; through newspaper advertisements, circulars, and other printed matter circulated to general public throughout the United States, and through verbal statements made by their agents and solicitors—

- (a) Represented "INSPECTORS NEEDED \$150-\$175 Per Month," and "Trained men and women are needed constantly as Railroad, Electric Railway, Streetcar, and Busline Passenger Traffic Inspectors" and that such occupation or "transportation" offered steady employment at high salaries, with opportunity to travel or stay near home, and opportunity for "well-paid position" in "new and uncrowded field";

Facts being there was no such demand, which exceeded supply of trained and experienced inspectors, transportation companies will not employ those who have theoretical knowledge only and no practical experience, such employment has been going on for 50 years and field is not new and does not offer well-paid positions or steady or permanent work or opportunity to remain in given locality for any length of time, or choice of locations, and traffic inspectors do not earn salaries as above set forth, but are compensated, usually, on per diem basis;

- (b) Made many representations as to guaranteeing and securing positions, including statements, in many instances, to prospective purchasers, that there was great demand on said corporation by railroad companies for its graduates, and that they had connections with a large number of such companies and were, therefore, in a position to place graduates without difficulty or delay, and that women graduates could be placed readily with any such company, and other statements of similar import;

Facts being there was no such demand, few, if any, individuals who completed said course found employment as such inspectors, they had no connection whatever with any railroad or other carrier of passengers, and could not and did not fulfill promises and guarantees made to students with respect to employment, and many passenger carriers do not employ women as such inspectors; and

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(c) Represented, as aforesaid, to students and prospective students, that their said 30-lesson course could be completed in 2 or 3 months, and that while completing his studies person could be sufficiently qualified to secure position and earn substantial salary;

Facts being no one had ever completed said course within 3, or even 6, months or ever found employment after partially completing said course, lessons thereof were mailed by them to their students at intervals of week or 10 days, and grading of papers and mailing of lessons were in many instances delayed for much longer periods;

With effect of misleading and deceiving purchasers and prospective purchasers of such courses of study and training into erroneous and mistaken belief that such representations were true, and with capacity and tendency so to do and to induce them to act on belief aforesaid and purchase and pay for their said courses, with result that trade was thereby diverted unfairly to them from competitors:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Harlow B. Ansell, of Syracuse, N. Y., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act the Federal Trade Commission, having reason to believe that Traffic Inspectors Training Corporation, a corporation, and Fred J. Kavanagh and Charles Van Buren, hereinafter referred to as respondents, have violated the provisions of 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, Traffic Inspectors Training Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York.

Respondent Fred J. Kavanagh is president and respondent Charles Van Buren is secretary and treasurer of said corporation, both individuals being the principal stockholders, jointly managing, controlling, and directing its policies and operations. The offices and principal places of business of all three of said respondents are in the Chimes Building, city of Syracuse and State of New York. Prior to the incorporation of said Traffic Inspectors Training Corporation on September 9, 1937, said individual respondents on April 27, 1937, had started the business hereinafter described, as copartners, continuing as such copartnership until the date of said incorporation.

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PAR. 2. Said respondents are now and since the dates set forth in paragraph 1 have been engaged in the sale and distribution in commerce between and among the various States of the United States of a course of study and instruction intended for preparing students thereof for positions as traffic inspectors or checkers, which said course is pursued by correspondence through the medium of the United States mail. Said respondents in the course and conduct of their said business, during the time aforesaid, caused, and do now cause, their said course of study and instruction to be transported from their said place of business in Syracuse, N. Y., to, into and through States of the United States other than New York, to the various purchasers thereof in such other States.

PAR. 3. There is now, and has been at all times hereinafter mentioned a course of trade in said course of instruction so sold and distributed by said respondents 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 their business as aforesaid, respondents are now, and since the dates aforesaid have been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of similar correspondence courses of instruction 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 their said business, and for the purpose of inducing the purchase of their course, respondents, by means of newspaper advertisements, circulars, and other printed matter circulated to the general public throughout the United States, and by verbal statements made by their agents and solicitors to purchasers and prospective purchasers of said course make many representations to the effect that trained traffic inspectors are constantly in demand at high salaries and that employment may be had on the road or near home. Examples of such representations are the following:

INSPECTORS NEEDED \$150-\$175 Per Month

Trained men and women are needed constantly as Railroad, Electric Railway, Streetcar and Busline Passenger Traffic Inspectors.

Transportation offers interesting outdoor employment at high salaries. Travel or stay near home.

Would you like to know how you can qualify in a short time at home for a well-paid position in this new and uncrowded field?

In truth and in fact passenger traffic inspectors are not in constant demand by the various passenger transportation companies for the reason that the supply of trained and experienced inspectors is

greater than the demand. Moreover, transportation companies will not employ applicants who have only a theoretical knowledge of the work and no practical experience. The representation that traffic inspection is a new field is also false in that traffic inspectors have been employed by passenger carriers for about 50 years.

In truth and in fact the representations that traffic inspectors earn between \$150 and \$175 per month and that there are well-paid positions are false and misleading. The nature of the work is such that it can be neither steady nor permanent, and compensation is usually on a per diem basis. Traffic inspectors are generally hired for one trip and employment rarely extends over 1 month.

Representations that traffic inspectors may secure positions near their homes are also false and misleading. In truth and in fact, the location of the work is determined by the needs of the carriers for traffic inspectors and not subject to choice by applicants for said work. Moreover, no traffic inspector can remain in any given locality for any length of time for the reason that his services in such locality are valueless as soon as his identity becomes known to the employees of the carrier for whom such inspector is working.

PAR. 6. Respondents also make many representations in the manner aforesaid, as to guaranteeing and securing positions, which are false and misleading. In many instances representations are made to prospective purchasers of said course of instruction that there is a great demand by railroad companies on respondent Traffic Inspectors Training Corporation for its graduates; that respondents have connections with a large number of railroad companies and are therefore in a position to place their graduates without difficulty or delay; that women graduates can be placed readily with any railroad company; and many other representations of similar import.

In truth and in fact there is no demand made on respondents by passenger carriers for traffic inspectors who have completed respondents' said course. Few, if any, individuals who have completed said course have found employment as traffic inspectors. Respondents have no connection whatever with any railroad company or other carrier of passengers and cannot and do not fulfil the promises and guarantees made to their students with respect to employment. There are many passenger carriers who do not employ women as traffic inspectors.

PAR. 7. By the means aforesaid, respondents falsely and misleadingly represent the length of time required in which said course of study and training may be completed, by assuring students and prospective students that the course could be completed in 2 or 3 months

and that while the complete course consists of 30 lessons, a person could be sufficiently qualified to secure a position and earn a substantial salary while completing his studies.

In truth and in fact no one has ever completed said course of study and training within 3 or even 6 months; nor has anyone ever found employment after partially completing said course. On the contrary, respondents mail the lessons comprising said course to their students at intervals of a week or 10 days and in many instances delay the grading of papers and mailing of lessons for much longer periods.

PAR. 8. The said advertisements and representations set forth in paragraphs 5, 6, and 7 hereof, and others of like and similar import are false, misleading, and deceptive in that respondents thereby represent that:

1. Trained men and women are constantly needed as traffic inspectors.

2. Traffic inspectors earn substantial salaries and have steady employment.

3. Traffic inspectors may elect to travel or work near their homes.

4. The field of traffic inspection is new and uncrowded.

5. Positions are guaranteed because of their connections with passenger carriers.

6. The traffic inspectors training course can be completed within 3 months or less.

7. Students are enabled to secure positions and earn salaries before said course is completed.

In truth and in fact all of said representations are either false and misleading or grossly exaggerated and not warranted by the facts. There is no constant demand for traffic inspectors by passenger carriers. Traffic inspectors do not earn high salaries but are employed only for short periods of time and usually on a per diem basis; the location of their work is not of their own choosing but is determined by the passenger carriers employing them; the work of traffic inspection is not new but has been carried on for many years and the number of trained and experienced inspectors exceeds the demand for them. Respondents do not guarantee positions and have no connections of any sort enabling them to find immediate employment for their students either before or after completion of said course of study and training. Students are not given an opportunity to complete said course in a short time but are supplied with their lessons in not less than 30 weeks.

PAR. 9. The statements and representations so made by respondents in the manner and by the means hereinabove alleged, have the tendency

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and capacity to, and do, mislead and deceive purchasers and prospective purchasers of said course of study and training into the erroneous and mistaken belief that such representations are true, and to induce them to act on such belief and to purchase and pay for respondents' course of study and instruction. Thereby trade is diverted unfairly to respondents from respondents' competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 10. Among the competitors of the respondents described in paragraph 4 hereof are many who do not in any manner use misrepresentations in connection with the sale and distribution of their said correspondence courses of instruction.

PAR. 11. The above-alleged acts and practices of respondents are all to the prejudice of the public and of competitors of respondents and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 29, 1938, issued, and on August 31, 1938, served, its complaint in this proceeding upon respondents, Traffic Inspectors Training Corporation, a corporation, and Fred J. Kavanagh, and Charles Van Buren, 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, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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 the said complaint and substitute answers, 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, Traffic Inspectors Training Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York.

Respondent, Frank J. Kavanagh, erroneously named in the complaint as Fred J. Kavanagh, is president, and respondent Charles Van Buren is secretary and treasurer of said corporation, both individuals being the principal stockholders, jointly managing, controlling, and directing its policies and operations. The offices and principal places of business of all three of said respondents are in the Chimes Building, city of Syracuse and State of New York. Prior to the incorporation of said traffic Inspectors Training Corporation on September 9, 1937, said individual respondents on April 27, 1937, had started the business hereinafter described, as copartners, continuing as such copartnership until the date of said incorporation.

PAR. 2. Said respondents are now and since the dates set forth in paragraph 1 have been engaged in the sale and distribution in commerce between and among the various States of the United States of a course of study and instruction intended for preparing students thereof for positions as traffic inspectors or checkers, which said course is pursued by correspondence through the medium of the United States mail. Said respondents in the course and conduct of their said business, during the time aforesaid, caused, and do now cause, their said course of study and instruction to be transported from their said place of business in Syracuse, N. Y., to, into and through States of the United States other than New York, to the various purchasers thereof in such other States.

PAR. 3. There is now, and has been at all times hereinafter mentioned, a course of trade in said course of instruction so sold and distributed by said respondents 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 their business as aforesaid, respondents are now, and since the dates aforesaid have been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of similar correspondence courses of instruction 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 their said business, and for the purpose of inducing the purchase of their course, respondents, by means of newspaper advertisements, circulars and other printed matter circulated to the general public throughout the United States, and by verbal statements made by their agents and solicitors to purchasers and prospective purchasers of said course make many representations to the effect that trained traffic inspectors are constantly in demand at high salaries and that employment may be had on the

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road or near home. Examples of such representations are the following:

INSPECTORS NEEDED \$150-\$175 Per Month

Trained men and women are needed constantly as Railroad Electric Railway, Streetcar and Busline Passenger Traffic Inspectors.

Transportation offers interesting outdoor employment at high salaries. Travel or stay near home.

Would you like to know how you can qualify in a short time at home for a well-paid position in this new and uncrowded field?

In truth and in fact passenger traffic inspectors are not in constant demand by the various passenger transportation companies for the reason that the supply of trained and experienced inspectors is greater than the demand. Moreover, transportation companies will not employ applicants who have only a theoretical knowledge of the work and no practical experience. The representation that traffic inspection is a new field is also false in that traffic inspectors have been employed by passenger carriers for about 50 years.

In truth and in fact the representations that traffic inspectors earn between \$150 and \$175 per month and that there are well-paid positions are false and misleading. The nature of the work is such that it can be neither steady nor permanent, and compensation is usually on a per diem basis. Traffic inspectors are generally hired for one trip and employment rarely extends over 1 month.

Representations that traffic inspectors may secure positions near their homes are also false and misleading. In truth and in fact, the location of the work is determined by the needs of the carriers for traffic inspectors and not subject to choice by applicants for said work. Moreover, no traffic inspector can remain in any given locality for any length of time for the reason that his services in such locality are valueless as soon as his identity becomes known to the employees of the carrier for whom such inspector is working.

PAR. 6. Respondents also make many representations in the manner aforesaid, as to guaranteeing and securing positions, which are false and misleading. In many instances representations are made to prospective purchasers of said course of instruction that there is a great demand by railroad companies on respondent Traffic Inspectors Training Corporation for its graduates; that respondents have connections with a large number of railroad companies and are therefore in a position to place their graduates without difficulty or delay; that women graduates can be placed readily with any railroad company; and many other representations of similar import.

In truth and in fact there is no demand made on respondents by passenger carriers for traffic inspectors who have completed respondents' said course. Few, if any, individuals who have completed said

course have found employment as traffic inspectors. Respondents have no connection whatever with any railroad company or other carrier of passengers and cannot and do not fulfill the promises and guarantees made to their students with respect to employment. There are many passenger carriers who do not employ women as traffic inspectors.

PAR. 7. By the means aforesaid, respondents falsely and misleadingly represent the length of time required in which said course of study and training may be completed, by assuring students and prospective students that the course could be completed in 2 or 3 months and that while the complete course consists of 30 lessons, a person could be sufficiently qualified to secure a position and earn a substantial salary while completing his studies.

In truth and in fact no one has ever completed said course of study and training within 3 or even 6 months; nor has anyone ever found employment after partially completing said course. On the contrary, respondents mail the lessons comprising said course to their students at intervals of a week or ten days and in many instances delay the grading of papers and mailing of lessons for much longer periods.

PAR. 8. The said advertisements and representations set forth in paragraphs 5, 6, and 7 hereof, and others of like and similar import are false, misleading, and deceptive in that respondents thereby represent that:

1. Trained men and women are constantly needed as traffic inspectors.
2. Traffic inspectors earn substantial salaries and have steady employment.
3. Traffic inspectors may elect to travel or work near their homes.
4. The field of traffic inspection is new and uncrowded.
5. Positions are guaranteed because of their connections with passenger carriers.
6. The traffic inspectors training course can be completed within three months or less.
7. Students are enabled to secure positions and earn salaries before said course is completed.

In truth and in fact all of said representations are either false and misleading or grossly exaggerated and not warranted by the facts. There is no constant demand for traffic inspectors by passenger carriers. Traffic inspectors do not earn high salaries but are employed only for short periods of time and usually on a per diem basis; the location of their work is not of their own choosing but is determined by the passenger carriers employing them; the work of traffic inspection is not new but has been carried on for many years and the num-

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ber of trained and experienced inspectors exceeds the demand for them. Respondents do not guarantee positions and have no connections of any sort enabling them to find immediate employment for their students either before or after completion of said course of study and training. Students are not given an opportunity to complete said course in a short time but are supplied with their lessons in not less than 30 weeks.

PAR. 9. The statements and representations so made by respondents in the manner and by the means hereinabove alleged, have the tendency and capacity to, and do, mislead and deceive purchasers and prospective purchasers of said courses of study and training into the erroneous and mistaken belief that such representations are true, and to induce them to act on such belief and to purchase and pay for respondents' courses of study and instruction. Thereby trade is diverted unfairly to respondents from respondents' competitors in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 10. Among the competitors of the respondents described in paragraph 4 hereof are many who do not in any manner use misrepresentations in connection with the sale and distribution of their said correspondence courses of instruction.

CONCLUSION

The aforesaid acts and practices of the respondent as herein alleged 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 the Federal Trade Commission Act.

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 fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Traffic Inspectors Training Corporation, a corporation, its officers, agents, representatives, and employees, and Frank J. Kavanagh, named in the complaint as Fred J. Kavanagh, and Charles Van Buren, their agents, representatives, and employees, directly or through any corporate or other device, in con-

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nection with the offering for sale, sale and distribution of correspondence courses of instruction for the purpose of training traffic inspectors, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

1. That trained men and women are constantly needed as traffic inspectors, earn substantial salaries, have steady employment, and may elect to travel or work near their homes.

2. That the field of traffic inspection is new and uncrowded.

3. That positions are guaranteed by the respondents because of their connections with passenger carriers.

4. That the traffic inspectors training course can be completed within a period of 3 months or less.

5. That students are enabled to secure positions and earn salaries before said course of instruction is completed.

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
W. H. COMSTOCK COMPANY, LTD.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket \$650. Complaint, Nov. 10, 1938—Decision, Mar. 27, 1939*

Where a corporation engaged in sale and distribution of medicinal preparations known as "Comstock's Dead Shot Worm Pellets" and "Comstock's N and B Liniment," to purchasers in other States and in District of Columbia, in substantial competition with others engaged in sale and distribution among the various States and in said District of similar medicinal products or products designed for same or similar purposes, and including many who sell such preparations and do not in any way misrepresent the nature and effectiveness thereof—

- (a) Represented, through advertisements disseminated through the mails and in commerce and otherwise, to induce purchase of its said preparations, that said preparation for treatment of worm infection was a specific medicine for such condition which eliminated said worms from the body and was unailing in its action in the treatment of such infection, facts being it was not such a specific treatment, would not accomplish such results, and was not unailing in its action; and
- (b) Represented, as aforesaid, including use of purported testimonial quotations, that its said "N and B Liniment" had therapeutic value in the treatment of, and relieved pain of, rheumatism, lumbago, and neuralgia, and was a remedy or cure for, and had therapeutic value in treatment of, chest colds, and in treatment of muscular pains, sprains, strains, and bruises, facts being said liniment did not give quick relief to all types of muscular pains and was not effective treatment for pains of rheumatism, lumbago, and neuralgia, nor treatment or remedy for chest colds, and would not cure or aid in treatment of serious muscular ailments, but was merely counter-irritant and only of value in treatment of muscular pains when due to minor conditions such as exercise or fatigue, and was not aid in treatment of chest colds which, as internal disorders, will not yield to external counter-irritant application;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that said statements and representations were true, and with result, as direct consequence of such belief, that number of consuming public purchased substantial volume of its said preparations, and trade in commerce as aforesaid was diverted unfairly to it from its competitors likewise engaged in distribution and sale of similar medicinal preparations, or those designed for similar purposes, and who truthfully advertise their respective products:

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

Mr. B. G. Wilson for the Commission.

Complaint

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that W. H. Comstock Co., Ltd., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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. W. H. Comstock Co., Ltd., is a corporation organized and existing under and by virtue of the laws of the Province of Ontario, Dominion of Canada, with its principal offices and place of business located in the city of Brockville, Province of Ontario, and with a branch office located in Morristown, N. Y., U. S. A.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the business of selling and distributing medicinal preparations known as "Comstock's Dead Shot Worm Pellets" and "Comstock's N and B Liniment." Respondent causes said preparations, when sold, to be transported from its place of business in the State of New York to its customers located in other States of the United States and in the District of Columbia.

Respondent maintains and at all times herein mentioned has maintained a course of trade in said medicinal preparations sold and distributed by it 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, respondent is in active and substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of similar medicinal products, or of products designed for the same or similar purposes as are respondent's preparations, 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 as aforesaid respondent has disseminated and caused to be disseminated false advertisements—

1. By the United States mails and in commerce by other means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the aforesaid preparations; and

2. By other means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase in commerce of said preparations.

Among and typical of representations thus made by the respondent are the following:

Comstock's Dead Shot Worm Pellets for round and pin worms. Easy to take expellant. The specific medicine for treatment of worm infection. Positively eliminates stomach (round or maw) worms and pin (thread and seat) worms. Unfailing in action. * * *

Comstock's N and B Liniment Works Quickly—It rapidly penetrates the skin and throws a comforting, soothing warmth into the tissues. * * * It eases most muscular pains in a few minutes.

When a liniment is needed it is needed for quick relief of muscular pains. That's the principal purpose of any liniment.

Use it as a liniment should be used, for muscular pains, sprains, strains and bruises; for the pains of rheumatism, lumbago and neuralgia; and for the irritation of chest colds.

When a child, I contracted an illness which left one leg under-developed. It is sometimes impossible for me to walk. Sometime ago I purchased a bottle of your N and B Liniment and it promoted circulation as no other liniment did.

I suffered with a lame back caused by weak muscles and at times was unable to straighten up. I read in your Almanac what Comstock's N and B Liniment had done for others and decided to give it a trial. After two weeks' applications my back felt much stronger, in fact better than it had in three years.

All such statements, together with similar statements appearing in respondent's literature, purported to be descriptive of respondent's products. In all of its advertising literature and through other means, through the statements and representations herein set out and other statements of similar import and effect, respondent directly or by inference represents: that its medicinal preparation known as "Comstock's Dead Shot Worm Pellets" is the specific medicine for the treatment of worm infections, that it positively eliminates stomach worms and pin worms and is unfailing in its action; that its medicinal preparation known as "Comstock's N and B Liniment" gives quick relief to all types of muscular pains, that it is an effective treatment for the pains of rheumatism, lumbago, and neuralgia, that it is a treatment or remedy for chest colds, that it will aid or cure serious muscular ailments of the human body.

PAR. 5. Representations made by respondent with respect to the nature and effect of its preparations are greatly exaggerated, misleading and untrue. In truth and in fact, Comstock's Dead Shot Worm Pellets is not the specific treatment for worm infection and will not eliminate stomach worms and pin worms, nor is it unfailing in its action. Comstock's N and B Liniment does not give quick relief to all types of muscular pains. This preparation is not an effective treatment for the pains of rheumatism, lumbago, and neuralgia. This preparation is not a treatment or remedy for chest colds and will not cure or aid serious muscular ailments of the human body.

The true facts are that this preparation is merely a counter-irritant and is only of value in the treatment of muscular pains when those pains are due to minor conditions such as exercise or fatigue. It will not constitute an effective treatment for the pains of rheumatism, lumbago, and neuralgia. It is not an aid in the treatment of chest colds because chest colds are internal disorders which will not yield to an external counter-irritant application.

PAR. 6. There are among the respondent's competitors many who distribute and sell similar medicinal preparations designed for the treatment of the same or similar conditions who do not in any way misrepresent the nature and effect of their respective products.

PAR. 7. The use of the false and misleading statements as hereinabove described has had and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's preparations, with the effect that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of distributing and selling similar medicinal preparations or medicinal preparations designed for similar purposes who truthfully advertise their respective products.

As a consequence thereof, 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. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 10, 1938, issued and on November 15, 1938, served its complaint in this proceeding upon respondent, W. H. Comstock Co., Ltd., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices 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

fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the 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, W. H. Comstock Co., Ltd., is a corporation organized and existing under and by virtue of the laws of the Province of Ontario, Dominion of Canada, and having its principal offices and place of business located in the city of Brockville, Province of Ontario, and a branch office located in Morristown, N. Y., U. S. A.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the business of selling and distributing medicinal preparations known as "Comstock's Dead Shot Worm Pellets" and "Comstock's N and B Liniment." Respondent causes said preparations, when sold, to be transported from its place of business in the State of New York to the purchasers thereof at their respective points of location in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said medicinal preparations, sold and distributed by it, 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, respondent is in active and substantial competition with other corporations and with individuals and partnerships 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 similar medicinal products, or of products designed for the same or similar purposes as are respondent's preparations.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has disseminated and caused to be disseminated false advertisements—

1. By the United States mails and in commerce, as commerce is defined in the Federal Trade Commission Act, by other means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of the aforesaid preparations; and

2. By other means for the purpose of inducing and which are

likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparations.

Among and typical of representations thus made by the respondent are the following:

Comstock's Dead Shot Worm Pellets for round and pin worms. Easy to take expellant. The specific medicine for treatment of worm infection. Positively eliminates stomach (round or maw) worms and pin (thread and seat) worms. Unfailing in action. * * *

Comstock's N and B Liniment Works Quickly—It rapidly penetrates the skin and throws a comforting, soothing warmth into the tissues. * * * It eases most muscular pains in a few minutes.

When a liniment is needed it is needed for quick relief of muscular pains. That's the principal purpose of any liniment.

Use it as a liniment should be used, for muscular pains, sprains, strains, and bruises; for the pains of rheumatism, lumbago and neuralgia; and for the irritation of chest colds.

When a child, I contracted an illness which left one leg underdeveloped. It is sometimes impossible for me to walk. Sometime ago I purchased a bottle of your N and B Liniment and it promoted circulation as no other liniment did.

I suffered with a lame back caused by weak muscles and at times was unable to straighten up. I read in your Almanac what Comstock's N and B Liniment had done for others and decided to give it a trial. After two weeks' applications my back felt much stronger, in fact better than it had in three years.

All such statements, together with similar statements appearing in respondent's literature, purported to be descriptive of respondent's products. In all of its advertising literature and through other means, through the statements and representations herein set out and other statements of similar import and effect, respondent directly or by inference represents: that its medicinal preparation known as "Comstock's Dead Shot Worm Pellets" is the specific medicine for the treatment of worm infections, positively eliminates stomach worms and pin worms, and is unfailing in its action; that its medicinal preparation known as "Comstock's N and B Liniment" gives quick relief to all types of muscular pains, is an effective treatment for the pains of rheumatism, lumbago and neuralgia, is a treatment or remedy for chest colds, and will aid in the treatment of or cure serious muscular ailments of the human body.

PAR. 5. The aforesaid representations by respondent with respect to the nature and effectiveness in use of its said preparations are greatly exaggerated, misleading, and untrue. In truth and in fact, Comstock's Dead Shot Worm Pellets is not the specific treatment for worm infection, will not eliminate stomach worms and pin worms, and is not unfailing in its action. Comstock's N and B Liniment does not give quick relief to all types of muscular pains.

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Such preparation is not an effective treatment for the pains of rheumatism, lumbago, and neuralgia, is not a treatment or remedy for chest colds, and will not cure or aid in the treatment of serious muscular ailments of the human body.

The true facts are that Comstock's N and B Liniment is merely a counter-irritant and is only of value in the treatment of muscular pains when those pains are due to minor conditions such as exercise or fatigue. It is not an aid in the treatment of chest colds because chest colds are internal disorders which will not yield to an external counter-irritant application.

PAR. 6. There are among the respondent's competitors in commerce between and among the various States of the United States and in the District of Columbia many who distribute and sell medicinal preparations designed for the treatment of the same or similar conditions who do not in any way misrepresent the nature and effectiveness in use of their respective products.

PAR. 7. The use by the respondent of the false and misleading statements and representations, disseminated as aforesaid, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true. As a direct result of such erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's preparations, and trade in commerce between and among the various States of the United States and in the District of Columbia has thereby been diverted unfairly to respondent from its competitors likewise engaged in the business of distributing and selling similar medicinal preparations or medicinal preparations designed for similar purposes who truthfully advertise their respective products.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, W. H. Comstock Co., Ltd., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Disseminating, or causing to be disseminated, any advertisement by means of the United States Mails or in commerce as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a preparation for the treatment of worm infection, now designated by the name of "Comstock's Dead Shot Worm Pellets," or a liniment preparation, now designated as "Comstock's N and B Liniment," or any other preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under said names or under any other names; or disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparations, which advertisements represent, directly or through implication:

(a) That such preparation for the treatment of worm infection is a specific medicine for worm infection, eliminates stomach or pin worms from the human body, or is unailing in its action in the treatment of worm infection.

(b) That such liniment preparation has therapeutic value in the treatment of, or relieves the pains of, rheumatism, lumbago, or neuralgia.

(c) That such liniment preparation is a remedy or cure for, or has therapeutic value in the treatment of chest colds.

(d) That such liniment preparation has therapeutic value in the treatment of muscular pains of the human body, other than as a counter-irritant for muscular pains due to minor conditions, such as excessive exercise or fatigue.

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

HERSHEY CREAMERY COMPANY

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

Docket 3700. Complaint, Feb. 7, 1939—Decision, Mar. 27, 1939

Where a corporation engaged in sale and distribution of frozen confections and assortments thereof which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers, and including (a) a number of 5¢ so called "Fudgicle" and "Banjo" frozen confections for sale and distribution to purchasing public under plan by which purchaser securing handle of one of said confections displaying thereon, after confection's removal, words "Return this stick for free Banjo" (or "free Fudgicle") as case might be, was thus entitled to such additional frozen confection without additional cost, and (b) other assortments involving same principle—

Sold such assortments to dealers by whom same were sold as above described and awards made, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products involving game of chance or sale of a chance to procure frozen confections at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who sell or distribute such confections and are unwilling to adopt and use said or any method involving game of chance or sale of a chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by its said sales plan or method employed in sale and distribution of its frozen confections and by element of chance involved therein and were thereby induced to buy and sell its said products in preference to such products 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 unfairly diverting trade to it from its said competitors who do not use such or equivalent method; to the substantial injury of competition in commerce:

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

Mr. L. P. Allen, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Hershey Creamery Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect, as follows:

PARAGRAPH 1. The respondent, Hershey Creamery Co., is a corporation, incorporated and doing business under the laws of the State of Delaware, with its principal office and place of business located at Harrisburg, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of frozen confections in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from its aforesaid place of business in the State of Pennsylvania, to the purchasers thereof in the various States of the United States other than Pennsylvania and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in said frozen confections in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is now and for some time last past has been in competition with other corporations, and with partnerships and individuals engaged in the manufacture of like or similar products and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business in said commerce as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of frozen confections so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Assortments of said frozen confections are sold to the consuming public in the following manner: This assortment consists of a number of frozen confections packed in paper bags and known as "Fudgicle" and "Banjo." Sales are 5¢ each. Through the center of each of said confections is a small stick or handle used by the consumer to handle the confection. On certain of said handles or sticks appear the phrases "Return this stick for free Banjo" or "Return this stick for free Fudgicle." These phrases are effectively concealed until the purchaser has made a purchase and the frozen confection has been consumed or removed from the stick. Purchasers who receive one of the sticks marked with the said phrases are entitled to and do receive an additional frozen confection without additional cost. The additional confections are thus distributed to the purchasing public wholly by lot or chance. Respondent sells various assortments of frozen confections by lot or chance, but the above described sales plan is illustrative of the principle involved in all such assortments.

PAR. 3. The dealers to whom respondent sells such assortments of said confections make the awards, as above described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products. The use by the respondent of said method in distributing its said frozen confections is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of frozen confections to the purchasing public in the manner above alleged, involves a game of chance or the sale of a chance to procure frozen confections at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute frozen confections 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 said sales plan or method employed by respondent in the sale and distribution of its frozen confections and the element of chance involved therein, and are thereby induced to buy and sell respondent's frozen confections in preference to frozen 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, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondent from its said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 7th day of February 1939, issued and served its complaint in this proceeding upon respondent, Hershey Creamery Co., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices

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in commerce in violation of the provisions of said act. On February 28, 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, Hershey Creamery Co., is a corporation, incorporated and doing business under the laws of the State of Delaware, with its principal office and place of business located at Harrisburg, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of frozen confections in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from its aforesaid place of business in the State of Pennsylvania, to the purchasers thereof in the various States of the United States other than Pennsylvania and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in said frozen confections in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is now and for some time last past has been in competition with other corporations, and with partnerships and individuals engaged in the manufacture, sale, and distribution of like or similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business in said commerce as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of frozen confections so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Assortments of said frozen confections are sold to the consuming public in the following manner: This assortment consists of a number of frozen confections packed in paper bags and known as "Fudgicle" and "Banjo." Sales are 5¢ each. Through the center of each of said confection is a small stick

or handle used by the consumer to handle the confection. On certain of said handles or sticks appear the phrases "Return this stick for free Banjo" or "Return this stick for free Fudgicle." These phrases are effectively concealed until the purchaser has made a purchase and the frozen confection has been consumed or removed from the stick. Purchasers who receive one of the sticks marked with the said phrases are entitled to and do receive an additional frozen confection without additional cost. The additional confections are thus distributed to the purchasing public wholly by lot or chance. Respondent sells various assortments of frozen confections by lot or chance, but the above-described sales plan is illustrative of the principle involved in all such assortments.

PAR. 3. The dealers to whom respondent sells such assortments of said confections make the awards, as above described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products. The use by the respondent of said method in distributing its said frozen confections is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of frozen confections to the purchasing public in the manner above found, involves a game of chance or the sale of a chance to procure frozen confections at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute frozen confections in competition with the respondent, as above 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 said sales plan or method employed by respondent in the sale and distribution of its frozen confections and the element of chance involved therein, and are thereby induced to buy and sell respondent's frozen confections in preference to frozen 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, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondent from its said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondent is violating the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Hershey Creamery Co., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of frozen confections or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing frozen confections or other merchandise so designed that the sale thereof by retail merchants constitutes or may constitute the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to, or placing in the hands of others frozen confections or other articles of merchandise which are used or which may be used without alteration or rearrangement thereof, to conduct a lottery, game of chance, or gift enterprise when distributed to the consuming public.

3. Supplying to, or placing in the hands of others, any lottery device which is to be used or may be used in the sale and distribution of merchandise to the consuming public.

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

LANTEEN LABORATORIES, INC., LANTEEN MEDICAL
LABORATORIES, INC., ALSO TRADING AS MEDICAL
BUREAUS OF INFORMATION, AND RUFUS RIDDLES-
BARGERCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3051. Complaint, Feb. 5, 1937—Decision, Apr. 1, 1939*

Where two corporations and an individual, who was officer thereof and directed and controlled their sales policies and business operations, engaged in manufacture, advertisement, distribution, and sale of certain medical preparations and appliances for so-called feminine hygiene and contraceptive use, in substantial competition with others engaged in distribution and sale of similar products, and including those who do not in any way misrepresent the character, nature, and size of their respective businesses, and do not misrepresent in any way the nature and character of their respective products; in advertising said products through show window displays and in trade literature such as booklets, pamphlets, and circulars, distributed to members of purchasing public through medium of boxes in which said products were marketed, through drug stores, through mails and direct to prospective purchasers, and sometimes sold, and sometimes given away free—

- (a) Represented, in connection with its cap diaphragm and preparation sold therewith, that the "Diaphragm Method" was the standard prescription which was given by medical specialists and marriage hygiene clinics throughout the world, and was recognized as the superior of all other methods for such hygiene, and that its products were sold only for use by married couples on physician's prescription for cure or prevention of ill health, and that its said method was the only method for such hygiene that had the full approval of the medical specialists in this practice, and was the one and only method universally prescribed by the world's leading doctors, marriage hygiene clinics and hospitals, and that use thereof brought health, happiness, and freedom from worry; and
- (b) Represented that said cap diaphragm, in its one standard size, was adaptable to all normal anatomies and would function simply and effectively under all circumstances, and that said preparation would insure quick destruction of all germs and would destroy all germ life, and provided complete sterilization, and, used with said diaphragm, gave the well-known double protection and assured complete reliability, and that its said products were ethical and widely available through the drug or medical profession, but not otherwise distributed;

Facts being products in question did not form or constitute competent treatments, remedies, cures, and preventives of ill health, as represented by them, and were of no beneficial therapeutic value and not generally prescribed for cure or prevention of ill health, none of said products, when used in connection with applicators furnished by them and with said diaphragm as recommended, and used as directed, would in all cases serve as competent contraceptives, and would fit all normal anatomies, but were capable of causing

Injuries and deleterious effects to those making use thereof; with tendency and capacity, directly and through implication, to cause substantial portion of purchasing public to believe erroneously that such products, when used as set forth by them, afforded safe, competent and effective contraceptives and, used as designated, safe, competent, and reliable remedies, cures and preventives of ill health, and that their said diaphragm was adaptable to all normal anatomies; and

- (c) Made use of trade names "Medical Bureaus of Information," and represented, thereby and otherwise in window displays and other advertising matter purportedly issued by aforesaid so-called "Bureaus," and in their advertising literature generally, that supposed "Medical Bureau of Information" was an organization devoted to scientific research on questions involving methods of prevention of conception, through such statements as "association not for profit," "rendering a high grade of professional service," because of the large numbers applying, "staffed entirely with women physicians and nurses, each one specially trained in the science of contraception," and " * * * The First Medical Bureau of Information on Birth Control was opened to the public in Chicago in 1929. It immediately became a mecca for Chicago wives, and many women have traveled great distances * * * to secure this information * * * from women physicians who have made a special study in this practice"; and
- (d) Represented, through aforesaid advertising, by pictures and otherwise, that some of its literature was composed by Norman Carr, M. D., London, and made such statements in advertisements referring to such doctor as "probably the most widely read author on this subject in the entire world. So great has been the acclaim accorded his writings that their publication has now exceeded 12,000,000 copies, in 26 editions. His technical treatises are respected by the medical profession as fully as his nontechnical works are appreciated by the laity";

Facts being such "Medical Bureaus of Information" were not organizations or institutions organized and conducted to carry on scientific research on questions involving such methods or methods of preventing, treating or curing maladies peculiar to women, or on any other questions, but were operated to promote sale of their products, so-called method, supposedly universally used by marriage hygiene clinics as outlined in pamphlets and advertising of such bureaus, was not generally prescribed or recommended by physicians, and said Norman Carr, M. D., referred to in their advertising, was a fictitious name used by them to encourage sale of their products and to deceive and mislead prospective and purchasing public and induce such erroneous belief that said "Medical Bureaus of Information" were organizations or institutions organized and conducted to carry on scientific research on methods above set forth, as represented by them, and there was no such physician as said Dr. Norman Carr, and mention thereof was to deceive and mislead purchasing public in order to induce sale of their said products;

With effect of misleading and deceiving members of purchasing public into erroneous and mistaken belief that said representations were true and into purchase of substantial quantities of their said various products by reason of such erroneous and mistaken beliefs thus induced, and trade was thereby unfairly diverted from competitors who do not, in sale and distribution of their respective products, make use of same or similar misrepresentations; to the injury of competition in commerce:

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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. Robert S. Hall* and *Mr. John L. Hornor*, trial examiners.

Mr. W. L. Taggart for the Commission.

Defrees, Buckingham, Jones & Hoffman, 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 Lanteen Laboratories, Inc., Lanteen Medical Laboratories, Inc., trading under its own name and under Medical Bureaus of Information and Rufus Riddlesbarger, 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 Lanteen Laboratories, Inc., is now, and has been for several years last past, a corporation organized, existing, and doing business under the laws of the State of Illinois, with its principal place of business at 900 North Franklin Street, Chicago, Ill.

Respondent Lanteen Medical Laboratories, Inc., is now, and has been for several years last past, a corporation organized and doing business under the laws of the State of Delaware, with its principal place of business at 900 North Franklin Street, Chicago, Ill.

Respondent Medical Bureaus of Information is operated by the Lanteen Medical Laboratories, Inc. to advertise and distribute information in regard to the products of the respondents Lanteen Medical Laboratories, Inc., and Lanteen Laboratories, Inc. The principal offices of the Medical Bureaus of Information are 734 State Lake Building, 190 North State Street, Chicago, Ill., Suite 804 Industrial Bank Building, Detroit, Mich., and 161 Wisconsin Avenue, Milwaukee, Wis.

Respondent Rufus Riddlesbarger of 1224 Pratt Boulevard, Chicago, Ill., is engaged in business individually and is an official of the Lanteen Laboratories, Inc., of Illinois and Lanteen Medical Laboratories, Inc. of Delaware. He directs and controls the sales policies and business operations of the corporate respondents.

The respondents have been, and are now, engaged in the business of manufacturing, advertising, distributing, and selling certain medical preparations and appliances for so-called feminine hygiene and contraceptive use to purchasers in commerce among and between various States of the United States and in the District of Columbia. The respondents cause these products, when sold, to be transported from their aforesaid places of business to the purchasers thereof located in various States other than the States from which said shipments of said products originate and in the District of Columbia, and maintain a constant course of trade and commerce in said products so distributed and sold by them.

In the course and conduct of said business respondents have been, and are, in substantial competition with other corporations and with firms, individuals, and partnerships engaged in the distribution and sale of similar products, and other products intended and designed for similar use by women in commerce among and between the various States of the United States.

PAR. 2. The products marketed by respondents are variously known and described as Lanteen Blue (jelly), Lanteen Brown (cap diaphragm), Lanteen Lilac (mensinga type diaphragm), Lanteen Yellow (solution—powder or liquid), Lanteen Pink (capsule), Lanteen Russett (rubber sponge tampon), Lanteen Rose (tampon in capsule), Lanteen Green (rose scented cones) and Lanteen Grey (a special jelly).

In the operation of their business and for the purpose of inducing the purchase of said products on the part of members of the purchasing public, the respondents have made use of certain advertising literature such as booklets, pamphlets, circulars, and show-window displays representing to be descriptive of the various products herein named; and the applicators and diaphragms used in connection therewith, as well as the effectiveness of said products and appliances when used. The advertising literature herein referred to is distributed to members of the purchasing public through the medium of the boxes in which said products are marketed, in advertising literature distributed through the medium of drug stores, through the United States Mails direct to the prospective purchasers and in other ways.

With reference to the products designated as Lanteen Blue and the cap diaphragm such statements as the following are made:

Diaphragm Method, which is now the standard prescription given by Medical Specialists and Marriage Hygiene Clinics throughout the world, and is recognized as the superior of all other methods for Marriage Hygiene. * * * this provides the wife with complete security against the hazards of foreign germ life that may enter the vaginal tract. Sold only for use by married couples on physician's prescription for the cure or prevention of ill health.

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A small injection of the antiseptic jelly should then be placed in the vaginal tract, outside the diaphragm, to insure quick destruction of all germs that may enter the vagina. * * * A douche is not necessary, but if desired, delay at least 15 to 30 minutes to give the antiseptic jelly ample time to destroy all germ life. * * * the antiseptic jelly provides complete sterilization.

The diaphragm method, combination of diaphragm and prophylactic jelly, is the only method for marriage Hygiene that has the full approval of the medical specialists in this practice. It is the one and only method that is universally prescribed by the world's leading doctors, Marriage Hygiene Clinics and hospitals. * * * Its use brings health, happiness, and freedom from that ever recurring worry.

The Lanteen Brown Cap Diaphragm, in its one standard size, is adaptable to all normal anatomies; it is self-locating by simply inserting and will securely maintain its position over and around the os cervix (mouth of the womb) under all circumstances.

The Lanteen Blue Jelly used with it destroys germ life, thus giving the well-known "double protection" and assuring complete reliability. Lanteen Blue is the clinically proven formula for feminine Jelly, entirely bland and non-irritating.

Lanteen are ethical products, widely available through the drug or medical professions, but are not distributed through any other channels.

In said statements, together with other similar statements not herein set out with respect to the products herein named in paragraph 2 and their other products, and in their general advertising, respondents, directly and through implication, represent that said products designated hereinabove form safe, competent and effective preventatives against conception; that said products form safe, competent, and reliable remedies, cures, and preventatives of ill health, and that said cap diaphragm is adaptable to all normal anatomies.

PAR. 3. In truth and in fact the products designated above do not form or constitute competent treatments, remedies, cures and preventatives of ill health hereinabove set out, and are of no beneficial therapeutic value, and are not generally prescribed by physicians for the cure or prevention of ill health. None of said products, when used in connection with the applicators furnished by the respondents and with said cap diaphragm as recommended for use with said products and used under respondents' directions, will in all cases serve as competent preventatives of conception. Said diaphragms will not fit all normal anatomies, but they are capable of causing injuries and deleterious effects to those making use of them.

PAR. 4. In the course of the operation of their business, as aforesaid, respondents employ and use agents for the promotion of the distribution and sale of the various products hereinabove named; make use of window displays and other advertising matter purporting to be issued by so-called "Medical Bureaus of Information." The advertising literature herein referred to purports to describe the functions of said bureaus in statements such as:

These Bureaus are an association not for profit, and because of the large numbers applying, they are rendering a high grade of professional service. They are staffed entirely with women physicians and nurses, each one specially trained in the science of contra-ception. * * * Their nominal fees, the maximum for professional services never exceeding five dollars.

The dear, old wrinkled face of our grandmother is the price she was compelled to pay for her lack of proper information during her early years of marriage. Our grandparents would have bartered ten years of their lives for the authoritative information and the reliable contraceptives now easily available to the women of today.

* * * The First Medical Bureau of Information on Birth Control was opened to the public in Chicago in 1929. It immediately became a mecca for Chicago wives, and many women have traveled great distances, from nearly every state in the Union and from many parts of Canada, to secure this information on birth control from women physicians who have made a special study in this practice.

In said statements, together with other statements not herein set out, and in their advertising literature generally, respondents represent, directly or through implication, that respondent Medical Bureaus of Information is an organization devoted to scientific research on questions involving methods of prevention of conception, and, through the aforesaid advertising, by pictures and otherwise, that some of its literature is composed by Norman Carr, M. D., London. It is further represented that:

Dr. Norman Carr is probably the most widely read author on this subject in the entire world. So great has been the acclaim accorded his writings that their publication has now exceeded 12,000,000 copies, in 26 editions. His technical treatises are respected by the medical profession as fully as his non-technical works are appreciated by the laity.

In truth and in fact the Medical Bureaus of Information are not organizations or institutions organized and conducted for the carrying on of scientific research on questions involving methods of prevention of conception, or methods of preventing, treating, or curing maladies peculiar to women, or on any other questions, and said bureaus are operated for the purpose of promoting the sale of respondents' products, and further the said so-called methods supposedly universally used by Marriage Hygiene Clinics, as outlined in the pamphlets and advertising of the Medical Bureaus of Information, are not generally prescribed or recommended by physicians, and the said Norman Carr, M. D. referred to in its advertising appears to be a fictitious name used by the said respondents for the purpose of encouraging the sale of the products of the respondents.

There are among the respondents' competitors in commerce, as herein set out, those who do not in any way misrepresent the character, nature and size of their respective businesses and who do not

misrepresent in any way the nature and character of their respective products, and do not make use of any of the misleading representations herein set out or others similar thereto.

PAR. 5. The aforesaid false and misleading statements and representations used by the respondents, in offering for sale and selling their various products as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true and into the purchase of substantial quantities of respondents' various products on account of said erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade is unfairly diverted from competitors of respondents who do not, in the sale and distribution of their respective products, make use of the same or similar misrepresentations. In consequence thereof injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued and served its complaint upon respondents Lanteen Laboratories, Inc., a corporation, Lanteen Medical Laboratories, Inc., a corporation, also trading under the name Medical Bureaus of Information, and Rufus Riddlesbarger, individually and in his official capacity as an officer of said respondents, charging respondents with the use of unfair methods of competition in interstate commerce in violation of Section 5 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 W. L. Taggart, an attorney 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 George T. Buckingham, Chas. O. Butler and Stephen E. Hurley for the respondents, and said testimony and other evidence 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 answers thereto, the testimony and other evidence and briefs and argument in support of the complaint and in opposition thereto; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Lanteen Laboratories, Inc. is now, and has been for several years last past, a corporation organized, existing, and doing business under the laws of the State of Illinois, with its principal place of business at 900 North Franklin Street, Chicago, Ill.

Respondent Lanteen Medical Laboratories, Inc. is now, and has been for several years last past, a corporation organized and doing business under the laws of the State of Delaware, with its principal place of business at 900 North Franklin Street, Chicago, Ill.

Respondent Rufus Riddlesbarger of 1224 Pratt Boulevard, Chicago, Ill., is an individual and is an official of the Lanteen Laboratories, Inc. of Illinois and Lanteen Medical Laboratories, Inc. of Delaware. He directs and controls the sales policies and business operations of the corporate respondents.

The Medical Bureau of Information, designated herein, is a trade name used by the respondents named. It is used by them in maintaining and furthering respondents' course of trade in interstate commerce, as hereafter detailed. The principal offices of the Medical Bureaus of Information are 734 State Lake Building, 190 North State Street, Chicago, Ill., Suite 804 Industrial Bank Building, Detroit, Mich., and 161 Wisconsin Avenue, Milwaukee, Wis.

PAR. 2. The respondents have been, and are now, engaged in the business of manufacturing, advertising, distributing, and selling certain medical preparations and appliances for so-called feminine hygiene and contraceptive use to purchasers in commerce among and between various States of the United States and in the District of Columbia. Respondents cause these products, when sold, to be transported from their aforesaid places of business to the purchasers thereof located in various States other than the States from which said shipments of said products originate and in the District of Columbia, and maintain a constant course of trade and commerce in said products so distributed and sold by them. The products marketed by respondents are variously known and described as Lanteen Blue (jelly), Lanteen Brown (cap diaphragm), Lanteen Lilac (mensigna type diaphragm),

Lanteen Yellow (solution—powder or liquid), Lanteen Pink (capsule), Lanteen Russett (rubber sponge tampon), Lanteen Rose (tampon in capsule), Lanteen Green (rose scented cones) and Lanteen Gray (a special jelly).

PAR. 3. In the course and conduct of said business respondents have been, and are, in substantial competition with other corporations and with firms, individuals, and partnerships engaged in the distribution and sale of similar products, and other products intended and designed for similar use by women in commerce among and between the various States of the United States.

PAR. 4. In the operation of their business and for the purpose of inducing the purchase of said products on the part of members of the purchasing public, the respondents have made use of certain advertising literature such as booklets, pamphlets, circulars, and show-window displays represented to be descriptive of the various products herein named; and the applicators and diaphragms used in connection therewith, as well as the effectiveness of said products and appliances when used. Such advertising literature herein referred to is distributed to members of the purchasing public through the medium of the boxes in which said products are marketed, in advertising literature distributed through the medium of drug stores, through the United States mails and direct to the prospective purchasers, and is sometimes sold for 10 cents and sometimes given away free of charge. With reference to the products designated as the cap diaphragm and the jelly, the following statements are made:

Diaphragm Method, which is now the standard prescription given by Medical Specialists and Marriage Hygiene Clinics throughout the world, and is recognized as the superior of all other methods for Marriage Hygiene. * * * this provides the wife with complete security against the hazards of foreign germ life that may enter the vaginal tract. Sold only for use by married couples on physician's prescription for the cure or prevention of ill health.

A small injection of the antiseptic jelly should then be placed in the vaginal tract, outside the diaphragm, to insure quick destruction of all germs that may enter the vagina. * * * A douche is not necessary, but if desired, delay at least 15 to 30 minutes to give the antiseptic jelly ample time to destroy all germ life. * * * the antiseptic jelly provides complete sterilization.

The diaphragm method, combination of diaphragm and prophylactic jelly, is the only method for marriage Hygiene that has the full approval of the medical specialists in this practice. It is the one and only method that is universally prescribed by the world's leading doctors, Marriage Hygiene Clinics and hospitals. * * * Its use brings health, happiness and freedom from that ever recurring worry.

The Lanteen Brown Cap Diaphragm, in its one standard size, is adaptable to all normal anatomies; it is self-locating by simply inserting and will securely maintain its position over and around the os cervix (mouth of the womb) under all circumstances.

The Lanteen Blue Jelly used with it destroys germ life, thus giving the well-known "double protection" and assuring complete reliability. Lanteen Blue is the clinically proven formula for feminine jelly, entirely bland and non-irritating.

Lanteen are ethical products, widely available through the drug or medical professions, but are not distributed through any other channels.

PAR. 5. In truth and in fact, the products designated herein in paragraph 2 do not form or constitute competent treatments, remedies, cures and preventatives of ill health as represented by respondents, and are of no beneficial therapeutic value, and are not generally prescribed by physicians for the cure or prevention of ill health. None of said products, when used in connection with the applicators furnished by the respondents and with said cap diaphragm as recommended for use with said products and used under respondents' directions, will in all cases serve as competent preventatives of conception. Said diaphragms will not fit all normal anatomies, but they are capable of causing injuries and deleterious effects to those making use of them. The advertisements herein mentioned in paragraph 4 have the tendency and capacity, directly and through implication, to cause a substantial portion of the public to erroneously believe such products when used as designated by respondents afford safe, competent and effective preventatives against conception, and that such products when used as designated afford safe, competent and reliable remedies, cures and preventatives of ill health, and that said cap diaphragm is adaptable to all normal anatomies.

PAR. 6. In the course of the operation of their business, as described in paragraph 2 herein, respondents employ and use agents for the promotion of the distribution and sale of the various products hereinabove named; make use of window displays and other advertising matter purporting to be issued by so-called "Medical Bureaus of Information." In advertising literature herein referred to which purport to describe the functions of said bureaus are the following excerpts:

These Bureaus are an association not for profit, and because of the large numbers applying, they are rendering a high grade of professional service. They are staffed entirely with women physicians and nurses, each one specially trained in the science of contraception.

The dear, old wrinkled face of our grandmother is the price she was compelled to pay for her lack of proper information during her early years of marriage. Our grandparents would have bartered ten years of their lives for the authoritative information and the reliable contraceptives now easily available to the women of today.

* * * The First Medical Bureau of Information on Birth Control was opened to the public in Chicago in 1929. It immediately became a mecca for Chicago wives, and many women have traveled great distances, from nearly

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every state in the Union and from many parts of Canada, to secure this information on birth control from women physicians who have made a special study in this practice.

In such statements, together with other statements not herein set out, and in their advertising literature generally, respondents represent, directly or through implication, that respondent, Medical Bureaus of Information, is an organization devoted to scientific research on questions involving methods of prevention of conception, and, through the aforesaid advertising, by pictures and otherwise, that some of its literature is composed by Norman Carr, M. D., London. In the advertisements referring to Dr. Carr, this statement is made:

Dr. Norman Carr is probably the most widely read author on this subject in the entire world. So great has been the acclaim accorded his writings that their publication has now exceeded 12,000,000 copies, in 26 editions. His technical treatises are respected by the medical profession as fully as his non-technical works are appreciated by the laity.

PAR. 7. In truth and in fact, the Medical Bureaus of Information are not organizations or institutions organized and conducted for the carrying on of scientific research on questions involving methods of prevention of conception, or methods of preventing, treating, or curing maladies peculiar to women, or on any other questions, and said Bureaus are operated for the purpose of promoting the sale of respondents' products, and the said so-called methods supposedly universally used by Marriage Hygiene Clinics, as outlined in the pamphlets and advertising of the Medical Bureaus of Information, are not generally prescribed or recommended by physicians, and the said Norman Carr, M. D., referred to in its advertising, is a fictitious name used by the said respondents for the purpose of encouraging the sale of the products of the respondents and used to deceive and mislead the prospective and purchasing public and to induce in such the erroneous belief such Medical Bureaus of Information are organizations or institutions organized and conducted for carrying on scientific research on methods preventing conception or curing maladies peculiar to women as represented by respondents, and there is and was not any such physician as Dr. Norman Carr mentioned by respondents' literature as set out herein, and such mention of Dr. Carr was and is used likewise to deceive and mislead the purchasing public in order to induce the sale of respondents' products.

PAR. 8. There are among the respondents' competitors in commerce, as set out in paragraph 2 herein, those who do not in any way misrepresent the character, nature and size of their respective businesses and who do not misrepresent in any way the nature and character of their respective products, and do not make use of any of the mis-

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leading representations herein set out or others similar thereto.

PAR. 9. The aforesaid false and misleading statements and representations used by the respondents, in offering for sale and selling their various products as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true and into the purchase of substantial quantities of respondents' various products on account of said erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade is unfairly diverted from competitors of respondents who do not, in the sale and distribution of their respective products, make use of the same or similar misrepresentations. In consequence thereof injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents Lanteen Laboratories, Inc. and Lanteen Medical Laboratories, Inc., corporations, and Rufus Riddlesbarger, an individual, 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 and constitute violations of Section 5 of the Federal Trade Commission Act.

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 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, briefs filed herein and oral arguments by William L. Taggart, counsel for the Commission, and by George T. Buckingham, of the law firm of DeFrees, Buckingham, Jones and Hoffman, 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 the Federal Trade Commission Act.

It is ordered, That the respondents, Lanteen Laboratories, Inc., a corporation, Lanteen Medical Laboratories, Inc., a corporation, also trading under the name Medical Bureaus of Information, their officers, agents, representatives and employees, and Rufus Riddlesbarger, individually and as an officer of the Lanteen Laboratories, Inc., and

Lanteen Medical Laboratories, Inc., his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of so-called feminine hygiene preparations and appliances, now known as and sold under the names "Lanteen Blue," "Lanteen Brown," "Lanteen Lilac," "Lanteen Yellow," "Lanteen Pink," "Lanteen Russet," "Lanteen Rose," "Lanteen Green," "Lanteen Gray," or any other preparation or appliance composed of similar ingredients or possessing similar characteristics, under whatever name or names sold, in interstate commerce or in the District of Columbia, do forthwith cease and desist, directly or by implication, from representing:

1. That any of said preparations or appliances, whether used alone or in connection with any other preparation or appliance, forms or constitutes a competent treatment, remedy or preventive of ill health of any nature, or is of any beneficial therapeutic value.

2. That the use of any of said preparations or appliances, whether used alone or in connection with others of said preparations or appliances, will prevent conception.

3. That the appliance now known as and sold under the name "Lanteen Brown," described as a diaphragm, or any other of said appliances, will fit all anatomies or all normal anatomies.

4. That any of said preparations or appliances has been tested and approved by an independent non-profit organization, or any organization, devoted to scientific research on questions involving the methods of preventing conception and the prevention, treatment and cure of the diseases, maladies and conditions peculiar to women, or that respondents are noted on account of the manufacture and sale of high class pharmaceutical products, when such is not the fact.

5. That any of said preparations or appliances is prepared, designed, approved or recommended by a member or members of the medical profession, when such is not the fact.

6. That any of said preparations or appliances may be used with safety and without deleterious effects by all women.

7. That the use of a diaphragm, or the so-called diaphragm method, is the only method that has the approval of medical specialists, marriage hygiene clinics and hospitals, or that the use of the diaphragm or the so-called diaphragm method is recognized by medical specialists, marriage hygiene clinics and hospitals as superior to all other methods for the prevention of conception, or that such an appliance or said method provides complete security against the hazards of "foreign" germ life.

8. That any of said preparations or appliances (a) destroys germ life, (b) gives double protection, (c) insures complete reliability, (d)

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provides complete security against the hazards of "foreign" germ life, (e) acts as a prophylactic, (f) has the full approval of specialists in the medical profession, marriage hygiene clinics or hospitals, (g) is recognized as superior to all other products of a similar type, or (h) will bring health, happiness and freedom to the user thereof.

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

Syllabus

IN THE MATTER OF
TWENTIETH CENTURY BUSINESS BUILDERS, INC., AND
EDWIN I. GORDON

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

Docket 2774. Complaint, Apr. 20, 1936—Decision, Apr. 3, 1939

Where a corporation and an individual, its general manager who directed and controlled its sales activities and policies with respect to acts and practices herein set forth, engaged in sale and distribution of a sales promotional plan to retail merchants in the various States, under contracts entered into with such merchants, pursuant to which they—

(1) Furnished merchant with "count the dot" or "count the block" puzzle advertising mats for use by merchant in his local paper, covering merchant's trade area, and representing, and usually with headline streamers, that merchant was conducting a contest and upon a given day would give away free of charge, to person most closely approximating number of dots or blocks in picture, items of merchandise there described and depicted and represented as of stated value, such as "\$159 living room suite," etc., and that person submitting answers or solutions nearest correct answer or solution would receive vouchers or checks redeemable in merchandise of particular retailer, and that only stated number of such vouchers and checks were issued, and pursuant to which they—

(2) Undertook to furnish "an experienced manager who will prepare for this sale and supervise same during the period of the sale"; and—

In substantial competition in commerce with others engaged in sale and distribution of various sales promotional plans to stimulate trade, and who do not engage in practice of causing merchants with whom they contract to make false representations relative to values of their merchandise or to issue checks or credit vouchers for stated amounts, but which in fact have no monetary value in purchasing from such merchants, and do not make or cause to be made any other false statements and representations in connection with sale and distribution of their said sales promotional plans or of merchandise involved in use thereof;

In carrying on their said business and plan, purpose of which was not to make awards of cash credit slips to contestants who submitted correct and accurate answer or solution to number of dots in advertisements, but to issue cash credit slips to all persons who submitted answers or solutions without regard to accuracy of answers submitted, and thereby entice such contestants into stores of merchants for purpose of effecting sales of merchandise of such merchants, who, acting under their direction and advice and that of their agents and representatives, (1) increased the selling price and represented value of their merchandise, and represented same as of a value in excess of the real worth by an amount which approximated the purported value of the credit vouchers distributed to contestants submitting answers or solutions, (2) widely advertised such false and fictitious values by newspaper advertisements and otherwise throughout such merchants' respective trade areas, and (3) distributed indiscriminately credit vouchers or credit checks without regard to solutions submitted—

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Caused retail merchants with whom they contracted to represent aforesaid sales promotional advertisement and plan as a contest, and to make false representations relative to values of their merchandise, and to issue checks or credit vouchers for various stated amounts, but which in fact were of no monetary value in purchasing from such merchants their said merchandise, to which they had assigned, as above set forth, fictitious special or sale prices and values in excess of those at which it was regularly and customarily offered for sale;

With effect of misleading and deceiving substantial portion of purchasing public, through publication by such retail merchants, as thus caused by them, of such false and fictitious selling prices and values, and such indiscriminate issuance of credit vouchers or checks, into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and that such false and fictitious selling prices and values were the usual selling prices and actual values for merchandise involved, and that by entering said "count the dot" contests and winning credit vouchers by accurately counting dots or blocks, they would receive special discounts in purchasing retailer's merchandise, and thereby effect savings to the extent of the amount of the credit vouchers won by them; and

With the result that substantial number of members of purchasing public, in reliance upon such erroneous and mistaken beliefs, entered such contests and purchased substantial quantities of the merchandise featured therein, and substantial number of merchants purchased such sales promotional plan of said corporation and individual and trade was diverted unfairly (1) to said merchants from their merchant competitors in commerce who do not make false representations relative to the value of their merchandise or issue checks or credit vouchers for various stated amounts, but in fact of no monetary value in purchasing merchandise from them, and (2) to said corporation and individual from competitors who, as hereinbefore set forth, do not, in sale and distribution of their various sales promotional plans, cause merchants with whom they contract to make false representations relative to values of their merchandise or to issue checks or credit vouchers as above set forth, or otherwise make or cause to be made other false statements and representations in connection with their said promotional sales plans or merchandise involved in use thereof:

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

Before *Mr. William C. Reeves*, *Mr. Robert S. Hall*, and *Mr. Arthur F. Thomas*, trial examiners.

Mr. Alden S. Bradley, *Mr. DeWitt T. Puckett*, and *Mr. George Foulkes* for the Commission.

Chritton, Wiles, Davies, Hirschl & Dawson, 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 Twentieth

Century Business Builders, Inc., a corporation, and Edwin I. Gordon, an individual, hereinafter called respondents, have been and are using unfair methods of competition in commerce as commerce is defined in said act and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, it hereby issues its complaint, stating its charges as follows in that respect.

PARAGRAPH 1. Respondent, Twentieth Century Business Builders, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Michigan and having its principal office and place of business at 917 Furniture Mart Building, in the city of Chicago and State of Illinois. Respondent Edwin I. Gordon is resident manager of Twentieth Century Business Builders, Inc., and maintains his principal office and place of business at 917 Furniture Mart Building, in the city of Chicago and State of Illinois.

Respondents, Twentieth Century Business Builders, Inc., in its entire corporate existence, to wit, since October 6, 1934, and Edwin I. Gordon, have been engaged in selling, and offering for sale, to retail merchants throughout the various States of the United States other than the State of Illinois a certain sales promotion plan, with the representation to the purchasers, and prospective purchasers thereof that the use of such plan, which is copyrighted, the copyright being owned by Edwin I. Gordon, is as follows:

Respondents procure contracts with various retail merchants throughout the various States of the United States as aforesaid under and by the terms of which, for a stated consideration, respondents agree, among other things, to furnish to such merchant advertising mats to be used in the manner hereinafter related, which said mats, however, remain at all times the property of respondents. Such mats, when used, reproduce what are known to the trade as "Count the Dot" and "Count the Block" puzzles, which consist of a reproduction or photograph of various merchandise and commodities featured by such retail merchant. Superimposed upon such reproduction or photograph are numerous blocks or dots. The retail merchant, when the contract is made, is instructed by the respondents to cause the insertion of such photograph in a paper or other periodical or periodicals of general circulation within the trade area of such merchant for a contracted and stated period of time. Accompanying such picture is a representation made by the dealer, acting under instructions by the respondents, that upon a given day the retail dealer will give free of charge to the person most closely approximating the number of dots or blocks in the picture certain described merchandise which is represented to be of considerable value.

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Further representations are made that a stated number of persons submitting answers or solutions to such puzzles nearest the correct answer or solution of the same will receive vouchers or checks redeemable in merchandise only and sold only at the store of such retail dealer.

PAR. 2. In truth and in fact such credit vouchers are indiscriminately distributed without regard to the solution submitted, and are used solely and only for the stimulation of trade, the object and purpose of the advertisements being that in connection with the sale of merchandise, which sale is widely advertised, increased number of patrons may be attracted.

PAR. 3. The contract between the respondents and retail merchant provides, among other things, that the merchant shall be entitled to the advice and business experience of the respondents. Acting under the direction and advice of the respondents, the retail merchant procures, in many instances, goods of an inferior character and of cheap manufacture, which, upon instruction of the respondents, he falsely represents to be of a value in excess of the real worth thereof; such increase in represented value amounting to approximately the purported value of said credit vouchers.

It is likewise the common practice of merchants, at the instance and advice of the respondents, to procure old or antiquated stock of little value and falsely to represent such stock to have a value in excess of its real worth; such increase in represented value amounting approximately to the purported value of said credit vouchers.

These false and fictitious values are widely advertised by circulars, handbills, in periodicals, magazines, newspapers, by radio broadcasts and other means throughout the trade area wherein such retail merchant operates, and the publishing of such false and fictitious prices has a capacity and tendency to, and does, mislead and deceive a substantial number of purchasers into the false belief that by purchasing the merchandise so advertised and represented during the period of the sale hereinbefore described, they effect economies and make pecuniary gains and savings. Relying upon such belief, a substantial number of the members of the purchasing public have so purchased said merchandise.

PAR. 4. The acts and practices of the respondents, as hereinabove described, have caused, and now cause, a substantial injury to a substantial number of retail merchants who are competitors of those retail merchants with whom respondents contract and who engage in the sale, transportation, and distribution throughout the various States of the United States other than the particular States wherein such competitors are located, of commodities similar in character, nature

and design to those in which such contracting retail merchants deal, and who do not use false and fictitious prices in the sale of the commodities vended by them, nor issue to customers, or prospective customers credit vouchers of a kind and in a manner herein before related. Such acts and practices have occasioned, and still occasion, a substantial diversion of trade from such competitors to those with whom respondents contract and who act in the manner above set out.

PAR. 5. In engaging in the business of stimulating trade and holding itself out as a business consultant, the respondents are in competition with a substantial number of other persons, firms, copartnerships, and corporations who likewise represent themselves to be business consultants and are engaged in the business of stimulating trade but who do not engage in the practice of fostering false or fictitious prices and who do not cause those with whom they contract falsely to represent to the purchasing public that the commodity offered for sale is new, or is of a superior quality at the price for which the same is offered and who do not mislead and deceive or cause a deception of members of the purchasing public by issuing, or causing to be issued, trade or credit vouchers for various stated amounts which are actually of no monetary value in purchasing from the merchants so issuing.

PAR. 6. The facts and practices of the respondents, as above set forth, have a tendency and capacity to, and do in fact, cause a substantial diversion of trade from its competitors, as above described, to the respondents.

PAR. 7. The acts and practices of the respondents are intended to, and do, cause the public to be misled and deceived, and cause a diversion of trade, as above related. In so doing, respondents furnish a method of deception and diversion to those with whom it contracts.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 28, 1936, issued and served its complaint in this proceeding upon respondents, Twentieth Century Business Builders, Inc., a corporation, and Edwin I. Gordon, an individual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Alden S. Bradley, DeWitt T. Puckett, and George Foulkes, attorneys for the Commission, and in opposition to the allegations of the complaint by Horace Dawson, attorney for the respondents, before W. C. Reeves, Robert S. Hall, and Arthur F.

Thomas, 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, briefs in support of the complaint and in opposition thereto (respondent not having requested oral argument); and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Twentieth Century Business Builders, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, and having its principal place of business located at 917 Furniture Mart Building, in the city of Chicago, State of Illinois.

Respondent, Edwin I. Gordon, is General Manager of respondent, Twentieth Century Business Builders, Inc., and as such directs and controls the sales activities and policies of said respondent corporation with respect to the acts and practices herein set forth.

Respondents, since the date of incorporation of respondent, Twentieth Century Business Builders, Inc., in the year 1934, have been and are now engaged in the business of the sale and distribution of a sales promotional plan to retail merchants situated in the various States of the United States.

Respondents enter into contracts with retail merchants doing business in various States of the United States, by the terms of which respondents agree, among other things, for a stated consideration, to furnish merchants with certain advertising mats for use by said merchants in conducting a "count the dot" contest.

The mats, when used, reproduce what is known to the trade as "count the dot" or "count the block" puzzles which consist of a reproduction or photograph of various merchandise and commodities upon which is superimposed many small "dots" or "blocks."

The retail merchant is instructed by respondents to cause the insertion of said reproduction or photograph in local newspapers which cover the merchant's trade area.

The mats furnished retail dealers by respondents usually contain headline streamers and other language which serve as representations that the retail dealer or merchant is conducting a contest and that upon a given day the retail dealer or merchant will give away free of

charge to the person most closely approximating the number of dots or blocks in the picture certain described items of merchandise which are represented to be of a stated value.

Following is a typical example of some of the representations appearing on a mat furnished to a retail furniture dealer by respondents:

More than \$10,000 worth of prizes to be given away free.

Introducing our Twentieth Century furniture exhibit.

Just count the dots in the living room suite picture below.

First prize a beautiful \$159 living room suite free.

Second prize two credit checks \$75 each redeemable on any Twentieth Century living room, dining room or bedroom suite.

How to win?

Just count the dots.

In the middle of the mat containing these representations is a picture of a davenport and large living room chair, upon which is superimposed a number of dots.

It is further represented that the person submitting answers or solutions to such puzzles nearest the correct answer or solution of the same will receive vouchers or checks redeemable in the merchandise sold at the store of such retail dealer.

Representations are made in the advertisements that only a stated number of these vouchers and checks are issued by the retail merchant.

PAR. 2. After written contracts have been entered into between the respondents and retail merchants, respondents supply merchants with the aforesaid mats.

These mats are shipped by respondents from their place of business in Chicago, Ill., across state lines to merchants and retail dealers who reside in States other than the State of Illinois.

PAR. 3. In truth and in fact the representations made by merchants and retail dealers, at the instance of respondents, that premiums and credit checks are awarded to persons submitting answers or solutions to the number of dots or blocks in advertisements, are false, misleading, and untrue.

The record shows, and the Commission finds, that credit vouchers or credit checks were indiscriminately distributed by retail merchants without regard to the solution submitted by contestants, and that this was done by retail merchants at the instance of respondents.

A retail furniture merchant, who entered into a contract with respondents and whose place of business is located in Gary, Indiana, distributed 3,000 cash credit slips to contestants, although the advertisement stated that only 234 cash credit slips in varying amounts would be awarded contestants who submitted the best solutions to the number of dots in the advertisements run in local newspapers

by said merchant. This was done under the direction and supervision of respondents' representatives who were in constant attendance at the merchant's store during the period of time covered by the sale.

PAR. 4. The Commission further finds that the purpose of the plan is not to make awards of cash credit slips to contestants who submit correct and accurate answers or solutions to the number of dots in the advertisements, but to issue cash credit slips to all persons who submit answers or solutions to the number of dots without regard to the accuracy of the answers submitted, and thereby to entice said contestants into the stores of merchants for the purposes of effecting sales of merchandise.

PAR. 5. The contract entered into between respondents and retail merchants further provides among other things that respondents will furnish "an experienced manager who will prepare for this sale and supervise same during the period of the sale."

Acting under the direction and advice of respondents and their agents and representatives, the Commission finds that retail merchants increased the selling price and represented value of their merchandise and represented such merchandise to be of a value in excess of the real worth of the same. The increase in the selling price and represented value of the merchandise amounted to approximately the purported value of the credit vouchers distributed to contestants submitting answers or solutions to the number of dots or blocks in the puzzle.

These false and fictitious values were widely advertised by retail merchants in newspaper advertisements and other means throughout the trade area of the retail merchants.

PAR. 6. The use by respondents of the foregoing false and misleading statements, representations and advertisements, disseminated as aforesaid, by causing such retail merchants to publish statements containing such false and fictitious selling prices and values relative to such merchandise and the causing of such retail merchants to indiscriminately issue such credit vouchers or checks to contestants without regard to the answers or solutions submitted by them, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and that such false and fictitious selling prices and values are the usual selling prices and actual values for such merchandise, and that by entering said "count the dot" contests and winning a credit voucher by accurately counting the dots or blocks, they would receive special discounts in purchasing the retail dealer's merchandise and thereby effect savings to the extent of the

amount of the credit vouchers won by them. In reliance upon such erroneous and mistaken belief, a substantial number of members of the purchasing public entered into these contests and purchased substantial quantities of the merchandise featured in such contests. As a result, a substantial number of merchants have purchased the sales promotional plan of the respondents and trade has been diverted unfairly to said merchants from other merchants who are competitors in commerce of the merchants with whom respondents contract and who do not make false representations relative to the value of their merchandise or issue checks or credit vouchers for various stated amounts which are in fact of no monetary value in purchasing merchandise from them. Further, as a result trade has been diverted unfairly to the respondents from their competitors described in paragraph 7 hereof.

PAR. 7. Respondents are engaged in substantial competition in commerce among and between the various States of the United States with other corporations and individuals and with partnerships and firms who are engaged in the sale and distribution of various sales promotional plans for the stimulation of trade, and who do not engage in the practice of causing the merchants with whom they contract to make false representations relative to the values of their merchandise or to issue checks or credit vouchers for various stated amounts which are in fact of no monetary value in purchasing merchandise from such retail merchants, and who do not make, or cause to be made, any other false statements and representations in connection with the sale and distribution of their sales promotional plans or of the merchandise involved in the use thereof.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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. C. Reeves, Robert S. Hall and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein (respondent not having requested oral argument), and the Commission having

made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Twentieth Century Business Builders, Inc., a corporation, its officers, representatives, agents, and employees, and Edwin I. Gordon, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce as commerce is defined in the Federal Trade Commission Act of a sales promotional plan designated in the trade as a "count the dot" or "count the block" plan, or any other sales promotional plan, do forthwith cease and desist from:

1. Representing, or causing or assisting the purchasers of said plan to represent, that any sales promotional plan in which credit vouchers, checks, gifts, or any form of so-called prizes, are given to the entrants or contestants therein without regard to the relative correctness of the answers or solutions submitted by said entrants or contestants, is a contest.

2. Representing, or causing or assisting the purchasers of said plan to represent, that credit vouchers or checks, or any other form of prizes or gifts awarded in connection with such sales promotional plan, enable the recipients thereof to receive a "credit," "reduction" or other financial advantage in the purchase of merchandise when, in fact, said merchandise is offered for sale in the course of such sales promotional plan or so-called "contest" at a price in excess of the normal and customary price of said merchandise.

3. Representing, or causing or assisting the purchasers of said plan to represent, as "special" or "sale" prices of merchandise offered for sale in connection with said sales promotional plan, prices which are the same as or in excess of the regular and customary prices of said merchandise.

4. Representing, or causing or assisting the purchasers of said plan to represent, as the customary or regular prices or values of merchandise offered for sale in connection with the said sales promotional plan, prices or values which are in fact fictitious and in excess of the prices at which such merchandise is regularly and customarily offered for sale.

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

WILLIAM W. CHAMBERS DOING BUSINESS AS THE
GREATER CHAMBERS COMPANY

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

Docket 3035. Complaint, Jan. 15, 1937—Decision, Apr. 3, 1939

Where an individual engaged in operating group of undertaking establishments and in selling and distributing line of caskets, vaults, accessories, and facilities usually connected with conduct of funerals and operation of such establishments, to purchasers in commerce among and between various States and in the District of Columbia, in competition with others engaged in sale and distribution of like and similar products in commerce among the various States and in said District; in advertising, through various circulars, folders, booklets, and newspapers and periodicals of national circulation, his complete funerals, caskets, vaults, accessories, and facilities—

- (a) Represented that certain undertaking facilities and merchandise furnished free, through such statements, among others, as "The many extra services rendered by Chambers are given without charge. * * *," "Complete funerals, cars and all, use of our buildings and chapels free," "* * * None of the extra services offered * * * are charged for * * *," etc., facts being he did not furnish any articles of merchandise or undertaking facilities free, but price thereof was included in that charged on purchase of a casket or other similar merchandise;
- (b) Represented that prices charged by him were discounts or reductions from those ordinarily charged, through such statements among others, as "This \$500.00 service by Chambers for only \$265.00," and through representation that he furnished a \$300 funeral for \$165 and a \$150 funeral for \$75, and that such prices charged for complete funerals represented saving in discount to purchaser, facts being they did not represent such discount or reduction but his usual and customary prices; and
- (c) Represented that burial vaults sold by him for \$85 were of a value of \$150, and were waterproof and airtight and would answer the purpose of a "\$5,000.00 mausoleum" because of nature of their construction, facts being said vault was usually sold for sum of \$85, was not waterproof and airtight, and would not answer all the purposes of a mausoleum;

With a tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and with result, as direct consequence of such erroneous and mistaken belief induced by his advertising statements and representations, that number of purchasing public bought substantial quantities of his said products and trade was unfairly diverted to him from others likewise engaged in sale in commerce among the various States of complete funerals, caskets, vaults, accessories and facilities and who truthfully advertise their products and services:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. James M. Hammond for the Commission.

Mr. Leonard A. Block and *Mr. Lucius Q. C. Lamar*, 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 William W. Chambers, an individual doing business under the firm name and style of The Greater Chambers Co., hereinafter referred to as the respondent, has been and is using unfair methods in 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, William W. Chambers, an individual doing business under the firm name and style of The Greater Chambers Co., is an undertaker operating a group of undertaking establishments. His main office and principal place of business is located at 1400 Chapin Street, N.W., Washington, D. C., with branches located at 517 Eleventh Street, S.E., Washington, D. C., and 918 Cleveland Avenue, Hyattsville, in the State of Maryland. He is now, and for many years last past has been, engaged in selling "complete funerals," which include among other things, caskets, vaults, and other facilities usually connected with the operation of a funeral home or undertaking establishment and in shipping said caskets, vaults, and the accessories pertaining thereto, or causing the same to be shipped, when sold from his several places of business to various places located in the District of Columbia, or the State of Maryland, or other States of the United States. There is now, and has been for more than 1 year last past, a constant current of trade and commerce among and between the various States of the United States and in the District of Columbia by the respondent in the aforesaid complete funerals, caskets, vaults, and other funeral accessories or facilities. In the course and conduct of his business the respondent is now, and has been, in substantial competition with other individuals, firms, corporations, and partnerships likewise engaged in the sale of "complete funerals" including,

among other things, caskets, vaults, and other facilities usually connected with the operation of a funeral home or undertaking establishment, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 2. Many members of the purchasing public have a preference for purchasing merchandise including caskets, vaults, and undertaking facilities from establishments of large size, believing that in so doing they will obtain merchandise of superior quality at better prices than can be obtained elsewhere and that they will be dealing with establishments of recognized leadership in their field.

PAR. 3. In the course and conduct of his business as described in paragraph 1 hereof, and for a long time last past, the respondent herein in soliciting the sale of and selling his complete funerals, including caskets, vaults, and other funeral accessories, in commerce as herein set out, makes use in his letterheads, circulars, catalogs, trade literature, and advertising matter of statements, among others, such as the following:

One of the largest undertakers in the world.
Forty assistants, twenty-five cars,
seven chapels, fourteen parlors.

Said statements serve as representations on the part of the respondent to a substantial portion of the purchasing public that respondent is one of the largest undertakers in the world, and that in purchasing caskets, vaults, and other facilities from him the public will secure the advantages as to price, quality and service regularly and usually obtained by the public in dealing with establishments of large size.

In truth and in fact respondent is not one of the largest undertakers in the world and does not maintain 40 employees of all types, nor 40 employees of the type susceptible of classification as undertakers, assistant undertakers, or assistant funeral directors, or persons engaged in the preparation of the dead for burial, and does not own, operate, or maintain the number of cars, chapels, or parlors so represented.

PAR. 4. In the course and conduct of his business as described in paragraph 1 hereof, and for a long time last past, the respondent in soliciting the sale of and selling his complete funerals including caskets, vaults, and other funeral accessories, makes use in his letterheads, circulars, catalogs, trade literature, and advertising matter of statements, among others, such as the following:

The many extra services rendered by Chambers are given without charge. Here are just a few of the uncharged-for services that remove much of the funeral responsibility from your shoulders:

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Attending to funeral notices in all local papers.

Skilled expert to arrange floral displays.

Beautiful Chambers funeral chapel at the disposal of the family.

Attendance to all funeral details.

Lady attendants to fix hair and attend to dressing of women and children.

Plastic surgery.

Securing death certificates and burial permits, etc.

The wooden box is furnished free by CHAMBERS when a vault is not purchased.

Complete funerals, cars and all, use of our buildings and chapels free.

The unstinted luxury, comfort and convenience of its parlors and chapels are free to you! None of the extra services offered by Chambers are charged for—you are allowed every privilege of the Chambers funeral home without any additional charge.

This \$500.00 service by Chambers for only \$265.00.

The same service as all Chambers services goes with a beautiful funeral complete for only \$75.00.

How do you feel when you pay \$300.00 for something you could have bought for \$165.00—\$135.00 saved.

In truth and in fact the aforesaid statements and representations of the respondent that the services, cars, hearses, and other funeral facilities which are furnished in connection with the sale of a casket, are free, or that he renders a \$500 service in connection with every funeral or that customers at his establishment will save one-half of the usual price or one-half of the former price of a funeral, or that members of the public will receive a \$500 funeral for \$265 or a \$300 funeral for \$165, or through any similar comparison of value and cost that the public receives a higher priced funeral service than for which the public pays, are false and misleading. The respondent does not give free services or free extras in connection with the sale of his caskets, vaults, and funeral facilities but charges the full price therefor in the purported charge for the said caskets, facilities, and funeral services. The respondent does not sell his funeral services at half price, half the usual price, or half the old-time price therefor, and does not give a \$500 funeral service for \$265 or a \$300 funeral for \$165, but the said prices charged are respondent's usual and customary prices and the usual and customary market values of said caskets, vaults, facilities, and funeral services.

PAR. 5. In the course and conduct of his business as described in paragraph 1 hereof and for a long time last past the respondent herein in soliciting the sale of and selling his complete funerals including caskets, vaults, and funeral accessories in commerce as herein set out, makes use in his letterheads, circulars, catalogs, trade literature, and advertising matter of statements, among others, such as the following:

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The \$85.00 steel vault. This air-sealed vault is a perfect symbol of security—made of 12-gauge copper-bearing steel—this vault is water-proof and air-tight—very reasonably priced.

World's finest water-proof, air-tight, guaranteed steel burial vault may be had from Chambers for \$85.00.

This steel vault—400 pounds of solid steel—always sold for \$150.00 until Chambers reduced its price to \$85.00.

Answering the purpose of a \$5,000.00 mausoleum—400 pounds of solid steel burial vault, one of the best that's made—only \$85.00. For those who want the best, you will find this affords the finest burial vault you can obtain in metal protection.

The aforesaid statements serve as representations on the part of the respondent to purchasers and prospective purchasers that his steel vaults are airsealed, waterproof, and airtight; that the vault which he sells for \$85 is worth \$150; that the vault he sells for \$85 answers the purpose of a \$5,000 mausoleum and is the finest burial vault which can be obtained. In truth and in fact the aforesaid representations are false and misleading, as his burial vaults are not waterproof or airtight, and the vault which he sells for \$85 does not now and has not heretofore sold for \$150 and does not answer the purpose of a \$5,000 mausoleum, and is not the finest burial vault which can be obtained.

PAR. 6. There are among the competitors of the respondent, as set forth in paragraph 1 hereof, other individuals, firms, corporations, or partnerships who do sell complete funerals including vaults, caskets and funeral facilities or accessories in commerce, as herein set out, who do not misrepresent the relative size of their undertaking establishments, the number of their assistants, or the extent of their facilities, or make use of misrepresentations similar to those set forth in paragraphs 2, 3, and 4 hereof, or who do not in any wise misrepresent the character, price, or extent of the commodities, services or facilities sold.

PAR. 7. The acts and practices of the respondent in making the representations herein set forth are calculated to mislead and deceive, and have and have had the capacity, tendency and effect of misleading and deceiving, and have misled and deceived, a substantial portion of the purchasing and consuming public into the erroneous belief that all of said representations are true and into the purchase of the respondent's caskets, vaults, and other facilities in reliance on said representations.

By means of the aforesaid false and misleading representations made to the purchasing public as above described, respondent has increased his own sales of said caskets, vaults, and funeral facilities, thereby lessening the market for similar caskets, vaults, and funeral facilities sold by other undertaking establishments who truthfully represent the

price, nature, quality, or advantage of their products, or the extent of their facilities and their true size and character in the undertaking business.

As the result thereof, trade is unfairly diverted to the respondent from competitors engaged in the sale in the District of Columbia or in commerce as herein set out of similar caskets, vaults, and funeral facilities, who truthfully represent the true nature of their facilities, products and services, the true price thereof, or the true size of their business as undertakers. Further, as the result thereof, substantial injury has been and is being done by respondent to the purchasing public and to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices and representations of the respondent 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 the Federal Trade Commission Act, the Federal Trade Commission, under date of January 15, 1937, issued and served its complaint in this proceeding upon the respondent, William W. Chambers, an individual doing business under the firm name and style of "The Greater Chambers Company," charging said respondent with the use of unfair methods of competition in commerce in violation of said act.

The respondent having entered his appearance by his attorneys, Leonard A. Block and Lucius Q. C. Lamar, filed his answer herein. The Commission is represented by James M. Hammond. Thereafter, hearings were had and evidence was thereupon introduced in support of the allegations of the complaint and on behalf of respondent before John J. Keenan, a trial examiner of the Federal Trade Commission, theretofore duly appointed. During the taking of testimony respondent entered into a stipulation of facts, which stipulation was incorporated in the record.

Thereafter this proceeding came on for final hearing before the Commission on the said complaint, answer, evidence and stipulation, 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 conclusions drawn therefrom.

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, William W. Chambers, an individual, doing business under the firm name and style of The Greater Chambers Co., is an undertaker operating a group of undertaking establishments, with his main office and principal place of business at 1400 Chapin Street, NW., Washington, D. C., and with branch offices located at 517 Eleventh Street, SE., Washington, D. C., and 918 Cleveland Avenue, Hyattsville, Md.

PAR. 2. The respondent is now, and for more than ten years last past has been, engaged in the business of selling and distributing a line of caskets, vaults, accessories and facilities usually connected with the conduct of funerals and operation of a funeral home or undertaking establishment, to purchasers thereof in commerce among and between various States of the United States and in the District of Columbia, causing his products when sold, to be shipped from his place of business in the State of Maryland to purchasers in States of the United States other than the State of Maryland and from his establishments in the District of Columbia to purchasers in said District of Columbia and other States. Respondent maintains, and during the times mentioned herein has maintained, a course of trade in caskets, vaults, accessories and facilities connected with complete funerals so sold and distributed by him in competition with other individuals, partnerships and corporations engaged in the sale and distribution of like or similar products 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 said business, respondent in the sale of his caskets, vaults, accessories, and facilities connected with complete funerals, and in inducing the public to purchase said vaults, caskets, accessories and facilities, has, by means of various advertising circulars, folders, booklets, advertisements inserted in newspapers and magazines of national circulation throughout the United States, made statements and representations concerning the price, character and nature of said complete funerals, caskets, vaults, accessories and facilities, among which are the following:

The many extra services rendered by Chambers are given without charge. Here are just a few of the uncharged-for services that remove much of the funeral responsibility from your shoulders: Attending to funeral notices in all local papers; skilled expert to arrange floral display; beautiful Chambers funeral chapel at the disposal of the family; attendance to all funeral details; lady attendants to fix hair and attend to dressing of women and children; plastic surgery; securing death certificates and burial permits.

The wooden box is furnished free by CHAMBERS when a vault is not purchased.

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Complete funerals, cars and all, use of our buildings and chapels free.

The unstinted luxury, comfort and convenience of its parlors and chapels are free to you! None of the extra services offered by Chambers are charged for—you are allowed every privilege of the Chambers funeral home without any additional charge.

This \$500.00 service by Chambers for only \$265.00.

The same service as all Chambers services goes with a beautiful funeral complete for only \$75.00.

How do you feel when you pay \$300.00 for something you could have bought for \$165.00—\$135.00 saved.

Here is that \$165.00 funeral I claim old-time undertakers sell for \$300.00.

The \$85.00 steel vault. This air-sealed vault is a perfect symbol of security—made of 12-gauge copper-bearing steel—this vault is water-proof and airtight—very reasonably priced.

World's finest water-proof, airtight, guaranteed steel burial vault may be had from Chambers for \$85.00.

This steel vault—400 pounds of solid steel—always sold for \$150.00 until Chambers reduced its price to \$85.00.

Answering the purpose of a \$5,000.00 mausoleum—400 pounds of solid steel burial vault, one of the best that's made—only \$85.00. For those who want the best, you will find this affords the finest burial vault you can obtain in metal protection.

PAR. 4. By means of the foregoing and other and similar statements and representations which purport to be descriptive of respondent's complete funerals, undertaking facilities, caskets, vaults, and other similar merchandise, the respondent represents that certain undertaking facilities and merchandise are furnished free, that the respondent furnishes a \$500 funeral for \$265, a \$300 funeral for \$165 and a regular \$150 funeral for \$75, and that the prices charged by the respondent for complete funerals represent a saving and discount to the purchaser. By this means also the respondent represents that the burial vaults sold by him for \$85 are of a value of \$150 and are waterproof and airtight and will serve the purposes of a mausoleum because of the nature of their construction.

In truth and in fact, the respondent does not furnish any articles of merchandise or undertaking facilities free, but the price thereof is included in the price charged on the purchase of a casket or other similar merchandise. The respondent does not furnish a \$500 funeral for \$265, a \$300 funeral for \$165 or a regular \$150 funeral for \$75, but in truth the prices charged by the respondent are the usual and customary prices generally charged for such complete funerals. The prices so charged by the respondent are not a discount or reduction from the prices ordinarily charged by the respondent, but represent respondent's usual and customary prices. The steel burial vault sold by respondent is not of a value of \$150, but is a vault which is usually and customarily sold for the sum of

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\$85; said vault is not waterproof and airtight and will not answer all the purposes of a mausoleum.

PAR. 5. Each and all of the misleading and untrue statements and representations made by respondent in offering for sale and selling his complete funerals, caskets, vaults, accessories and facilities 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 said representations are true. Further, as a direct consequence of such mistaken and erroneous belief induced by the advertising, statements and representations of respondent, as aforesaid, a number of the purchasing public have purchased a substantial quantity of said products with the result that trade has been unfairly diverted from other corporations, individuals, firms and partnerships likewise engaged in the sale in commerce among and between the various states of the United States of complete funerals, caskets, vaults, accessories and facilities, who truthfully advertise their products and services.

PAR. 6. The Commission further finds that the charges alleged in paragraph 3 of the complaint herein have not been sustained.

CONCLUSION

The aforesaid acts, representations and practices of the respondent, William W. Chambers, an individual, doing business under the firm name and style of The Greater Chambers Co., have been and are 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, and the briefs filed herein by James M. Hammond, counsel for the Commission, and by Leonard A. Block, counsel for the respondent, and the Commission having made its findings as to the facts and conclusion, that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, William W. Chambers, individually and doing business under the name The Greater Cham-

bers Co., or under any other trade name, his agents, employees, and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of caskets, vaults, or other undertaking facilities in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the customary or regular prices or values for funerals, caskets, vaults or other and similar merchandise, prices and values which are in fact fictitious and greatly in excess of the prices at which said funerals, caskets, vaults or similar merchandise are regularly and customarily offered for sale and sold in the normal and usual course of business.

2. Representing that the price at which funerals, caskets, vaults or other and similar merchandise are offered for sale is a saving or discount to the purchaser when in fact said price is the usual and customary price at which the respondent sells said funerals, caskets, vaults or similar merchandise in the normal and usual course of business.

3. Using the term "free" or any other term of similar import or meaning to designate or describe articles of merchandise or undertaking facilities regularly included in a combination offer with caskets or other similar articles of merchandise.

4. Representing that the vaults or any other articles of merchandise of similar design and construction sold by the respondent are waterproof or airtight or will answer the purposes of a mausoleum when such is not the fact.

It is further ordered, That the charges set out in paragraph 3 of the complaint be, and the same hereby are, dismissed.

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
IDAHO 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 3130. Complaint, May 15, 1937—Decision, Apr. 3, 1939

Where a corporation engaged in selling and distributing various packages or assortments of candy and other articles of novelty merchandise which were so packed and assembled to involve or were designed to or might involve use of a lottery scheme when sold and distributed to ultimate consumers thereof, and included, in case of all, push card or punchboard and use of same method of chance for distribution of candy or other articles to consuming public by means of said card or board and were made up as illustrative, in case of two of such assortments, of

- (a) Number of bars of candy, together with push card for use in sale and distribution of such candy to purchasing public under a plan by which purchaser received for the 5 cents paid 5, 4, 3, 2, or 1 bar of candy in accordance with success or failure in securing from card certain legends concealed thereon, and last sale of assortment entitled purchaser to four bars of candy; and of
- (b) Number of packages of candy and another article of merchandise, together with a punchboard for use in sale and distribution of such candy and other article to purchasing public under a plan and in accordance with said board's explanatory legend, by which chance receipt from board of certain specified numbers entitled persons securing same to specified packages of candy, and certain other number, or last punch entitled person securing number or making punch to other article of merchandise, and purchasers not qualifying by obtaining one of specified numbers or making last purchase received nothing for their money other than privilege of punching number from board;

Sold to wholesalers and jobbers for display and resale to purchasing public by retail dealer purchasers thereof in accordance with such sales plans said assortment and thereby supplied to and placed in the hands of others means of conducting lottery in sale of its products in accordance with such plans involving game of chance or sale of a chance to procure additional bars of candy, packages of candy, or other article of merchandise; contrary to public policy as long recognized in the common law and criminal statutes and contrary to the public policy of the United States Government, and in competition with many who sell and distribute candy and other articles of merchandise and are unwilling to offer or sell the same so packed and assembled as above found or otherwise arranged or packed for sale to purchasing public so as to involve game of chance and refrain therefrom;

With capacity and tendency to induce purchasers of its said products thereby to buy same in preference to candy and other articles offered and sold by its competitors; and with result that many dealers in and ultimate purchasers of candy and other articles were attracted by its said method and manner of packing said candy and other merchandise and by element of chance involved therein as above set forth and were thereby induced to purchase substantial quantities of said products so packed and sold by it in preference to other articles offered and sold by its competitors who do not use same or equivalent method; and

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With further tendency and capacity through use of such method and because of said game of chance to divert trade and custom to it from said competitors who do not use same or equivalent methods, to exclude from said candy trade all competitors who are unwilling to and do not use such methods as unlawful, to lessen competition in said trade and create monopoly thereof in it and in such other distributors of candy and such other articles who use same or equivalent methods, and to deprive purchasing public of benefit of free competition in said trade, and to eliminate therefrom 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, as above set forth, were all to the injury and prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Henry M. White, Mr. William C. Reeves, and Mr. Miles J. Furnas*, trial examiners.

Mr. Henry C. Lank, Mr. P. C. Kolinski, and Mr. D. C. Daniel for the Commission.

Langroise, Sullivan & Griffin, of Boise, Idaho, 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 Idaho 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, 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 Idaho, with its principal office and place of business located at 412 South Eighth Street, in the city of Boise, State of Idaho. Respondent is now, and for several years last past has been, engaged in the sale and distribution of candy and various articles of novelty merchandise to wholesale dealers and jobbers and retail dealers located at points in the State of Idaho and in various other States of the United States. Respondent causes said products when sold to be transported from its place of business in the city of Boise, State of Idaho, to purchasers thereof in Idaho 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 and other merchandise 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 and in the sale and distribution of various articles of novelty 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 sells and has sold to wholesale dealers and jobbers and retail dealers various packages or assortments of candy and other articles of novelty merchandise 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. Respondent assembles, sells and distributes various assortments, some of which contain candy only while others contain packages of candy, together with other articles of merchandise. All such assortments include a push card or a punchboard, and each assortment involves the use of the same method of chance for the distribution of the candy or other articles of merchandise to the consuming public by means of said push card or punchboard; for illustration:

(a) One of said assortments is composed of a number of bars of candy, together with a device commonly called a "push card." The said bars of candy are sold and distributed to the consuming public by means of said push card in the following manner: Sales are 5 cents each, and each purchaser is entitled to one push from said card. When a push is made from said card, a legend is disclosed. The card bears statements informing purchasers and prospective purchasers that certain legends receive five bars of candy, that certain other legends receive four bars of candy, that certain other legends receive three bars of candy, that certain other legends receive two bars of candy, that certain other legends receive one bar of candy, and that the last sale from said assortment receives four bars of candy. The legends on said card are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular push separated from the card. The fact as to whether a purchaser receives one or more than one bar of candy for the price of 5 cents is thus determined wholly by lot or chance.

(b) Another assortment is composed of a number of packages of candy and another article of merchandise, together with a device commonly called a "punchboard." The candy and the other article of merchandise are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each, and each purchaser is entitled to punch a concealed slip of paper bearing a printed number from said board. The numbers begin

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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 statements informing purchasers and prospective purchasers that certain numbers receive specified packages of candy, that a certain other number or the last punch from said board receives the other article of merchandise, and that purchasers not qualifying by obtaining one of the specified numbers or by making the last purchase from the board receive nothing for their money other than the privilege of punching a number from said board. The slips of paper bearing printed numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular punch or slip of paper separated from the board. The fact as to whether a purchaser receives one of the packages of candy or the other article of merchandise, or nothing other than the privilege of punching a number from said board, 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 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 and other articles of merchandise 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 and other articles of merchandise offered for sale and sold by its competitors.

PAR. 4. The sale of said candy and other articles of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure additional bars of candy, packages of candy, or another article of merchandise. The use by respondent of said methods in the sale of candy and other articles of merchandise, and the sale of candy and other articles of merchandise 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 to create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the said trade involved in this proceeding competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or equiv-

alent or similar elements of chance or lottery schemes. Many persons, firms, and corporations who sell and distribute candy and other articles of merchandise in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy and merchandise 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 and other articles of merchandise are attracted by respondent's said methods and manner of packing said candy and other merchandise 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 other articles of merchandise so packed and sold by respondent in preference to candy and other articles of merchandise 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 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 trade and to tend to create a monopoly in said trade in respondent and such other distributors of candy and other articles of merchandise as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said methods by respondent has the tendency and capacity to eliminate from said trade all actual competitors and 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 the Federal Trade Commission Act, the Federal Trade Commission on May 15, 1937 issued and thereafter served its complaint in this proceeding upon respondent, Idaho Candy 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the 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 Idaho, with its principal office and place of business located at 412 South Eighth Street, in the city of Boise, State of Idaho. Respondent is now, and for several years last past has been, engaged in the sale and distribution of candy and various articles of novelty merchandise to wholesale dealers and jobbers and retail dealers located at points in the State of Idaho and in various other States of the United States. Respondent causes said products when sold to be transported from its aforesaid place of business in the city of Boise, State of Idaho, to purchasers thereof in Idaho 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 by said respondent in such candy and other merchandise in commerce 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 and in the sale and distribution of various articles of novelty 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 sells and has sold to wholesale dealers and jobbers and retail dealers various packages or assortments of candy and other articles of novelty merchandise 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. Respondent assembles, sells and distributes various assortments, some of which contain candy only while others

contain packages of candy, together with other articles of merchandise. All such assortments include a push card or a punchboard, and each assortment involves the use of the same method of chance for the distribution of the candy or other articles of merchandise to the consuming public by means of said push card or punchboard; for illustration:

(a) One of said assortments is composed of a number of bars of candy, together with a device commonly called a "push card." The said bars of candy are sold and distributed to the consuming public by means of said push card in the following manner: Sales are 5 cents each, and each purchaser is entitled to one push from said card. When a push is made from said card, a legend is disclosed. The card bears statements informing purchasers and prospective purchasers that certain legends receive five bars of candy, that certain other legends receive four bars of candy, that certain other legends receive three bars of candy, that certain other legends receive two bars of candy, that certain other legends receive 1 bar of candy, and that the last sale from said assortment receives four bars of candy. The legends on said card are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular push separated from the card. The fact as to whether a purchaser receives one or more than one bar of candy for the price of 5 cents is thus determined wholly by lot or chance.

(b) Another assortment is composed of a number of packages of candy and another article of merchandise, together with a device commonly called a "punchboard." The candy and the other article of merchandise are sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each, and each purchaser is entitled to punch a concealed slip of paper bearing a printed number from said board. 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 statements informing purchasers and prospective purchasers that certain numbers receive specified packages of candy, that a certain other number or the last punch from said board receives the other article of merchandise, and that purchasers not qualifying by obtaining one of the specified numbers or by making the last purchase from the board receive nothing for their money other than the privilege of punching a number from said board. The slips of paper bearing printed numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular punch or slip of paper separated from the board. The fact as to whether a purchaser receives one of the

packages of candy or the other article of merchandise, or nothing other than the privilege of punching a number from said board, 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 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 and other articles of merchandise 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 and other articles of merchandise offered for sale and sold by its competitors.

PAR. 4. The sale of said candy and other articles of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure additional bars of candy, packages of candy, or another article of merchandise. The use by respondent of said methods in the sale of candy and other articles of merchandise, and the sale of candy and other articles of merchandise 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 to create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the said 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 sell and distribute candy and other articles of merchandise in competition with the respondent, as above found, are unwilling to offer for sale or sell candy and other merchandise so packed and assembled as above found, 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 and other articles of merchandise are attracted by respondent's said methods and manner of packing said candy and other merchandise and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase substantial quantities of said candy and other articles of merchandise

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so packed and sold by respondent in preference to candy and other articles of merchandise 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 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 trade and to create a monopoly in said trade in respondent and such other distributors of candy and other articles of merchandise as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said methods by respondent has the tendency and capacity to eliminate from said trade all actual competitors and exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

CONCLUSION

The aforementioned methods, acts, and practices of respondent as hereinabove found 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 the Federal Trade Commission Act.

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 all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Idaho Candy Co., its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or other merchandise so packed and assembled that sales of such candy and other merchandise 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 dealers assortments of candy or other merchandise, which assortments are to be 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 said candy or other merchandise contained in said assortments to the public.

3. Supplying to, or placing in the hands of dealers assortments of candy or other merchandise together with push cards, punchboards, or other lottery devices, which push cards, punchboards or other lottery devices are to be used or may be used in selling or distributing such candy or other merchandise to the public.

4. Supplying to, or placing in the hands of dealers a lottery device either with assortments of candy or other merchandise, or separately, which lottery device is to be used or may be used in selling or distributing such candy or other merchandise to the public.

5. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

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IN THE MATTER OF

HIRAM E. BARBER DOING BUSINESS AS MOTOR EQUIPMENT SPECIALTY COMPANY

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

Docket 3617. Complaint, Sept. 30, 1938—Decision, Apr. 3, 1939

Where an individual engaged in manufacture, sale and distribution of two devices for use in connection with automobile work, namely, the "Mesco Fender Roller" and the "Universal Wheel Check," to purchasers in various other States, in substantial competition with others engaged in sale and distribution of other devices intended and sold for similar usage; in advertising in various periodicals and newspapers circulating throughout the various States for salesmen to engage in distribution of said devices, and in letters and circulars sent through the mails to prospective agents and salesmen purchasing for resale, and to those purchasing for use—

- (a) Made such statements, with respect to purported earnings or profits of salesmen of said devices, as "Up to \$250 weekly profits made with amazing new 'Mesco' fender tools," "Salesmen wanted—\$250 weekly profit made selling special tool set to garages," "Every garage needs one so you see \$250 per week isn't unreasonable. Really it is only a good week," and made, among others, such statements as "Hewett made \$84.50 in one day," etc., "Felton averaged better than \$150 weekly all summer long—Barber cleared \$1,100 in seven weeks—We will show you how to do as well," and "Dealers can just coin money";

Facts being successful demonstration is necessary in practically all cases to effect sales of said roller, and it is necessary to acquire considerable skill, which may be had only by actual practice and experience, in order to give such demonstration, those who do not acquire ability to operate roller so as to obtain successful and satisfactory results essential to success of a salesman cannot reasonably be expected to approach aforesaid earnings, many purchasers, without personal demonstration, have been unable to operate roller satisfactorily, notwithstanding written instructions, any earnings of \$250 a week were made by persons who had acquired sufficient skill to be able to demonstrate roller successfully, and even they had not earned at said rate consistently in ordinary course of business under normal conditions, stated earnings for specific periods of individuals named, who included owner and seller herein and all of whom were sufficiently skilled to give satisfactory demonstration, were not representative of their earnings over long periods, and none of salesmen obtained as result of said individual's advertising had earnings even approaching those of individuals mentioned;

- (b) Made such statements, with respect to efficacy of said roller and ease with which proficiency in use thereof might be acquired, and with respect to merchantability of said articles, as "Actually lifts dents out of fenders and makes them perfectly smooth without hammering, grinding or filing," "Does not mar paint or varnish," "Saves the long practice required with other tools," "Badly needed by every garage and shop," and "No competition";

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Facts being that, while said roller will, if capably operated, remove many dents, it will not remove all, additional work, in some cases, must be done either prior to or following use of roller, in order to obtain desired smoothness, operation cannot, in all cases, be carried on without marring paint or varnish, dependent upon number of factors including skill of operator, etc., proficiency in use cannot be acquired without certain amount of practice, and articles in question are in fact competitive, affecting salability of roller, and garage or shop owner's need thereof is reflected by present equipment and prospective purchaser's opinion as to relative merits of that and article in question; and

(c) Made such statements, with respect to terms and conditions of sale, as "If you can't sell them we will sell them for you or refund your money";

Facts being he did not refund to customers purchase price for such devices upon being advised of customer's inability to sell same, but required customers demanding such refund, and notwithstanding nondisclosure of such a requirement in his aforesaid advertising matter, to furnish lists of those to whom devices had been offered and reasons given for their refusal to purchase;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said statements and representations were true, and into purchasing substantial quantities of his devices because of such erroneous and mistaken belief, and with result that trade in commerce was thereby diverted unfairly to him from competitors engaged in sale and distribution of devices designed and intended for similar use:

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

Mr. Randolph W. Branch for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Hiram E. Barber, an individual, trading and doing business under the name and style of Motor Equipment Specialty Co., hereinafter referred to as respondent, has violated the provisions of the 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, Hiram E. Barber, is an individual doing business under the name and style of Motor Equipment Specialty Co., with his office and principal place of business at Beaver City, in the State of Nebraska. The respondent is now, and for more than one year last past, has been, engaged in the manufacture and sale of various articles known generally as Automotive Specialties and particularly two devices known as the "Mesco Fender Roller" and the "Universal Wheel Check," the former for use in the removal of dents from auto-

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mobile fenders and the latter for use in determining the correctness of the alignment of automobile wheels. In the course and conduct of his business, respondent causes said devices, when sold, to be transported from his aforesaid place of business in the State of Nebraska to the prospective purchasers thereof located in the various States of the United States other than the State of Nebraska and respondent maintains, and has at all times herein referred to maintained, a course of trade in said devices in commerce among and between 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 is now, and has been for more than one year last past, in substantial competition with other individuals, firms, partnerships, and corporations engaged in the sale and distribution of other devices designed, intended, and sold for similar usage in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, and for the purpose of inducing the purchase of said devices by salesmen purchasing for resale and by others, the respondent has advertised for salesmen to engage in the distribution of his devices in newspapers, magazines and other periodicals having a large interstate circulation particularly among prospective agents and salesmen for devices of this character. Among, and typical of, the advertisements so used by the respondent are the following:

UP TO \$250 WEEKLY PROFITS MADE WITH AMAZING NEW "MESCO" FENDER TOOLS
Actually lifts Dents Out of Fenders and Makes Them Perfectly Smooth without Hammering, Grinding or Filing.

DOES NOT MAR PAINT OR VARNISH

Representatives Badly Needed by Every Garage and Shop—Ten Minutes Work Often Saves Buying New Fender—Saves the Long Practice Required with Other Tools—Often Makes More Profit Than All the Rest of the Shop Combined. Priced Where Every Shop Can Buy It.

Hewett made \$84.50 in one day selling "Mesco" Fender Tools—Felton averaged better than \$150 weekly all summer long—Barber cleared \$1100 in seven weeks—We will show you how to do as well.

Exclusive territory to producers—Main or side line. Get full particulars, while territory is available.

MOTOR EQUIPMENT SPEC. CO

Box 2050

Beaver City, Neb.

SALESMEN WANTED—
\$250 WEEKLY PROFIT MADE SELLING
SPECIAL TOOL SET TO GARAGES.
No Competition.

Write "Mesco"

Box 205-S

Beaver City, Neb.

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SALESMEN—\$84.50 profit in one day by Hewett. \$1100 in seven weeks by Barber. Over \$200 per week all summer by Felton. All selling our Special Tool Set to garages. No competition. Exclusive Territory. Write Mesco, Box 205, Beaver City, Neb.

PAR. 4. For the purposes aforesaid, the respondent has caused letters and circulars relative to the purported profits or earnings of salesmen of said devices, to the terms and conditions upon which said devices might be purchased, and to the character, utility and merit of said devices, to be sent through the United States mails and otherwise to prospective agents and salesmen purchasing for resale and to others purchasing for use. Among, and typical of, the statements so made as to the purported earnings or profits of salesmen of said devices are the following:

Every garage needs one, so you see \$250 per week isn't unreasonable. Really it is only a good week.

Jewett, who had never sold a lick, went out for about two and a half months, took his family—came back with over \$1000 clear.

D. F. Felton—said "Even \$450 per month straight wouldn't tempt me in the least." He made as high as \$300 clear profit in a single week.

The profits our boys make don't look reasonable and I hesitate to mention them.

D. F. F. made \$90 clear in about six hours on his first trip.

Dealers can just coin money.

You have, as soon as these tools reach you, the makings of \$250 per week salary.

Among, and typical of, the statements so made by the respondent as to the purported terms and conditions upon which purchases of said devices might be made are the following:

If you can't sell them, we will sell them for you or refund your money.

Your sample outfit, the roller and check, cost you only \$12.50 if remittance accompanies order—Enclose one-third of amount of order if you wish it shipped C. O. D.

Among, and typical of, the statements so made by the respondent as to the character, utility and merit of said devices are the following:

It is new but we have not a single dissatisfied customer to our knowledge.

I have seen and used all kinds of fender rollers and I never saw a roller work as nice as that roller does.

We have had our roller for 3 weeks and sure like it fine.

This is the only wheel gauge I ever saw that tells us what we want to know. It is quick, accurate and not too expensive.

PAR. 5. Through use of the aforesaid statements appearing in his advertising literature, and through other statements of similar import and meaning, the respondent represents (1) that said fender roller device will make dented fenders smooth without hammering, grinding or filing or without marring the paint or varnish; (2) that

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said devices can be successfully operated without long experience; (3) that large profits amounting to approximately \$250 per week could be earned by ordinary salesmen and distributors of said devices under normal and usual conditions; (4) that respondent would sell the devices for purchasers or refund the purchase price thereof in the event said salesmen and distributors could not sell such devices; (5) that there is in fact no substantial competition between respondent's devices and other devices designed and intended for similar usage; and (6) that said devices possess such utility and merit as to render them readily salable to all garages.

PAR. 6. The aforesaid representations so made and disseminated by the respondent in the course of his aforesaid business are misleading, deceptive, and false. In truth and in fact, the use of said fender roller device does not in all cases make dented fenders smooth without hammering, grinding or filing and will not generally perform a smooth operation on fenders without marring the paint or varnish. Respondent's devices cannot be successfully used except by those who have devoted a substantial amount of time to practice therewith. Large profits amounting to approximately \$250 per week have not been and cannot be earned by ordinary salesmen and distributors under normal and customary business conditions. In the few instances, if any, in which profits approximating said sum were earned, there were special and unusual circumstances in connection therewith which were not revealed to prospective purchasers purchasing for resale. Ordinary salesmen and distributors under normal and usual conditions of business cannot earn profits in any amount closely approximating the sums represented. Respondent does not customarily refund the purchase price of said devices or sell said devices for purchasers in instances wherein the purchasers have been unable to sell such devices themselves. There is in fact substantial competition between respondent's devices and other devices intended for similar uses. Respondent's said devices do not generally possess the degree of utility and merit represented and can be successfully operated only after long practice and experience with said devices.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations in connection with the offering for sale and sale of said devices in commerce as aforesaid has had, and now has, the capacity and tendency to, and does, mislead and deceive prospective purchasers of such devices into the false and erroneous beliefs that said representations are true and into the purchase of respondent's said devices in and on account of said mistaken and erroneous beliefs so induced by respondent's representations. As a result thereof, trade has been unfairly diverted to re-

spondent from competitors engaged in selling similar devices or other devices designed and intended for similar usage who do not misrepresent the amount of profits that can be earned through selling said devices or otherwise misrepresent the nature, utility and merit of their respective devices. In consequence thereof, injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The acts and practices hereinabove alleged on the part of the respondent are all to the prejudice of the public and to the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 30, 1938, issued, and on October 3, 1938, served, its complaint in this proceeding upon said respondent, Hiram E. Barber, trading and doing business as Motor Equipment Specialty Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On October 7, 1938, the respondent filed his answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, signed and executed by the respondent and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted and filed, and the Commission having 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, Hiram E. Barber, is an individual doing business under the name and style of Motor Equipment Spe-

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cialty Co. His office and principal place of business is at Beaver City, Nebr. The respondent is, and has been for more than one year last past, engaged in the manufacture, sale and distribution of two devices known as the "Mesco Fender Roller" and the "Universal Wheel Check." The former is used in the removal of dents from automobile fenders and the latter in determining the correctness of the alignment of automobile wheels. Respondent causes said devices, when sold, to be transported from the State of Nebraska to the purchasers thereof at their respective points of location in various States of the United States other than in the State of Nebraska. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said devices among and between various States of the United States.

During this period the respondent has been in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of other devices intended and sold for similar usage in commerce between and among the various States of the United States.

PAR. 2. In connection with the sale of its devices, the respondent has advertised in various periodicals and newspapers having a circulation through the various States of the United States for salesmen to engage in the distribution of these devices, and has also caused letters and circulars to be sent through the United States mails between and among various States of the United States to prospective agents and salesmen purchasing for resale and to others purchasing for use.

In the manner and by the means aforesaid the respondent has made statements and representations relating to (1) purported earnings or profits of salesmen of the devices; (2) the efficacy of the fender roller; (3) the ease with which proficiency in the use of the fender roller may be acquired; (4) the merchantability of the articles, and (5) the terms and conditions of sale by respondent. The statements and representations by respondent, disseminated as aforesaid, are hereinafter set forth.

PAR. 3. With respect to the purported earnings or profits of salesmen, the following representations were made by respondent:

Up to \$250 weekly profits made with amazing new "Mesco" fender tools.

Hewett made \$84.50 in one day selling "Mesco" fender tools—Felton averaged better than \$150 weekly all summer long—Barber cleared \$1100 in seven weeks—We will show you how to do as well.

Salesmen wanted—\$250 weekly profit made selling special tool set to garages.

Salesmen—\$84.50 profit in one day by Hewett. \$1100 in seven weeks by Barber. Over \$200 per week all summer by Felton.

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Every garage needs one so you see \$250 per week isn't unreasonable. Really it is only a good week.

Jewett, who never sold a lick, went out for about 2½ months, took his family—came back with over \$1000 clear.

D. F. Felton said—"Even \$450 per month straight wouldn't tempt me in the least." He made as high as \$300 clear profit in a single week.

The profits our boys made don't look reasonable and I hesitate to mention them.

D. F. F. made \$90 clear in about 6 hours on his first trip.

Dealers can just coin money.

A successful demonstration is necessary in practically all cases to effect sales of respondent's fender roller and it is necessary to acquire considerable skill in order to give a successful demonstration, which skill can be acquired only by actual practice and experience. Ability to operate the roller so as to obtain successful and satisfactory results is essential to success as a salesman and those who do not acquire such ability cannot reasonably be expected to approach the aforesaid represented earnings. Without personal demonstration, many purchasers have been unable to operate the roller satisfactorily although respondent furnishes to such purchaser-salesmen written instructions for the operation of the device. Any earnings of \$250 per week which may have been made by those selling the device have been made by persons who have acquired sufficient skill in the operation of the roller to be able to demonstrate it successfully, but even such persons have not earned at that rate consistently in the ordinary course of business under normal conditions or circumstances.

The earnings of the various individuals mentioned above were made prior to 1935. Those attributed to one individual were made in 1929 while selling for \$12.50 a single article that cost him \$3, whereas the dealers now sell four articles which cost them \$10.75 and have a recommended resale price of \$36. Two of the individuals mentioned above are not now engaged in the sale of the device. "Barber," who is stated to have earned \$1,100 in 7 weeks, is the respondent and is extremely proficient in the use of the fender roller of which he is the designer and manufacturer.

The stated earnings for specific periods of the individuals named are not representative of consistent earnings by these persons over long periods. All of them were sufficiently skilled in the operation of the fender roller to give a satisfactory demonstration.

None of the respondent's salesmen obtained as a result of his advertising have had earnings even approaching those of the individuals mentioned in respondent's advertisements and circulars.

PAR. 4. With respect to the efficacy of the fender roller, the following representations were made:

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Actually lifts dents out of fenders and makes them perfectly smooth without hammering, grinding or filing.

Does not mar paint or varnish.

The fender roller will, if capably operated, remove many dents. It will not, however, since dents may be so located as to be inaccessible to the device, remove all dents from all types of fenders. In some cases work must be done either prior to or after the use of the roller in order to obtain the desired smoothness. The operation cannot in all cases be carried on without marring the paint or varnish. Whether or not such marring occurs depends upon a number of factors which include the skill of the operator, the severity of the dent, the condition of the paint or varnish, and the extent to which it was damaged.

PAR. 5. With respect to the ease with which proficiency in the use of the fender roller may be acquired the following representation was made:

Saves the long practice required with other tools.

Proficiency in the use of the roller cannot be acquired without a certain amount of practice.

PAR. 6. With respect to the merchantability of the devices the following representations were made:

Badly needed by every garage and shop.

No competition.

Every garage needs one.

The articles are competitive. The existence of this competition affects the saleability of the fender roller, and whether or not it is needed by a garage or shop will depend upon its present equipment and the opinion of the purchaser as to the relative merits of this equipment and the respondent's article.

PAR. 7. With respect to the conditions upon which purchases of the devices might be made the following representation was made:

If you can't sell them we will sell them for you or refund your money.

Respondent does not refund to his customers the purchase price for such devices upon being advised of the customer's inability to sell the same. When demands for such refunds are made, respondent requires the customers, demanding such refund, to furnish lists of those to whom the devices have been offered for sale by such customers and the reasons given for their refusal to purchase. Respondent does not disclose such requirement to prospective purchasers of his devices in the advertising matter disseminated as aforesaid.

PAR. 8. The use by respondent of the aforesaid false and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive, and has misled and de-

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ceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the said statements and representations are true, and into purchasing substantial quantities of respondent's devices because of said erroneous and mistaken belief. As a result thereof trade in commerce among and between various States of the United States has been diverted unfairly to the respondent from his competitors engaged in the business of selling and distributing devices designed and intended for similar usage.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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 the Federal Trade Commission Act.

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 entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provide, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Hiram E. Barber, individually and trading as Motor Equipment Specialty Co., or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of certain devices now designated as the "Mesco Fender Roller" and "Universal Wheel Check," or any other devices of substantially similar construction or design, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any given period of time which is not a true representation of the average net earnings or profits consistently made by respondent's active, full time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

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2. Representing any specified sum of money as earnings or profits of any specified agent, salesman, representative or distributor for any given period of time which has not in fact been consistently earned net by such agent, salesman or distributor in the ordinary course of business and under normal business conditions.

3. Representing that the use of such fender roller will remove all dents from all fenders, or will in all cases remove dents from fenders without the necessity of hammering, grinding, filing, or performing other work on the fender, or will in all cases remove dents from fenders without causing damage to the finish of the fender.

4. Representing that such fender roller can be operated adequately or successfully without practice in the operation thereof.

5. Representing that there is no competition in connection with the sale of such devices with other devices designed and intended for similar usage or that such devices are needed by every garage or shop.

6. Representing that respondent will refund the purchase price for such devices to his customers who are unable to resell the same unless and until such is the fact and unless all the terms and conditions of such offer of refund are clearly and unequivocally stated in equal conspicuousness and in immediate connection therewith.

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
ARONSON-CAPLIN 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 3649. Complaint, Nov. 9, 1938—Decision, Apr. 3, 1939

Where a corporation engaged in manufacture, sale, and distribution of women's lingerie, including slips and nightgowns, to retailers in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such products and garments made of silk, rayon, and other fabrics, and including many who do not in any manner misrepresent the nature, character or quality of their merchandise or materials of which made, and do not make any other false statements in connection with sale and distribution thereof—

Represented, through use of such terms as "satin," "taffeta," and "pure dye," and such phrases as, "Taffeta De Luxe 100 percent pure dye, finest tested acetate yarns," on statements purportedly describing material of which its said merchandise was made in catalogs or price lists distributed among prospective purchasers, and on labels attached to articles in question, that said merchandise was made of silk, product of cocoon of silkworm;

Notwithstanding fact said products were not made of silk as aforesaid, as long associated in mind of purchasing public with said terms, which, by substantial part of purchasing public and retailers, were understood and believed to be used only to describe merchandise made of silk, and word "acetate," used either separately or in conjunction with words "satin," "taffeta," or "pure dye," and other words and phrases of similar import or meaning, not sufficiently well known and understood by purchasing public to indicate to or inform them that merchandise thus described was made in whole or in part of material other than silk, and of rayon, was, on contrary, in and as incorporated in such designations, understood by substantial portion of such public to describe silken fabrics and merchandise or products of silk, long held in great public esteem and confidence for their preeminent qualities and preferred by substantial number of members of such public in purchase of lingerie, including slips and nightgowns;

With result of placing, through such labeling on its said articles, distributed as aforesaid, in hands of retailers instrumentality which might be used by them to divert trade unfairly from its competitors who truthfully mark and brand their merchandise, and with effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations and advertisements were true, and that its said products were made of silk, product of cocoon of silkworm, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to purchase substantial quantities of its said goods, and of thereby diverting unfairly trade to it from its competitors in commerce who truthfully advertise, brand and mark their products; to the injury of competition in commerce:

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

Mr. James L. Fort for the Commission.

Mr. Milton N. Mound, of New York City, for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Aronson-Caplin Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Aronson-Caplin Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business at 148 Madison Avenue in the city of New York, State of New York and its factory in the city of Easton, State of Pennsylvania.

PAR. 2. The respondent is now and has been for more than three years last past engaged in the business of manufacturing, selling, and distributing women's lingerie including slips and nightgowns. Respondent sells said merchandise to retail dealers situated in various States of the United States and in the District of Columbia, and causes said merchandise, when sold by it, to be transported from its said factory in the State of Pennsylvania to the purchasers thereof at their respective points of location in various States of the United States other than the State of Pennsylvania and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in commerce in said merchandise among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other corporations and with partnerships, firms and individuals engaged in the business of selling and distributing women's lingerie, including slips and nightgowns, made of silk, rayon, and other fabrics. Among such competitors in said commerce are many who do not in any manner misrepresent the nature, character, or quality of their merchandise or of the materials of which such merchandise is made and who do not make any other false statements in connection with the sale and distribution of their merchandise.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said merchandise, respondent has caused false advertisements containing statements and repre-

sentations purporting to be descriptive of the material of which such merchandise is made to be inserted in catalogs or price lists distributed among prospective purchasers of said merchandise situated in various States of the United States and the District of Columbia, and has caused false statements and representations purporting to be descriptive of the material of which such merchandise is made to be placed on labels attached to said articles of merchandise. Among and typical of the statements and representations used and disseminated as aforesaid are the following:

Made of Satin La Rue.

Made of New Satin La Rue 100% Pure Dye.

Seamprufe made of Taffeta De Luxe 100% pure dye, finest tested acetate yarns.

Crepe La Rue.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of respondent's merchandise and of the material of which such merchandise is made, respondent has represented directly and by implication that such merchandise is made of silk, the product of the cocoon of the silkworm. Silk fiber has been woven for many years into a variety of fabrics which are designated or referred to as "satin," "crepe," "taffeta," or "pure dye." Such terms have been for many years, and are now, associated in the mind of the purchasing public with the product of the cocoon of the silkworm commonly known to retail dealers and the purchasing public as "silk." It is the understanding and belief of a substantial portion of the purchasing public and retail dealers that such terms are used only to describe merchandise made of silk. The word "acetate," when used either separately or in combination or in conjunction with the words "crepe," "satin," "taffeta," or "pure dye" and with other words and phrases of similar import or meaning, is not sufficiently well known and understood by the purchasing public to indicate to or inform them that the merchandise so described, designated or referred to is made in whole or in part of a material other than silk, to wit: rayon; but, on the contrary, such designations are understood by a substantial portion of the purchasing public to describe silken fabrics and merchandise made of silk.

PAR. 6. The aforesaid statements and representations, used and disseminated by the respondent in the manner above described, are misleading and untrue and constitute false advertisements. In truth and in fact, the said merchandise of the respondent is made in whole or in part of rayon.

PAR. 7. The word "silk" for many years last past has had, and now has, in the minds of the purchasing public and retail dealers, a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk products have had for many years, and now have, great public esteem and confidence for their preeminent qualities. A substantial number of the members of the purchasing public have had, and now have, a preference in purchasing lingerie, including slips and nightgowns, for lingerie made of silk, the product of the cocoon of the silkworm.

PAR. 8. The dissemination by the respondent of the aforesaid false statements and representations by placing such statements and representations on labels on the said articles of merchandise which the respondent distributes to retail dealers, places in the hands of such retail dealers an instrumentality which may be used by such retail dealers to divert trade unfairly from the competitors of respondent in said commerce who truthfully mark or brand their merchandise.

PAR. 9. The use by the respondent of the foregoing false and misleading statements, representations and advertisements, disseminated, as aforesaid, with respect to said merchandise, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and that respondent's said merchandise is made of silk, the product of the cocoon of the silkworm, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said merchandise. As a result, trade has been diverted unfairly to respondent from its competitors in said commerce who truthfully advertise, brand, and mark their merchandise. 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 and the District of Columbia.

PAR. 10. The aforesaid acts and practices of the respondent, as herein alleged, 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 9, 1938 issued, and on November 10, 1938 served, its complaint in this proceeding upon the

respondent, Aronson-Caplin Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent filed its answer admitting all the material allegations of fact set forth in said complaint, except respondent denied that it misrepresented the fiber content of "Crepe La Rue" as set forth in the complaint, and alleged in its answer that the said "Crepe La Rue" is in fact made of silk. Respondent, in its answer, waived all intervening procedure and further hearing as to the said facts. 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 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, Aronson-Caplin Co., 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 148 Madison Avenue in the city of New York, State of New York and its factory in the city of Easton, State of Pennsylvania.

PAR. 2. The respondent is now and has been for more than three years last past engaged in the business of manufacturing, selling and distributing women's lingerie including slips and nightgowns. Respondent sells said merchandise to retail dealers situated in various States of the United States and in the District of Columbia, and causes said merchandise, when sold by it, to be transported from its said factory in the State of Pennsylvania and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said merchandise among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other corporations and with partnerships, firms and individuals engaged in the business of selling and distributing women's lingerie, including slips and nightgowns, made of silk, rayon and other fabrics. Among such competitors in said commerce are many who do not in any manner misrepresent the nature, character, or quality of their merchandise or of the materials of which such merchandise is made, and who do not make

any other false statements in connection with the sale and distribution of their merchandise.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said merchandise, respondent has caused false advertisements containing statements and representations purporting to be descriptive of the material of which such merchandise is made to be inserted in catalogs or price lists distributed among prospective purchasers of said merchandise situated in various States of the United States and in the District of Columbia, and has caused false statements and representations purporting to be descriptive of the material of which such merchandise is made to be placed on labels attached to said articles of merchandise. Among and typical of the statements and representations used and disseminated as aforesaid are the following:

Made of Satin La Rue.

Made of New Satin La Rue 100% Pure Dye.

Seamprufe made of Taffeta De Luxe 100% pure dye, finest tested acetate yarns.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of respondent's merchandise and of the material of which such merchandise is made, respondent has represented, directly and by implication, that such merchandise is made of silk, the product of the cocoon of the silkworm. Silk fiber has been woven for many years into a variety of fabrics which are designated or referred to as "satin," "taffeta," or "pure dye." Such terms have been for many years and are now associated in the mind of the purchasing public with the product of the cocoon of the silkworm, commonly known to retail dealers and the purchasing public as "silk." It is the understanding and belief of a substantial portion of the purchasing public and retail dealers that such terms are used only to describe merchandise made of silk. The word "acetate," when used either separately or in conjunction with the words "satin," "taffeta," or "pure dye" and with other words and phrases of similar import or meaning, is not sufficiently well known and understood by the purchasing public to indicate to or inform them that the merchandise so described, designated or referred to is made in whole or in part of a material other than silk, to wit: rayon; but on the contrary, such designations are understood by a substantial portion of the purchasing public to describe silken fabrics and merchandise made of silk.

PAR. 6. The aforesaid statements and representations used and disseminated by the respondent in the manner above described, are

misleading and untrue and constitute false advertisements. In truth and in fact, the said merchandise of the respondent is made in whole or in part of rayon.

PAR. 7. The word "silk," for many years last past, has had, and now has, in the mind of the purchasing public and retail dealers, a definite and specific meaning, to wit: the product of the cocoon of the silk worm. Silk products have had for many years, and now have, great public esteem and confidence for their preeminent qualities, and a substantial number of the members of the purchasing public have had and now have a preference in purchasing lingerie, including slips and nightgowns, for lingerie made of silk, the product of the cocoon of the silk worm.

PAR. 8. The dissemination by the respondent of the aforesaid false statements and representations by placing such statements and representations on labels on the said articles of merchandise which the respondent distributes to retail dealers, places in the hands of such retail dealers an instrumentality which may be used by such retail dealers to divert trade unfairly from the competitors of respondent in said commerce who truthfully mark or brand their merchandise.

PAR. 9. The use by the respondent of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said merchandise, has had and now has a capacity and tendency to and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true and that respondent's said merchandise is made of silk, the product of the cocoon of the silkworm, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said merchandise. As a result, trade has been diverted unfairly to respondent from its competitors in said commerce who truthfully advertise, brand and mark their merchandise. 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 and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent as herein found 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 the Federal Trade Commission Act.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint except that it denies that its fabric "Crepe La Rue" is made of any product other than silk, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Aronson-Caplin Co., Inc., and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of women's lingerie, including slips and night-gowns, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "pure dye" or any other term of similar import or meaning to describe or designate any fibers or fabrics or other products which are not composed wholly of unweighted silk, the product of the cocoon of the silkworm.

2. Using the words "satin" or "taffeta" or any other word or words of similar import or meaning to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, unless said descriptive word or words are used truthfully to designate the type of weave, construction, or finish, in which case such word or words shall be qualified by using in immediate connection or conjunction therewith in letters of at least equal size and conspicuousness, a word or words clearly and accurately naming or describing the fibers or materials from which said fabric or product is made.

3. Using the word "acetate" or any other name as indicative of any process of manufacturing rayon, to describe or designate any fabrics, garments, or other products made from rayon unless the word rayon is used in immediate conjunction with such word or name in type of equal size and conspicuousness.

This order shall not be construed as permitting the advertising or offering for sale of fabrics, garments, or other products composed in whole or in part of rayon without disclosing the rayon content of such products.

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

MUELLER COMPANY, A. Y. McDONALD MANUFACTURING COMPANY, HAYS MANUFACTURING COMPANY, FARNAN BRASS WORKS COMPANY, AND KITSON COMPANY

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

Docket 3690. Complaint, Jan. 24, 1939—Decision, Apr. 5, 1939

Where five corporations engaged in manufacture and sale of corporation stops and curb stops, principal purchasers of which fittings for water works and gas systems were municipalities and owners of public utilities, who, because of substantial quantity used, bought said products through invitation for bids, for selection therefrom of member of industry for particular purchase, and constituting substantially all the manufacturers of such products and, prior to adoption of practices below set out, in active and substantial competition with each other and with other members of the industry, and which, but for said practices, would still have been in such active substantial competition; with intent of fixing and maintaining prices, suppressing price competition, restraining interstate trade, and eliminating competition between themselves, and suppressing competition and monopolizing said trade—

Entered into and engaged in, and carried out, a wrongful and unlawful agreement, combination, and conspiracy to maintain prices, suppress price competition, eliminate competition between themselves and restrain interstate trade and drive out competitors and monopolize trade aforesaid; and, in pursuance of said understanding, etc., and to carry out the same—

- (1) Agreed to fix and maintain, and did fix and maintain, prices at which said products were sold, and uniform terms and conditions covering sale thereof;
- (2) Agreed to submit, and did submit, in response to requests for bids, uniform and identical bids on such products; and
- (3) Used coercive measures to compel jobbers to maintain the prices thereon;

With result that the capacity, tendency and effect of such agreement, combination, etc., and their said acts and practices done thereunder and pursuant thereto, were to monopolize in themselves business of manufacture and sale of such products, and unreasonably to lessen, eliminate and restrain, and hamper and suppress competition in sale thereof in interstate commerce, and deprive purchasing public of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said industry, and otherwise to operate as a restraint of trade and detriment to the freedom of fair and legitimate competition in trade in question, and to obstruct natural flow of trade into channels of commerce:

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

Mr. Floyd O. Collins for the Commission.

Cushman, Darby & Cushman, of Washington, D. C., for respondents, with whom also appeared *Gunnison, Fish, Gifford & Chapin*, of Erie, Pa., for Hays Manufacturing Co., and *Ewing & Hecker*, of Cleveland, Ohio, for Farnan Brass Works Co.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Mueller Co., a corporation, A. Y. McDonald Manufacturing Co., a corporation, Hays Manufacturing Co., a corporation, Farnan Brass Works Co., a corporation, and Kitson Co., a corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Mueller Co. is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its home office and principal place of business at 512 West Cerro Corda Street, Decatur, Ill.

Respondent A. Y. McDonald Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of Iowa, with its home office and principal place of business at Dubuque, Iowa.

Respondent Hays Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business at 801 West Twelfth Street, Erie, Pa.

Respondent Farnan Brass Works Co. is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its home office and principal place of business at 1104 Center Street, Cleveland, Ohio.

Respondent Kitson Co. is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business at 2409 West Moreland Street, Philadelphia, Pa.

PAR. 2. All of the respondents herein named are now, and have been since their organization, engaged in manufacturing corporation stops and curb stops, and have been since their organization engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of said corporation stops and curb stops, and cause said products when sold to be shipped from their respective places of business through and into other States of the United States and into the District of Columbia to the purchasers thereof.

PAR. 3. The said respondents now constitute and have, during all the times herein mentioned, constituted substantially all of the manufacturers of curb stops and corporation stops. Prior to the adoption of the practices herein alleged, said respondents were in active and substantial competition with each other and with other members of the industry, and, but for the facts herein alleged, said respondents would now be in active, substantial competition with each other and with other members of the industry.

Said corporation stops and curbs stops are fittings used in water-works systems and gas systems, and the principal purchasers of curb stops and corporation stops are municipalities and owners of public utilities, and these purchasers, because of the substantial quantity used, purchase corporation stops and curb stops through invitations for bids, from which bids is selected the member of the industry from whom purchases of said products will be made for a given time or in a stated quantity.

PAR. 4. Some time prior to November 30, 1936, the respondents herein for the purpose of fixing and maintaining prices, suppressing price competition, restraining interstate trade, eliminating competition between themselves, suppressing competition and monopolizing said trade in said corporation stops and curb stops, entered into and engaged in, and have since carried out, a wrongful and unlawful agreement, combination and conspiracy to maintain prices, suppress price competition, eliminate competition between themselves, restrain interstate trade, drive out competitors and monopolize said trade and pursuant to and for the purpose of carrying out said understanding, agreement, combination and conspiracy have, among other things, done the following:

(a) Agreed to fix and maintain, and have fixed and maintained, the prices at which said products are sold.

(b) Agreed to fix and maintain, and have fixed and maintained, uniform terms and conditions covering the sale of said products.

(c) Agreed to submit, and have submitted, uniform and identical bids on said products when requests were made for such bids.

(d) Have used coercive measures to compel jobbers to maintain the prices of said products.

PAR. 5. The capacity, tendency, and effect of such agreement, combination, understanding and conspiracy and the acts and practices of the respondents, as set out herein, and many others not specifically described, are and have been to monopolize for said respondents the business of manufacturing and selling corporation stops and curb stops and to unreasonably lessen, eliminate and restrain, hamper and suppress competition in the manufacture and sale of said products in interstate commerce, and to deprive the purchasing public of the advantages of price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said industry, and to otherwise operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States and in the District of Columbia.

PAR. 6. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among the respondents in the sale of curb stops and corporation stops in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in the manufacture and sale of curb stops and corporation stops, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 24, 1939, issued and served its complaint in this proceeding upon the respondents, Mueller Co., a corporation, A. Y. McDonald Manufacturing Co., a corporation, Hays Manufacturing Co., a corporation, Farnan Brass Works Company, a corporation, and Kitson Co., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On March 2, 1939, the respondents filed their answers in which answers the respondents admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answers thereto, and the Commis-

sion having duly considered the matter and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Mueller Co. is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its home office and principal place of business at 512 West Cerro Corda Street, Decatur, Ill.

The respondent A. Y. McDonald Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of Iowa, with its home office and principal place of business at Dubuque, Iowa.

The respondent Hays Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business at 801 West Twelfth Street, Erie, Pa.

The respondent Farnan Brass Works Co. is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its home office and principal place of business at 1104 Center Street, Cleveland, Ohio.

The respondent Kitson Co. is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business at 2409 West Moreland Street, Philadelphia, Pa.

PAR. 2. All of the respondents are now, and have been since their organization, engaged in manufacturing corporation stops and curb stops, and have been since their organization engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of said corporation stops and curb stops, and cause and have caused said products when sold to be shipped from their respective places of business through and into other States of the United States and into the District of Columbia.

PAR. 3. The said respondents now constitute and for a number of years last past have constituted substantially all of the manufacturers of curb stops and corporation stops. Prior to the adoption of the practices hereinafter set out, said respondents were in active and substantial competition with each other and with other members of the industry, and, but for said practices, said respondents would now be

in active, substantial competition with each other and with other members of the industry.

Corporation stops and curb stops are fittings used in water works systems and gas systems, and the principal purchasers of curb stops and corporation stops are municipalities and owners of public utilities. These purchasers, because of the substantial quantity used, purchase corporation stops and curb stops through invitations for bids, from which bids is selected the member of the industry from whom purchases of said products will be made for a given period of time or in a stated quantity.

PAR. 4. Some time prior to November 30, 1936, the respondents, for the purpose of fixing and maintaining prices, suppressing price competition, restraining interstate trade, eliminating competition between themselves, suppressing competition and monopolizing said trade in said corporation stops and curb stops, entered into and engaged in, and have since carried out, a wrongful and unlawful agreement, combination and conspiracy to maintain prices, suppress price competition, eliminate competition between themselves, restrain interstate trade, drive out competitors and monopolize said trade and pursuant to and for the purpose of carrying out said understanding, agreement, combination and conspiracy have, among others, done the following acts and things:

(a) Agreed to fix and maintain, and have fixed and maintained, the prices at which said products are sold.

(b) Agreed to fix and maintain, and have fixed and maintained, uniform terms and conditions covering the sale of said products.

(c) Agreed to submit, and have submitted, uniform and identical bids on said products when requests were made for such bids.

(d) Have used coercive measures to compel jobbers to maintain the prices on said products.

PAR. 5. The capacity, tendency and effect of such agreement, combination, understanding and conspiracy and the acts and practices of the respondents done thereunder and pursuant thereto are and have been to monopolize for said respondents the business of manufacturing and selling corporation stops and curb stops and to unreasonably lessen, eliminate and restrain, hamper and suppress competition in the sale of said products in interstate commerce, and to deprive the purchasing 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 industry, and to otherwise operate as a restraint of trade

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and a detriment to the freedom of fair and legitimate competition in said trade and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents and each of them are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and state that they and each of them waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

Now, therefore, it is hereby ordered, That the respondents Mueller Co., a corporation, A. Y. McDonald Manufacturing Co., a corporation, Hays Manufacturing Co., a corporation, Farnan Brass Works Company, a corporation, and Kitson Co., a corporation, their successors, officers, agents and employees, in connection with the offering for sale, sale and distribution of fittings used in water works systems and gas systems, commonly known, and referred to, as corporation stops and curb stops, in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

1. Doing and performing by agreement, combination or conspiracy between and among any two or more of said respondents, or any of said respondents and any other member or members of the industry, the following acts and things:

a. Fixing and maintaining the prices at which said products are sold.

b. Fixing and maintaining uniform discounts, terms and conditions covering the sale of said products.

c. Submitting uniform and identical bids on said products.

d. Using coercive methods to compel jobbers to maintain prices for said products.

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2. Selling or offering for sale said products at prices, discounts or terms or conditions of sale which have been arrived at through or pursuant to any agreement, conspiracy or combination between and among any two or more of said respondents, or any of said respondents and any other member or members of the industry,

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

IN THE MATTER OF

ALLEN B. WRISLEY COMPANY, ALLEN B. WRISLEY DISTRIBUTING COMPANY, ALSO TRADING AS REGAL SOAP COMPANY, AND KARL MAYER, GEORGE A. WRISLEY AND WRISLEY B. OLESON, TRADING AS KARL MAYER & COMPANY

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

Docket 3021. Complaint, Dec. 24, 1936—Decision, Apr. 6, 1939

Where a corporation, its subsidiary, and three individuals, partners, and officers and employees of said corporations, engaged, as case might be, in manufacture, offer, and sale of many kinds of soaps, and in branding, stamping, or imprinting on certain of their said soaps certain brands, and in labeling, wrapping, and packaging product in question and distributing same, and in substantial competition with others engaged in manufacture and sale of genuine olive oil soaps in commerce among the various States, and also with those thus engaged in manufacture and sale of soap, oil content of which is not wholly olive oil—

Made use of words "Oliv-ilo," "Olive Oil," "Olive," and "Oliv," in names, brands, designations, and descriptions of certain of their said soaps, through such names and designations as "WRISLEY'S Oliv-ilo pronounced Oliv-eye-lo," "ROYALE OLIVE OIL PURE Allen B. Wisley Co., Chicago," "PURITO OLIVE OIL CASTILE," "PALM and OLIVE SOAP," etc., facts being six of the seven brands thus involved and designated contained from 5 to 15 percent of olive oil or olive oil fats only, and its "Del Gloria Castile, Spanish Process" contained, for a time, 36 percent of said product and thereafter approximately 51 percent, and none of said soaps were genuine olive oil soap, as understood and preferentially bought and used by substantial number of consuming public as soap containing as fatty ingredient, to exclusion of all other oils or fats, the more costly olive oil, and considered by manufacturers, dealers, and public generally, by reason of qualities of said oil, as high-quality soap free from substances harmful to skin or delicate fabrics and possessing desirable qualities not obtained in other soaps, and as such preferentially purchased and used for many purposes by substantial portion of purchasing and consuming public, and long considered by medical profession as having qualities requisite and desirable for use in the bathing of infants and sick and ailing, and in medicinal preparations, and prescribed and recommended by it for such purposes;

With result that they were enabled to and did sell their soaps at prices substantially less than those at which competitors who imported or manufactured and sold genuine olive oil soaps, with their more costly olive oil ingredient, could and did sell their products, and with effect of misleading and deceiving substantial portion of trade and purchasing public into erroneous belief that such representations were true, and into purchase of substantial quantities of their said soaps by reason of such belief, and of thereby diverting unfairly trade to themselves from competitor manu-

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facturers and distributors of genuine olive oil soap and competitor manufacturers and distributors of soap, oil content of which is not wholly olive, and who truthfully advertise, sell, and distribute their said products among the various States; to the substantial injury of competition in commerce:

Held, That such acts, practices, and methods were all to the injury and 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. Frank W. Sullivan of Mayer, Meyer, Austrian & Platt, 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 Allen B. Wisley Co., a corporation, Allen B. Wisley Distributing Co., a corporation, also trading under the name Regal Soap Co.; and Karl Mayer, George A. Wisley, and Wisley B. Oleson, copartners, trading as Karl Mayer & Co., hereinafter referred to as respondents, have been and are 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, Allen B. Wisley Co., is a corporation, organized in 1895, and doing business under the laws of the State of Illinois, having its principal office and place of business at 6801 West Sixty-fifth Street, Chicago, Ill. Respondent, Allen B. Wisley Distributing Co., is a corporation, organized in 1933, and doing business under the laws of the State of Illinois, with its principal office and place of business at 6801 West Sixty-fifth Street, Chicago, Ill. It is an affiliate and sales agent of the Allen B. Wisley Co. Allen B. Wisley Distributing Co. also trades under the name Regal Soap Company. Respondent Wisley B. Oleson is president and respondent George A. Wisley is vice president and general manager of both companies.

Respondents, Karl Mayer, Wisley B. Oleson, and George A. Wisley, are copartners, trading as Karl Mayer & Co. The place of business of said partnership is located in the Merchandise Mart Building, Chicago, Ill. Respondent, Karl Mayer, originally owned and operated Karl Mayer & Co. In 1932, the respondents, Wisley B. Oleson and George A. Wisley became associated with the said Karl Mayer in

his business. The policies and practices of the respondents are controlled and directed by the respondent Allen B. Wrisley Co.

Respondent, Allen B. Wrisley, Co., is engaged in the business of manufacturing soap and all of said respondents are now, and for several years last past have been, engaged in the sale and distribution of soap to the purchasing and consuming public located in various States of the United States and in the District of Columbia. Respondents now cause, and for several years last past have caused, their soap, when sold by them, to be shipped from their respective places of business in Chicago, Ill., to the purchasers thereof, located in the various States of the United States other than the State of Illinois and in the District of Columbia. There is now, and has been for several years last past, a constant current of trade in commerce by the respondents, in soap, between and among the various States of the United States and in the District of Columbia.

Respondents are, and for several years last past have been, in substantial competition with corporations, partnerships, and individuals, engaged in the manufacture and sale of genuine olive oil soap in commerce between and among the various States of the United States, and in the District of Columbia; and respondents are, and for several years last past have been in substantial competition with corporations, partnerships, and individuals, engaged in the manufacture and sale of soap the oil content of which is not wholly olive oil, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 thereof, respondents offer for sale and sell many kinds of soap some of which are branded, labeled, and otherwise advertised and represented as olive oil soap. Among the brands and labels so used by the respondents are:

| | |
|--------------------------|-------------------------------|
| WRISLEY'S | ROYALE |
| Oliv-ilo | OLIVE OIL |
| pronounced | PURE |
| Oliv-eye-lo | |
| PURITO OLIVE OIL CASTILE | Allen B. Wrisley Co., Chicago |
| Wrisley's | PALM and OLIVE |
| OLIV-SKIN | SOAP |
| pure | Regal Soap Co. |
| Toilet | |
| Soap | |

Palm and Olive Oil Soap

In truth and in fact the oil or fat ingredient of said soap so labeled and branded is not wholly olive oil.

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PAR. 3. Genuine olive oil soap is one the oil ingredient of which always has been and now is olive oil to the exclusion of all other oils and fats. Said soap has for many years been sold to and used by the purchasing public throughout the United States. Because of the qualities of olive oil as a soap material, said soap has long been and now is considered by manufacturers of and dealers in soap, and by the public generally, as a high-quality soap, free from substances harmful to the human skin or delicate fabrics; and possessing desirable qualities not contained in other soaps. For many purposes, a substantial portion of the purchasing and consuming public prefers to purchase and use soap, the oil content of which is wholly olive oil. Said olive oil soap has long been and is now considered by the medical profession to have the qualities requisite and desirable for bathing infants, sick and ailing persons, and is used in medicinal preparations. Said soap has long been and now is prescribed and recommended by the medical profession for said purposes.

PAR. 4.—Genuine olive oil soap is more costly to manufacture than respondents' said soaps for the reason that olive oil is uniformly substantially higher in price than the oils and fats used by respondents as substitutes therefor. By reason of that fact, respondents are enabled to and do sell their soaps at prices substantially less than respondents' competitors who import, or manufacture, and sell genuine olive oil soap, can and do sell the same. Respondents' aforesaid practices have the capacity and tendency to cause and do cause the trade and public to purchase respondents' said soaps as and for genuine olive oil soap in preference to the more costly genuine olive oil soap sold by said competitors referred to in paragraph 1 hereof.

PAR. 5. The use by respondents of the representations set forth herein has had and now has the capacity and tendency to mislead and deceive a substantial portion of the trade and purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondents' said soap on account of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of genuine olive oil soap and manufacturers and distributors of soaps, the oil content of which is not wholly olive oil, who truthfully advertise, sell, and distribute their soaps among the various States of the United States and in the District of Columbia. By use of the representations aforesaid, trade is unfairly diverted to respondents from such competitors, thereby substantial injury is being, and has been done by respondents to competition in commerce as herein set out.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 24, 1936, issued and served its complaint in this proceeding upon the respondents, Allen B. Wrisley Co., a corporation, Allen B. Wrisley Distributing Co., a corporation, also trading under the name Regal Soap Co., Karl Mayer, George A. Wrisley, and Wrisley B. Oleson, copartners trading as Karl Mayer & 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' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission and in opposition to the allegations of the complaint by Frank W. Sullivan, attorney for the respondents 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. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, 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 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 respondents, Allen B. Wrisley Co. and Allen B. Wrisley Distributing Co. are corporations organized, existing, and doing business under the laws of the State of Illinois with their principal place of business at 6801 West Sixty-fifth Street, Chicago, Ill., and respondent Allen B. Wrisley Distributing Co. is a subsidiary of the respondent Allen B. Wrisley Co. Wrisley B. Oleson is president of both respondent corporations, and George A. Wrisley is vice president and general manager of both corporations. Karl Mayer is employed as a salesman by the Allen B. Wrisley Distributing Co.

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Respondents George A. Wisley, Karl Mayer, and Wisley B. Oleson are partners doing business under the firm name and style of Karl Mayer & Co., in the Merchandise Mart, Chicago, Ill.

Respondent Allen B. Wisley Co. is engaged in the manufacture and sale of soap, certain brands being sold through the medium of its subsidiary, respondent Allen B. Wisley Distributing Co. All branding, stamping, or imprinting on the soap is done by the Allen B. Wisley Co., and all labeling, wrapping, and packaging of the soap is done by the respondent Allen B. Wisley Distributing Co. The Allen B. Wisley Distributing Co. sells to respondent Karl Mayer & Co. a soap labeled "Del Gloria Castile."

PAR. 2. Upon receipt of orders, respondents Allen B. Wisley Co. and Allen B. Wisley Distributing Co., Karl Mayer, George A. Wisley, and Wisley B. Oleson ship their stamped, branded, and labeled products from their place of business in Chicago, Ill., to customers located in the States of the United States, other than the State of Illinois.

PAR. 3. In the course and conduct of their said business in commerce, respondents are, and for several years last past have been, in substantial competition with corporations, partnerships, and individuals engaged in the manufacture and sale of genuine olive oil soap in commerce between and among the various States of the United States; and respondents are, and for several years last past have been, in substantial competition with corporations, partnerships, and individuals engaged in the manufacture and sale of soap, the oil content of which is not wholly olive oil, in commerce between and among the various States of the United States.

PAR. 4. In the course and conduct of their businesses as set forth above, respondents offer for sale and sell many kinds of soap, some of which is not wholly olive oil, in commerce between and among the States of the United States. Among the brands and labels so used by the respondents are:

WRISLEY'S
Oliv-ilo
pronounced
Oliv-eye-lo

ROYALE
OLIVE OIL
PURE
Allen B. Wisley Co., Chicago

PURITO OLIVE OIL CASTILE

Wisley's
OLIV-SKIN
pure
Toilet
Soap

PALM and OLIVE
SOAP
Regal Soap Co.

Palm and Olive Oil Soap

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"Oliv-Palm Complexion Soap", having branded on the back thereof, "Contains olive, palm and coconut oils, best for the skin, hair, and baby."

Del Gloria Castile, Spanish Process, made with pure olive oil, for nursery, toilet, bath, shampoo, Karl Mayer & Company, Chicago, U. S. A.

PAR. 5. The testimony shows and the Commission finds the oil or fat ingredient of said soaps so labeled and branded as set forth in paragraph 4 is not wholly olive oil but each has an olive oil content as follows:

(a) Wrisley's Oliv-ilo Toilet Soap contains 5 to 15 percent of olive oil or olive oil foots.

(b) Purito Olive Oil Castile, which is also labeled, "Purito Baby Castile Soap, pure and mild, for nursery and clinic. Allen B. Wrisley Company," contains 5 to 15 percent denatured olive oil.

(c) Oliv-Palm Complexion Soap, having branded on the back thereof, "Contains olive, palm, and coconut oils, best for the skin, hair, and baby," contains 5 to 15 percent olive oil foots.

(d) Palm and olive oil soap, having branded on the back thereof, "for the complexion, scalp, skin, and toilet," contains 5 to 15 percent olive oil foots.

(e) Royale Pure Olive Soap contains 5 to 15 percent olive oil foots.

(f) Wrisley's Oliv-Skin Pure Toilet Soap, having stamped on the back thereof, "Allen B. Wrisley Company, Chicago, U. S. A.," contains 5 to 15 percent olive oil foots.

(g) "Del Gloria Castile, Spanish Process, made with pure olive oil, for nursery, toilet, bath, shampoo, Karl Mayer & Company, Chicago, U. S. A.," contained 36 percent prior to the fall of 1936, and since that time it has contained approximately 51 percent olive oil. Its olive oil content was never less than 36 percent and never greater than 51 percent.

PAR. 6. Olive oil soap is a soap containing olive oil as its fatty ingredient, to the exclusion of all other oils or fats. Some of the brand names and labels used by respondents in advertising their soap have led a substantial number of the trade and purchasing public to believe that the soap so labeled, branded, and otherwise advertised is olive oil soap.

PAR. 7. Because of the qualities of olive oil as a soap material, said soap has long been, and is now, considered by manufacturers of and dealers in soap, and by the public generally, as a high-quality soap, free from substances harmful to the human skin or delicate fabrics; and, possessing desirable qualities not contained in other soaps. For many purposes, a substantial portion of the purchasing and consuming public prefer to purchase and use soap, the oil content of which is wholly olive oil. Said olive oil soap has long been and is now considered by

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the medical profession to have the qualities requisite and desirable for bathing infants, sick and ailing persons, and is used in medicinal preparations. Said soap has long been, and is now, prescribed and recommended by the medical profession for said purposes.

PAR. 8. Olive oil has been higher in price than other oils and fats commonly used in the manufacture of soap, and genuine olive oil soap is more costly to manufacture than respondents' said soaps, and respondents are enabled to, and do, sell their soaps at prices substantially less than respondents' competitors who import, or manufacture, and sell genuine olive oil soap, can and do sell the same.

PAR. 9. There are a substantial number of the consuming public who understand an olive oil soap to be a soap containing 100 percent olive oil as its oil or fat content, and prefer to buy and use said soaps.

PAR. 10. The use by the respondents of the representations as set forth above has had, and now has, the capacity and tendency to mislead and deceive and have misled and deceived a substantial portion of the trade and purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondents' said soaps on account of such erroneous belief. There are among the competitors of respondents manufacturers and distributors of genuine olive oil soap and manufacturers and distributors of soap, the oil content of which is not wholly olive oil, who truthfully advertise, sell, and distribute their soaps among the various States of the United States. By the use of the representations aforesaid, trade is unfairly diverted to respondents from such competitors, thereby, substantial injury is being and has been done by the respondents to competition in commerce as herein set forth.

CONCLUSION

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

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, briefs

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filed herein, and oral arguments by DeWitt T. Puckett, counsel for the Commission, and by Frank L. Sullivan, 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 the Federal Trade Commission Act.

It is ordered, That the respondents, Allen B. Wrisley Co. and Allen B. Wrisley Distributing Co., also trading under the name Regal Soap Co., their officers, representatives, agents, and employees, directly or through any corporate or other device, and Karl Mayer, George A. Wrisley, and Wrisley B. Oleson, copartners trading as Karl Mayer & Co., or trading under any other name, their 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:

Using the word "olive" or any other word or words or any combination of words or parts thereof or any device of similar import or meaning to describe, designate, or in any way refer to soap, the oil or fatty content of which is not wholly olive oil, except that in the case of soap containing olive oil and other oils as the fatty content, the word "olive" may be used as descriptive of the olive oil content if there is used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent oil in the order of its predominance by volume, beginning with the largest single oil constituent, and provided that if any particular oil in said soap is not present in an amount sufficient substantially to affect its detergent or other qualities, the percentage in which such oil is present shall then be specifically disclosed.

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
SOAP LAKE PRODUCTS CORPORATION

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

Docket 2823. Complaint, May 27, 1936—Decision, Apr. 10, 1939

Where a corporation engaged in preparation, sale and distribution of certain packaged mineral salts which (1) were designated as "Mother Nature Soap Lake Salts," "Mother Nature Soap Lake Seltzer," and "Mother Nature Soap Lake Spirit," and of which (2) salt ingredients were obtained from Soap Lake, Washington, and of which (3) its "Salts" constituted the unadulterated residue, after evaporation was complete, of the natural water of said lake, while its "Spirit" was the liquid concentrate bottled before evaporation was complete, and its "Seltzer" was 60 percent "Salts" and 40 percent citric and tartaric acid salts, added for effervescence and palatability, and (4) contents of which, as disclosed by analysis, included trifle more than 20 percent sodium sulphate or Glauber's salts, laxative effect of which was minimized by combination with other ingredients therein, about 54 percent sodium carbonate or caustic alkali known as washing soda, and about 25 percent sodium chloride and potassium chloride, or ordinary table salt, and, as thus engaged, in competition with others likewise engaged in preparing, selling and distributing mineral salt products or other products intended and sold for same purposes as its said products;

In advertising its said packaged mineral salts through booklets, folders, pamphlets and other advertising literature distributed to members of the purchasing public in the various States and furnished to customers for distribution to members of said public, and through newspapers and magazines of general circulation throughout the various States, and through radio broadcasts of extrastate audience—

Represented through said advertisements, in all of which it featured its corporate name in connection with aforesaid trade names of its said products as above set forth, and various statements therein made, directly or by implication, that said various products would prevent and cure and were beneficial in the treatment of many of the diseases, afflictions, ailments, and conditions which may be present or exist in the body, and thus included rheumatism, arthritis, neuritis, eczema, athlete's foot, ulcers of the stomach, poison oak and ivy, gangrene, body and scalp sores, Buerger's disease, hyperacidity, lumbago, trench mouth and pyorrhea;

Facts being its said packaged mineral salts alone, used either externally or internally, will not prevent or cure, and are not beneficial in the treatment of, rheumatism, arthritis, neuritis and the various other ailments and conditions above set forth, or any other disease, affliction, ailment or condition which may be present or exist in the body, as represented as above set forth, but therapeutic benefits, if any, generally obtained from use of any or all of said products, are limited to those resulting from the laxative, diuretic, and cleansing properties of the various ingredients thereof;

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With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that said representations were true, and with result, as direct consequence of such erroneous and mistaken beliefs induced by said acts and representations as above set forth, that number of consuming public purchased substantial volume of its product and trade in commerce was unfairly diverted to it from those likewise engaged in preparing, 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 above, and who truthfully represent the effectiveness of their respective products; to the injury of competition in commerce:

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

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

Mr. P. C. Kolinski and *Mr. Reuben J. Martin* for the Commission.

Hyland, Elvidge & Alvord, of Seattle, Wash., for respondent.

Honorable Clarence D. Martin, Governor of the State of Washington, and *Honorable G. W. Hamilton*, Attorney General for the State of Washington, of Olympia, Wash., for State of Washington, 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 Soap Lake Products Corporation, a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to 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, Soap Lake Products Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 2013 Fourth Avenue, in the city of Seattle, State of Washington. Respondent is now, and has been for more than one year last past, engaged in the business of preparing, distributing, and selling, in commerce as herein set out, certain packaged mineral salts designated as "Mother Nature Soap Lake Salts" and packaged kindred products designated as "Mother Nature Soap Lake Seltzer" and "Mother Nature Soap Lake Spirit," obtained from Soap Lake located in the State of Washington.

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PAR. 2. Said respondent, being engaged in business as aforesaid, causes said salts and kindred products, when sold, to be transported from its office and place of business in the State of Washington to purchasers thereof located at various points in other States of the United States and in the District of Columbia. There is now, and has been at all times since the organization of respondent corporation, a constant current of trade and commerce in said products 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. 3. In the course and conduct of its said business, the respondent is now, and has been, in substantial competition with other corporations, and with firms and individuals likewise engaged in the business of manufacturing, distributing, and selling mineral salts 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. 4. In the course of the operation of said business, and for the purpose of inducing individuals, firms, and corporations to purchase said salts and kindred products, respondent has caused advertisements to be inserted in newspapers, periodicals, and trade journals of general circulation throughout the United States, has printed and circulated throughout the several States to customers and prospective customers, through the United States mails and otherwise, advertising folders, letters, and literature, and has made use of radio broadcasts over stations of sufficient power to convey the programs emanating therefrom into the various States of the United States; in all of which advertisements, respondent has caused its corporate name to be prominently and conspicuously displayed, together with the following statements:

* * * Ask almost anyone who has been there (Soap Lake) and who faithfully took the treatments for such ills as rheumatism, neuritis, arthritis, eczema, athlete's foot, ulcers of the stomach, poison oak or ivy, gangrene, infections, or body and scalp sores. In many cases you will be told stories of complete and prompt recovery so astonishing as to be almost unbelievable.

No longer need you journey far and expensively to prove the virtue of Soap Lake minerals. They are now easily and inexpensively available to you through your druggist under the name of Mother Nature Soap Lake Products—Mother Nature Soap Lake Salts for the bath; Mother Nature Soap Lake Seltzer—pleasantly effervescent—for internal use, and Mother Nature Soap Lake Spirit for external application—all natural products from Nature's own laboratory.

The answer to all such arguments are the thousands and thousands of cases of neuritis, arthritis, rheumatism, insomnia, Buerger's Disease, gangrene, infections, etc., that have been benefited by Soap Lake baths alone.

You will find that Mother Nature Soap Lake baths are a wonderful aid to Nature in correcting certain forms of eczema, itch, poison oak and ivy, athlete's foot and disorders resulting from hyperacidity.

For rheumatic swellings and congestion, sore muscles, lumbago, etc., poulticing is recommended.

Ulcers of the Stomach. Soap Lake water has proven wonderfully beneficial in aiding Nature to correct this distressing trouble. No one should submit to an operation for ulcers without first having given Mother Nature Soap Lake Seltzer a trial.

Oral Hygiene: Trench Mouth—Pylorria. * * * Wonderful aid to Nature in Pylorria and Trench Mouth.

All of said statements, together with many similar statements appearing in respondent's advertising literature purport to be descriptive of respondent's products and their effectiveness in treating or curing many of the diseases, ailments, afflictions, and conditions of the human body. In all of its advertising literature, respondent represents, through the statements and representations herein set out and other statements of similar import and effect, that its various packaged products to wit: Mother Nature Soap Lake Salts, Mother Nature Soap Lake Seltzer and Mother Nature Soap Lake Spirit, will prevent and cure, or are beneficial in the treatment of, many of the diseases, ailments, afflictions and conditions which may be present or exist in the human body.

Among the diseases, ailments, afflictions and conditions named by the respondent in said radio broadcasts and advertising literature as diseases, ailments, afflictions and conditions which the use of said, above named, products will prevent and cure, or are beneficial in the treatment of, are the following: rheumatism, neuritis, arthritis, eczema, athlete's foot, ulcers of the stomach, poison oak or ivy, gangrene, body or scalp sores, Buerger's Disease, hyperacidity, lumbago, trench mouth, and pylorria.

PAR. 5. The representations made by the respondent with respect to the nature and effect of its products when used are grossly exaggerated, false, misleading and untrue. In truth and in fact, the use of respondent's packaged products will not prevent and cure, nor is it beneficial in the treatment of all, or any of, the diseases, ailments, afflictions, and conditions hereinabove named. The beneficial properties, if any, of said products are limited to laxative and diuretic action. Said packaged products have no therapeutic value in the treatment of the diseases, ailments, afflictions, and conditions above named.

PAR. 6. There are among respondent's competitors many who manufacture, distribute and sell various products designed, intended, and sold for the purpose of curing, relieving or treating the various diseases, ailments, afflictions, and conditions of the human body hereinabove named and who do not, in any way, misrepresent the quality or character of their respective products or their effectiveness when used.

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PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing its products and 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 its said products was, and is, calculated to, and had, and now has, a tendency and capacity to mislead 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 beliefs, induced by the acts and representations of the respondent, as hereinabove detailed, a number of the consuming public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from 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 products. As a result thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 27th day of May, A. D., 1936, issued and served its complaint in this proceeding upon the respondent, Soap Lake Products 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 answer thereto by the respondent, testimony and other evidence in support of the allegations of the complaint were introduced by P. C. Kolinski and Reuben J. Martin, attorneys for the Commission, and in opposition thereto by Ivan D. Hyland, 910 Dexter Horton Building, Seattle, Wash., attorney for the respondent, before Henry

M. White, Charles P. Vicini, and Miles J. Furnas, respectively, 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 proceedings regularly came on for final hearing before the Commission on the said complaint; the answer thereto, the testimony and other evidence, and briefs in support of the complaint and in opposition thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Soap Lake Products Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2013 Fourth Avenue, in the city of Seattle, in said State. Respondent is now, and for more than one year last past has been, engaged in the business of preparing, selling and distributing in commerce, certain packaged mineral salts designated as "Mother Nature Soap Lake Salts," "Mother Nature Soap Lake Seltzer," and "Mother Nature Soap Lake Spirit." The salt ingredients which go to make up these products are obtained by said respondent from a body of water called "Soap Lake," which is situated in the State of Washington.

PAR. 2. Respondent causes its products, when sold, to be transported from its place of business in Seattle, in the State of Washington, to purchasers thereof located at various points in other States of the United States. There is now, and has been for some time last past, a course of trade and commerce by the respondent in said products, between and among various States of the United States.

PAR. 3. Said respondent, in the course of the operation of its said business, as described in paragraphs 1 and 2 hereof, is in competition with other corporations and with individuals and firms also engaged in the business of preparing, selling and distributing mineral salt products or other products intended and sold for the same purposes for which respondent's products are sold, in commerce between and among various States of the United States.

PAR. 4. In the course of the operation of its business and for the purpose of inducing individuals, firms, and corporations to purchase said packaged mineral salts, the respondent has made use of booklets, folders, pamphlets and other advertising literature, some of which it distributes to members of the purchasing public located in the various

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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 made use of radio broadcasts over stations of sufficient power to convey the programs emanating therefrom into the various States of the United States. In all of its said advertisements, respondent has caused its corporate name to be prominently and conspicuously displayed in connection with the trade names of its products, "Mother Nature Soap Lake Salts," "Mother Nature Soap Lake Seltzer," and "Mother Nature Soap Lake Spirit," together with the following statements:

A JOYOUS BLESSING for the AFFLICTED

* * *

ALMOST UNBELIEVABLE—BUT TRUE!

The Fame of Soap Lake has become nation-wide. More than 30,000 visitors last summer! They came with aches and pains—rheumatism, neuritis, arthritis * * * with skin irritations—eczema, itch, psoriasis, athlete's foot, poison oak, poison ivy, gangrene and lingering infections; with stomach, gall, intestine, kidney, bladder and other functional disorders—and left happy.

The Government sends its Buerger's disease patients to Soap Lake * * *

Not all, however, who are afflicted can afford the time and money to visit Soap Lake. So the Soap Lake Products Corporation, under the brand name, Mother Nature, is making available the virtues of Soap Lake to the public everywhere. Through modern concentrating and evaporating methods, three products have been produced, viz: Mother Nature Soap Lake Salts for the bath; Mother Nature Soap Lake Seltzer for internal use, and Mother Nature Soap Lake Spirit for external application.

Stop at the nearest drug store—get the Mother Nature Soap Lake product for your particular affliction. Through its use—*more complete relief* than ever dreamed possible! * * *

The trade name, Mother Nature, is your protection. *Insist on the genuine—* Mother Nature Soap Lake Products—and get the gratifying results you expect. At drug stores everywhere. Samples free—send us your name and address at once in a postcard.

Make sure—demand natural, Genuine Mother Nature Soap Lake products. Demonstrate without cost, their anti-acid value in correcting ills caused by hyperacidity.

They neutralize acid wherever contacted.

Ask almost anyone who has been there and who faithfully took the treatments for such ills as rheumatism * * * ulcers of the stomach, gangrene, body or scalp sores. In many cases you will be told stories of complete and prompt recovery so astonishing as to be almost unbelievable. * * *

No longer need you journey far and expensively to prove the virtue of Soap Lake minerals. They are now easily and inexpensively available to you through your druggist * * * from Nature's own laboratory.

No one should submit to an operation for ulcers without first having given Mother Nature Soap Lake Seltzer a trial.

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Oral Hygiene: Trench Mouth—Pyorrhea, * * * Wonderful aid to Nature in Pyorrhea and Trench Mouth * * * Hold in mouth in contact with sore places as long as possible. Wonderful results.

Through the use of said statements and other statements of similar import and meaning used in its advertising matter, respondent represents directly or by implication that "Mother Nature Soap Lake Salts," "Mother Nature Soap Lake Seltzer," and "Mother Nature Soap Lake Spirit," will prevent and cure, and are beneficial in the treatment of, many of the diseases, afflictions, ailments and conditions which may be present or exist in the human body. Among the diseases, ailments, afflictions, and conditions named by respondent in said radio broadcasts and said advertising literature as diseases, ailments, afflictions and conditions which the use of the said above-named products will benefit, prevent and cure, are the following: Rheumatism, arthritis, neuritis, eczema, athlete's foot, ulcers of the stomach, poison oak and ivy, gangrene, body or scalp sores, Buerger's disease, hyperacidity, lumbago, trench mouth, and pyorrhea.

PAR. 5. In truth and in fact, the use of respondent's packaged mineral salts alone, either externally or internally, will not prevent or cure, and are not beneficial in the treatment of rheumatism, arthritis, neuritis, eczema, athlete's foot, ulcers of the stomach, poison oak and ivy, gangrene, body or scalp sores, Buerger's disease, hyperacidity, lumbago, trench mouth, pyorrhea, or any other disease, affliction, ailment or condition which may be present or exist in the human body, as represented in its radio broadcasts and other advertisements and advertising literature.

Respondent obtains its above-named products by evaporation of the waters of Soap Lake. An analysis has been made of the natural water of Soap Lake and also of respondent's product, "Mother Nature Soap Lake Salts." Respondent's "Salts" are the unadulterated residue after evaporation is complete, and its "Spirit" is the liquid concentrate bottled before evaporation is complete. Its "Seltzer" is 60 percent "Salts" and 40 percent citric and tartaric acid salts, which are added solely for effervescence and palatability.

"Mother Nature Soap Lake Salts" contain:

| | <i>Percent</i> |
|---------------------------------------------------------------------------------------------|----------------|
| Sodium Chloride..... | 18.19 |
| Potassium Chloride..... | 6.57 |
| Sodium Sulphate..... | 21.38 |
| Sodium Carbonate..... | 53.72 |
| Calcium Carbonate..... | .07 |
| Negligible traces of silica, phosphorus, iron, aluminum, magnesium, iodine and lithium..... | .07 |
| Total..... | 100.00 |

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Findings

The chemical content of the natural water is the same as that of respondent's "Salts," except that certain volatiles are lost in the evaporation process. There is no radioactivity or vitamin D content in the respondent's packaged preparations.

No merit is claimed for the calcium carbonate or for the negligible traces of silica, phosphorus, iron, alumina, magnesium, iodine, and lithium.

Sodium sulphate, or Glauber's salts, a well known purgative, accounts for a trifle more than one-fifth of the total solid content. Concentrated Glauber's salts give a laxative effect. The effect of the Glauber's salts in respondent's products, however, is so minimized by its combination with the other ingredients therein as to require increased dosage and the ingestion of a very large amount of water, in order to have the same effect as that given by a concentrated laxative requiring a much less amount of water. Physicians prefer to prescribe a laxative in concentrated form, in order that the patient be not required to drink more water than he would normally consume.

More than one-half of the content of the "Salts" is sodium carbonate, a caustic alkali known as washing soda. For the purpose of temporarily neutralizing acid in cases where ulcers or a condition of hyperacidity exists, an alkali is sometimes prescribed by physicians. One of the elements usually prescribed for temporarily overcoming hyperacidity is sodium bicarbonate which is less caustic and more readily decomposed by the hydrochloric acidity of the stomach than sodium carbonate. While the respondent's products, because of the sodium carbonate therein, do have an alkalizing effect, they are not a proper treatment for ulcers or hyperacidity because of their extremely caustic effect.

Of the total content 24.76 percent is sodium chloride and potassium chloride. Potassium chloride is ordinary table salt. The medicinal properties of potassium chloride and sodium chloride are practically the same. The normal diet contains an adequate supply of salt and other chlorides for all purposes.

In the treatment of neuritis, arthritis, or lumbago, which are types of rheumatism, and kidney trouble, the use of chlorides is restricted by physicians because an excess of chloride irritates and aggravates the pathological processes in the kidneys. The internal use of respondent's products by persons afflicted with any type of rheumatism causes additional aggravation and irritation of the kidneys. Frequently, the conditions prevalent when the patient is suffering from so-called rheumatism are associated with some degree of kidney involvement, and the use of respondent's product is distinctly harmful.

When taken internally the respondent's product acts as a mild and indefinite diuretic and laxative. There are many well known harmless laxatives, diuretics, and neutralizers of hyperacidity which do not aggravate the pathological processes of the organs of the patient. Many of these other preparations will react definitely as prescribed by physicians.

Bathing in hypertonic salt solutions will promote dehydration through the skin and thus eliminate to a certain extent toxic products circulating in the blood. This effect is increased when baths are taken hot. Hot baths with or without salts of this character are very useful in giving temporary relief to internal pains, especially those associated with the joints, arising from neuritis, arthritis, lumbago, rheumatism, gangrene, or Buerger's disease. The dehydrating effect of the hypertonic salt solution very probably results in the lessening of congestion in and about swollen joints or other afflicted parts and thus temporarily relieves pain because of the slight hypertonic effect of respondent's products. There are many hypertonic salts other than respondent's which likewise furnish temporary relief when mixed with hot bath water.

Eczema and other similar diseases are generally considered of systemic origin and are manifested by skin lesions. When sodium carbonate is applied to this diseased skin, it acts as a counter-irritant and temporarily relieves the itching and discomfort. Respondent's products, however, are not effective in curing or preventing these skin diseases.

Athlete's foot is a fungoid infection deeply embedded in the layers of the skin. While some of the ingredients of respondent's product might cleanse the diseased tissue, there are no antiseptic properties in respondent's products which will prevent or cure athlete's foot.

Poison oak and poison ivy are skin diseases which spread rapidly unless properly checked. The rapidity with which the infection is spread over the body is greatly accentuated by the use of liquid solutions. External applications of respondent's product are harmful to a person suffering from this affliction.

Body and scalp sores are commonly treated with medicines having astringent qualities. It is also necessary to keep the afflicted parts clean. Respondent's products have no astringent properties whatever. The beneficial effect following the use of these products on sores is limited to the cleansing properties thereof.

Trench mouth is caused by a germ which is not affected in any way by respondent's products. The cause and cure of pyorrhea are not known to medical science as yet. The only benefit which a person afflicted with trench mouth and/or pyorrhea could derive from re-

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spendent's products would be through its use as a mouth wash. When so used the effect would be similar to that of table salt.

Hot and cold baths are beneficial in temporarily relieving the pain incidental to Buerger's Disease and gangrene. Gangrene is sometimes due to diabetes. In that event, respondent's products may be soothing when mixed with bath water. However, respondent's packaged products, when administered in any form, are not competent treatments for gangrene or Buerger's Disease.

The therapeutic benefits, if any, generally obtained from the use of any or all of said products are limited to those resulting from the laxative, diuretic and cleansing properties of the various ingredients thereof.

PAR. 6. The use by the respondent of each and all of the false and misleading statements and representations in its advertising circulars, pamphlets, radio continuities and other advertising media, in offering for sale and selling its products in commerce, had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a direct result of these erroneous and mistaken beliefs induced by the acts and representations of the respondent, as hereinabove enumerated, a number of the consuming public have purchased a substantial volume of respondent's products, with the result that trade in commerce has been unfairly diverted to the respondent from individuals, firms and corporations likewise engaged in the business of preparing, 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 products, 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 as herein found 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 the Federal Trade Commission Act.

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 Henry M.

White, Charles P. Vicini, and Miles J. Furnas, examiners 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 (counsel for respondent 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Soap Lake Products Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of packaged mineral salts obtained from the waters of Soap Lake located in the State of Washington, now designated as "Mother Nature Mineral Soap Lake Salts," "Mother Nature Soap Lake Seltzer," and "Mother Nature Soap Lake Spirit," whether sold under those names or any other names, do forthwith cease and desist from representing:

1. That said packaged mineral salt preparations will cure eczema or similar skin diseases of systemic origin, or have any beneficial effect in the treatment thereof other than temporarily relieving the itching and discomfort incidental to said diseases.

2. That said mineral salt preparations will cure athlete's foot or any body or scalp sores or have any beneficial value in the treatment thereof other than cleansing effect upon surface lesions.

3. That said mineral salt preparations will cure poison oak or poison ivy or have any beneficial value in the treatment thereof.

4. That said mineral salt preparations will cure pyorrhea or trench mouth or have any beneficial value in the treatment thereof other than as a cleansing agent.

5. That said mineral salt preparations will cure ulcers of the stomach or hyperacidity or constitute a competent and proper treatment therefor or have any beneficial value in the treatment thereof other than temporarily relieving the pain and discomfort incident thereto by temporarily neutralizing excess acid.

6. That the said mineral salt preparations, when taken internally, will prevent or cure rheumatism, neuritis, arthritis, lumbago, gangrene, or Buerger's Disease, or constitute a proper treatment thereof or have any beneficial value in the treatment thereof.

7. That said mineral salt preparations when used externally will prevent or cure rheumatism, neuritis, arthritis, lumbago, gangrene, or Buerger's Disease, or have any beneficial effect in the treatment

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thereof other than temporarily relieving pain and congestion in the afflicted parts.

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
FREDERICK CLUTHE, TRADING AS CHARLES CLUTHE
& SONS; AND CHARLES CLUTHE & SONS (A CORPORATION)

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

Docket 3512. Complaint, July 27, 1938—Decision, Apr. 10, 1939

Where an individual and a corporation, engaged in manufacture of trusses for ruptures, and in sale and distribution thereof to purchasers in various other States, in competition with others engaged in sale and distribution in commerce among the various States of trusses and similar appliances; in advertising their said products in pamphlets and circulars distributed to prospective purchasers in various States, and in newspapers, and periodicals circulating among the various States—

- (a) Represented, through use of term "Guaranteed to hold," that their said truss would prevent the intestines from passing through the rupture; and
- (b) Represented that use thereof would enable ruptured persons to engage safely in severe forms of exercise and physical effort, and that same would seal the rupture opening; and

Where said individual—

- (c) Represented, as above set forth, that their said appliance was a new kind of truss or invention, and that elastic or spring trusses were not adaptable for use on the body, and that ruptured person using their said truss would be assured of beneficial results by reason of such use, and that it would fit ruptures; and
- (d) Represented, through use of term "overcome rupture troubles," that use of their said truss would cure a rupture, and that the necessity for an operation for rupture would be eliminated by reason of the use of such truss;

Facts being said product was not a new kind of truss and invention, and would not overcome rupture troubles or fit and cure the rupture, and was not a way of obtaining sure results in the treatment of such condition, and would not end rupture worries and accomplish results above claimed, elastic or spring trusses could be adapted for use on the body, and their said truss would not seal the opening or save and eliminate necessity of operation for rupture, and their said representations were false and misleading;

With effect of misleading and deceiving members of purchasing public in various States into erroneous and mistaken belief that said statements and representation were true, and into purchasing substantial quantities of their said products because of such erroneous and mistaken belief, and with result that trade was thereby diverted unfairly to them from their competitors aforesaid who truthfully advertise their respective products:

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

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Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Charles S. Coæ for the Commission.

Cromelin, Townsend, Brooke & Kirkland, of Washington, D. C., for respondent.

COMPLAINT¹

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Frederick Cluthe, trading as Charles Cluthe & Sons, hereinafter referred to as respondent, has violated the provisions of the 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, Frederick Cluthe, is an individual trading as Charles Cluthe & Sons, with his principal place of business located at 232 Broad Street, Bloomfield, N. J. Respondent, under the trade name of Charles Cluthe & Sons, is now, and for more than two years last past has been, engaged in the advertising, manufacture, sale, and distribution of trusses, which are appliances used for bodily afflictions commonly called ruptures. Such trusses, when sold, are transported or caused to be transported by the respondent to purchasers of the same located in various States of the United States other than the State of New Jersey and thus respondent at the times

¹ Charles Cluthe & Sons, a corporation, was added as party respondent to the original complaint by following order dated October 21, 1938:

This matter coming on to be heard by the Commission upon the motion of Charles Cluthe & Sons, a corporation, that the complaint herein be amended and that it be added as a party respondent, and it appearing to the Commission that Charles Cluthe & Sons was organized and incorporated under the laws of the State of New Jersey on July 8, 1937, and has at all times thereafter conducted the business formerly conducted by Frederick Cluthe, an individual, trading as Charles Cluthe & Sons, and that all the acts complained of in the complaint in this proceeding subsequent to July 8, 1937, should also be directed to Charles Cluthe & Sons, a corporation, and that petitioner has waived the service of said complaint on it and has waived hearing on, or service of notice as to action on its petition, and has waived the formal amendment and service of an amended complaint in this proceeding naming it as a party respondent herein; and the Commission having duly considered said motion and the record herein, and being now fully advised in the premises.

It is ordered, That the complaint herein be, and the same hereby is, amended so as to make Charles Cluthe & Sons, a corporation, a party respondent herein, and that the charges set forth in said complaint insofar as the same were subsequent to July 8, 1937, shall be, and the same are, considered as also directed to Charles Cluthe & Sons, a corporation.

It is further ordered, That the respondent, Charles Cluthe & Sons, a corporation, shall file its answer to the complaint herein within twenty days from the date of service of this order upon it.

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herein mentioned has maintained and now maintains a constant current of trade and commerce in said product into and through the various States of the United States.

PAR. 2. Respondent offers said trusses for sale through pamphlets and circulars which are sent to States in the United States other than the State of New Jersey and in advertisements which are published and circularized in various newspapers, magazines and periodicals having a circulation in other States than the State of New Jersey.

PAR. 3. The respondent in the course and conduct of his said business at all times herein mentioned has been and is now in competition with other individuals, and with partnerships, firms, and corporations engaged in the advertising, manufacture, sale, and distribution of trusses and appliances similar to those of respondent into and through the various States of the United States.

PAR. 4. In the course and conduct of his business respondent makes certain representations to prospective customers in said circulars or advertisements in the following words, to wit:

Ruptured? Improvement or recovery can result only from having your Rupture continuously held. The principle of the famous Cluthe Comfort Truss provides the needed holding support and in the proper direction as is possible with no other type of truss or appliance. * * * Positively guaranteed to hold.

New Kind of Truss Amazes Ruptured!

Ruptured? Try the Cluthe Automatic Comfort Truss. Doctors themselves wear and recommend it. Guaranteed to hold your rupture safely under heaviest strain.

Know The Truth About Rupture. Can you really overcome rupture trouble? Yes! * * * sure help may be obtained without an operation. * * * the Cluthe Automatic Easy Truss. * * *

* * * saves operation, insures safety, * * *

Beware The Danger in Wearing Trusses Like These (p'ctured) * * * It will enable you to be just as active, work just as hard as anybody, with absolute safety and maximum ease. It will hold your rupture in under all conditions of strain. This is absolutely necessary for improvement or recovery.

Your Cluthe Truss * * * is fitted correctly, and * * * does exactly the job you want done. * * * we can and do provide a truss that permits you to be just as active and work just as hard as you ever did. * * * When you consider that no improvement or recovery can result except through complete and proper holding, why continue to expect the impossible from any truss which fails to hold at all times.

* * * For with no other type of truss can rupture be so easily held * * * Cluthe Truss that holds under all conditions of strain.

Ruptured? Get Up-To-Date Relief. Why try to worry along with old-fashioned trusses that gouge your flesh—press heavily on hips and spine—enlarge opening—fail to hold rupture up and in? You need the Cluthe. No harness. Automatic adjustable pad seals opening * * * Cannot slip. Holds rupture whether at work or play.

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* * * elastic and spring trusses simply aren't adapted to the human body. * * *

If Ruptured Try This Wonder Truss. * * * Guaranteed to hold even the worst rupture under all conditions.

If Ruptured Try This Wonder Truss * * * Guaranteed to hold even the worst rupture under the most difficult conditions.

* * * you don't realize how much it means to be protected against the danger of having your rupture come out—or you would never have gone all this time without trying a Cluthe Truss. * * * you are secure against all likelihood of such trouble and danger the minute you put on a Cluthe Truss * * *.

If Ruptured Try This Wonder Truss. Nothing ever known to equal its amazing combination of perfect, safe holding support and astonishing comfort. * * * Guaranteed to hold.

and statements and representations of similar import.

By the means and in the manner aforesaid, the respondent represents and implies that the Cluthe Truss is a new kind of truss and invention; that by using the Cluthe Truss rupture troubles can be "overcome"; that the Cluthe Truss will fit and cure the rupture; that the wearing of said appliance is a way of obtaining sure results; that by using said appliance the person will end rupture worries; that said appliance will make one secure against all likelihood of having his rupture come out; that said appliance can be worn with absolute safety; that elastic or spring trusses are not adapted to the human body; that the Cluthe Truss will enable its user to engage in the most severe form of exercise and strain; that said truss will seal the opening; and that the Cluthe Truss will save the necessity of an operation.

PAR. 5. The representations and implications so made and used by the respondent, as hereinabove alleged, with respect to said product are grossly exaggerated, false, misleading, and deceptive. In truth and in fact, said product is not a new kind of truss and invention; will not overcome rupture troubles; will not fit and cure the rupture; is not a way of obtaining sure results; will not end rupture worries; will not make one secure against all likelihood of having his rupture come out; can not be worn with absolute safety; that elastic or spring trusses can be adapted to the human body; that the Cluthe Truss will not enable its user to engage in the most severe form of exercise and strain; will not seal the opening; and will not save the necessity of an operation.

PAR. 6. Among the competitors of respondent are those who do not in any manner misrepresent the qualities and properties of their products and who do not use the methods, acts and practices used by the respondent, as herein alleged, in connection with the sale and distribution of their said products in said commerce.

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PAR. 7. The acts and practices of the respondent in making and using said representations and implications in connection with the sale and distribution of said product in said commerce and to induce the purchase thereof, as hereinabove alleged, have had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that all of said representations and implications are true and have caused many members of the purchasing public, because of said mistaken and erroneous belief, to purchase a substantial volume of respondent's said product with the result that trade in said commerce has been diverted unfairly to the respondent from his competitors to their injury and to the injury of the public.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 27, 1938, issued and thereafter served its complaint in this proceeding upon respondent, Frederick Cluthe, an individual trading as Charles Cluthe & Sons, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

On October 21, 1938, the complaint was amended by director of the Commission so as to make Charles Cluthe & Sons, a corporation, a party respondent thereto, and all the allegations in the complaint relating to acts and practices committed subsequent to July 8, 1937, were also directed against Charles Cluthe & Sons, a corporation.

On March 2, 1939, respondent Frederick Cluthe, an individual trading as Charles Cluthe & Sons, Bloomfield, N. J., and the respondent Charles Cluthe & Sons, a corporation, filed motions to be allowed to withdraw their answers in this proceeding and not to substitute in lieu thereof answers admitting all the material allegations of fact set forth in said amended complaint and waiving all intervening procedure and further hearing as to the said facts. The Commission by order entered herein granted respondents' motion for permission to withdraw said answers and to substitute therefor answers admitting all the material allegations set forth in said amended complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final

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hearing before the Commission, on the said amended complaint and substitute answers, 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, Frederick Cluthe, is an individual trading as Charles Cluthe & Sons, and having his principal office and place of business located at 232 Broad Street, Bloomfield, N. J. Respondent, Charles Cluthe & Sons, is a corporation organized, existing and doing business under the laws of the State of New Jersey, and having its principal office and place of business at 232 Broad Street, Bloomfield, N. J. Respondent Frederick Cluthe, an individual trading as Charles Cluthe & Sons, for more than one year prior to July 8, 1937, was, and respondent Charles Cluthe & Sons, a corporation, is now and has been since July 8, 1937, engaged in the manufacture, sale and distribution of trusses, which are appliances used for bodily afflictions commonly called rupture. Such trusses, when sold, are transported, or caused to be transported, by respondents to purchasers of the same located in various States of the United States other than the State of New Jersey, and thus respondents at the times herein mentioned have maintained, and now maintain, a constant current of trade in commerce in said products into and through various States of the United States.

PAR. 2. In the course and conduct of their said business, and to induce the purchase of their trusses, respondent, Frederick Cluthe, prior to July 8, 1937, and respondent, Charles Cluthe & Sons, a corporation, subsequent to July 8, 1937, caused statements and representations relative to the effectiveness in use of their trusses, to be inserted in pamphlets and circulars, distributed to prospective purchasers situated in various States of the United States, and in newspapers, magazines and periodicals having a circulation among and between various States of the United States. Among and typical of the statements and representations disseminated as aforesaid are the following:

Ruptured? Try the Cluthe Automatic Comfort Truss. Doctors themselves wear and recommend it. Guaranteed to hold your rupture safely under heaviest strain.

Ruptured? Get Up-To-Date Relief. Why try to worry along with old-fashioned trusses that gouge your flesh—press heavily on hips and spine—enlarge opening—fail to hold rupture up and in? You need the Cluthe. No

harness. Automatic adjustable pad seals opening * * * Cannot slip. Holds rupture whether at work or play.

If Ruptured Try This Wonder Truss * * * Guaranteed to hold even the worst rupture under all conditions.

If Ruptured Try This Wonder Truss * * * Guaranteed hold even the worst rupture under the most difficult conditions.

If Ruptured Try This Wonder Truss. Nothing ever known to equal its amazing combination of perfect, safe holding support and astonishing comfort. * * * Guaranteed to hold.

and statements and representations of similar import.

By the means and in the manner aforesaid, the respondent, Frederick Cluthe, an individual trading as Charles Cluthe & Sons, and respondent, Charles Cluthe & Sons, a corporation, represent and imply that the Cluthe Truss will enable its users to engage safely in the most severe form of exercise and strain; that by using said appliance the person will end rupture worries; that said appliance will seal the rupture opening; and that said appliance will make one secure against all likelihood of having his intestines pass through the rupture.

PAR. 3. In the course and conduct of his business and in addition to the aforesaid statements and representations, the respondent Frederick Cluthe, an individual trading as Charles Cluthe & Son, caused other statements and representations relative to the effectiveness in use of his trusses to be disseminated in the manner described in paragraph 2 hereof. Among and typical of such statements and representations disseminated as aforesaid are the following:

Ruptured? Improvement or recovery can result only from having your Rupture continuously held. The principle of the famous Cluthe Comfort Truss provides the needed holding support and in the proper direction as is possible with no other type of truss or appliance. * * * Positively guaranteed to hold.

Know The Truth About Rupture. Can you really overcome rupture troubles? Yes! * * * sure help may be obtained without an operation. * * * the Cluthe Automatic Easy Truss. * * *

* * * saves operation, insures safety, * * *

Beware The Danger In Wearing Trusses Like These (pictured) * * * It will enable you to be just as active, work just as hard as anybody, with absolute safety and maximum ease. It will hold your rupture in under all conditions of strain. This is absolutely necessary for improvement or recovery.

Your Cluthe Truss * * * is fitted correctly, and * * * does exactly the job you want done. * * * we can and do provide a truss that permits you to be just as active and work just as hard as you ever did. * * * When you consider that no improvement or recovery can result except through complete and proper holding, why continue to expect the impossible from any truss which falls to hold at all times.

* * * For with no other type of truss can rupture be so easily held * * * a Cluthe Truss that holds under all conditions of strain.

* * * elastic and spring trusses simply aren't adapted to the human body. * * *

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* * * you don't realize how much it means to be protected against the danger of having your rupture come out—or you would never have gone all this time without trying a Cluthe Truss. * * * you are secure against all likelihood of such trouble and danger the minute you put on a Cluthe Truss * * *.

and statements and representations of similar import.

By means and in the manner aforesaid the respondent, Frederick Cluthe, an individual trading as Charles Cluthe & Sons, Bloomfield, New Jersey, represents and implies that the Cluthe Truss is a new kind of truss and invention; that by using the Cluthe Truss rupture troubles can be "overcome"; that the Cluthe Truss will fit and cure the rupture; that the wearing of said appliance is a way of obtaining sure results in the treatment of a rupture; that elastic or spring trusses are not adapted to the human body; and that the Cluthe Truss will save the necessity of an operation for rupture.

PAR. 4. The representations thus made by the respondents are false and misleading. In truth and in fact, said product is not a new kind of truss and invention; will not overcome rupture troubles; will not fit and cure the rupture; is not a way of obtaining sure results in the treatment of a rupture; will not end rupture worries; will not make one secure against all likelihood of having his intestines pass through the rupture; will not enable a ruptured person to engage safely in the most severe form of exercise and strain. Elastic or spring trusses can be adapted for use on the human body. Respondents' truss will not seal the rupture opening and will not save or eliminate the necessity of an operation for rupture.

PAR. 5. In the course and conduct of their aforesaid business, the respondents are now, and have been during all the times mentioned herein, in competition with other individuals and corporations and with firms and partnerships engaged in the sale and distribution in commerce among and between the various States of the United States of trusses and appliances similar to those of respondents.

PAR. 6. The use by the respondents of each and all of the aforesaid false and misleading statements and representations now has, and has had, the tendency and capacity to, and does, and did, mislead and deceive members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief that said statements and representations are true and into purchasing substantial quantities of respondents' products because of said erroneous and mistaken belief. As a result thereof trade in commerce among and between various States of the United States has been diverted unfairly to the respondents from their said competitors engaged in the sale and distribution of trusses and who truthfully advertise their respective products.

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CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, and the answers of the respondents, in which answers the respondents admit all the material allegations of fact set forth in said amended complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Frederick Cluthe, individually and trading as Charles Cluthe & Sons, or under any other name or names, his representatives, agents, and employees, and the respondent Charles Cluthe & Sons, a corporation, its representatives, officers, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a truss now designated as the "Cluthe Truss," or any other truss of substantially the same design, style and workmanship, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

(a) By the use of the term "guaranteed to hold," or any other term or terms of similar import and meaning, or in any other manner, that the use of such truss will prevent the intestines from passing through the rupture.

(b) That the use of such truss will enable ruptured persons to engage safely in severe forms of exercise and physical effort.

(c) That such truss will seal a rupture.

It is further ordered, That the respondent Frederick Cluthe, individually and trading as Charles Cluthe & Sons, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a truss now designated as the "Cluthe Truss" or any other truss of substantially the same design, style, and workmanship, in commerce, as commerce is defined

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in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

(a) That such truss is a new kind of truss or invention.

(b) That a ruptured person using such truss will be assured of beneficial results by reason of the use thereof.

(c) That elastic or spring trusses are not adaptable for use on the human body.

(d) That such truss will fit ruptures.

(e) By the use of the term "overcome rupture troubles", or any other term or terms of similar import and meaning, or in any other manner, that the use of such truss will cure a rupture.

(f) That the necessity for an operation for rupture will be eliminated by reason of the use of such truss.

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

IN THE MATTER OF
HAROLD L. ROTHSCHILD, TRADING AS CORONADO
MANUFACTURING COMPANY

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

Docket 2829. Complaint, May 29, 1936—Decision, Apr. 11, 1939

Where an individual engaged in sale and distribution of cosmetics and toilet preparations among the various States, under a plan involving (1) the disposition of his products through distributors who were required to deposit \$300 and were then supplied with assortment of such products, together with thirty display cases to be placed in drug stores and other establishments, for sale of product on commission by proprietors of such stores and establishments, and (2) employment of supervisors who visited various cities and advertised at own expense, but with copy which he furnished, for distributors, in business and opportunity columns of local papers, and were paid by him commission of 25 percent on amount of business placed by them—

(a) Represented through such advertising and through his said representatives or supervisors, that he had been established in business since 1923, and that a substantial demand had been established for his preparations, and exhibited letters setting forth high quality and salability of his said products, and represented that distributors would receive \$50 weekly with steady increase, and that they were earning from \$10 a day to \$5,000 a year, even without sales experience, and that least distributor would earn would be \$40 a week, and in some instances guaranteed minimum income of between \$3,000 and \$5,000 a year, and exhibited to applicants list containing names of those represented as receiving such amounts, and letters purporting to be from distributors showing their sale of large quantities of his said merchandise;

Facts being he established his business in 1933 and not in 1923, had not established substantial demand for his preparations, letters setting forth high quality and salability of his said products above referred to had been, in a number of such cases, presented to storekeepers for their signature when the goods were placed with them and before they had time to verify statements contained therein and later found such products not of high quality and with very little sale therefor, and distributors did not earn amounts as above alleged, and none had earned such amounts, but instead, in numerous cases, had suffered losses, and in some instances loss of entire investment, and in others loss ranging from \$165 to \$285, and, according to admission of supervisor, in no case had met with success or earned any substantial amount; and

(b) Represented to applicants that supervisors would assist them in disposing of his merchandise, and that if applicants were unable to dispose thereof their money would be refunded upon its return to him, and informed applicants that after having made original purchase, they would be furnished with additional supplies of cosmetics and toilet preparations under profit-sharing plan, and that they would be given new and exclusive territory;

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Facts being said supervisors did not assist distributor in disposing of merchandise in question, and he failed and refused to make refund for any such merchandise thus returned, and refused in numerous instances to furnish distributors with additional products on profit-sharing basis after they had made original purchase, and territory assigned to distributors as new and exclusive in numerous instances had previously been worked by other distributors of said individual, with exclusive agency still held by some;

With result that some 300 distributors were secured as a result of such misrepresentations, and with effect of causing numerous persons to believe that such false and misleading representations made by said individual and his agents, as above set forth, were true, and to purchase said products in such belief in preference to like products sold in commerce among the various States by competitors, and of thus diverting trade to himself from competitors aforesaid:

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

Before *Mr. Charles F. Diggs*, 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Harold L. Rothschild, trading under the name and style of Coronado Manufacturing Co., 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, Harold L. Rothschild, is an individual trading and doing business under the name and style of Coronado Manufacturing Co. Said respondent maintains his office and place of business at 500 Robert Street in the city of St. Paul, in the State of Minnesota. Said respondent is now, and for more than one year last past, has been engaged in the sale and distribution of various cosmetics and toilet preparations between and among the various States of the United States. Said respondent causes said cosmetics and toilet preparations, when sold by him, to be transported to the purchasers thereof located in the State of Minnesota and in various other States of the United States. There is now, and has been for a long time, to wit, more than 1 year last past, a constant current of trade and commerce by said respondent in cosmetics and toilet preparations between and among the various States of the United States.

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In the course and conduct of his said business, said respondent is now, and for a long time, to wit, for more than 1 year last past, has been in substantial competition in commerce between and among the various States of the United States with various other individuals, corporations, partnerships, and firms engaged in the interstate sale and distribution of cosmetics and toilet preparations.

PAR. 2. Said respondent, in the course and conduct of his said business, sells and distributes several lines of cosmetics and toilet preparations. Among the lines sold by said respondent are cosmetics and toilet preparations sold under the trade name "Coronet." Respondent also sells a more expensive line of cosmetics and toilet preparations under the trade name of "Lovely Lady," and still another higher priced line under the trade name of "Priscilla Parker." In the regular course and conduct of his business respondent sells the "Coronet" line of cosmetics and toilet preparations by three methods and to three different classes of dealers, namely, to drug and beauty supply jobbers and department stores; to retail druggists; and to distributors appointed by salesmen called supervisors.

PAR. 3. Said respondent for a long time, to-wit, for more than one year last past, in the course and conduct of his said business of selling the "Coronet" line of cosmetics and toilet preparations in interstate commerce, as aforesaid, has adopted a policy of advertising in the financial and business opportunity columns of daily newspapers for men with capital to invest to act as managers or other representatives, using in said advertisements false, misleading and deceptive statements (a) as to the size of said respondent's business, (b) as to the length of its establishment, (c) as to the equipment and cooperation furnished by said respondent, (d) as to opportunities offered, and (e) as to the possible and probable earnings or profits to be derived from the business operated and the money invested therein.

PAR. 4. Said respondent, for a long time, to wit, for more than one year last past, in the course and conduct of his said business of selling "Coronet" line of cosmetics and toilet preparations in interstate commerce, as aforesaid, has adopted the policy of entering into agreements, or seeking to enter into agreements, with individuals who apply for positions with said respondent as a result of the advertisements inserted in daily newspapers by said respondent, as set forth in paragraph 3 hereof, whereby said respondent purports to employ said applicants as managers and other representatives for said respondent in certain specified exclusive territories, and in consideration for such appointment the said applicants are required to purchase from said respondent a designated quantity of said "Coronet" cosmetics and toilet preparations, varying in number with the amount of capital said

applicants have to invest, and whereby said applicants are also required to agree to purchase from said respondent a designated number of said "Coronet" cosmetics and toilet preparations per month at a specified price with the understanding that said applicants, as managers or other representatives, shall cause said "Coronet" cosmetics and toilet preparations to be sold at a specified price; with the further understanding that if after offering the said "Coronet" line for sale in accordance with the instructions in the agreement, and after having carried out in full all of the provisions of the said agreement, the applicants may then secure additional quantities of said "Coronet" preparations on a profit sharing basis, or may return the supply of said "Coronet" preparations in their hands and receive a refund of the money paid therefor.

PAR. 5. Said respondent for a long time, to wit, for more than one year last past, in the course and conduct of his said business of selling the "Coronet" line of cosmetics and toilet preparations in interstate commerce, as aforesaid, in order to induce said applicants who answer advertisements of said respondent, as described in paragraph 3 herein, to enter into said agreements, and to purchase said "Coronet" line of cosmetics and toilet preparations from said respondent, as set out in paragraph 4 herein, has used and is now using false, misleading, and deceptive statements.

(a) As to the length of time it has been engaged in business.

(b) As to the demand for said "Coronet" line of cosmetics and toilet preparations.

(c) As to the possible and probable earnings or profits to be derived from the business operated and the money to be invested therein.

(d) As to the profits or earnings realized by other representatives of said respondent, and as to the success of other representatives of said respondent.

(e) As to many other important facts relating to the business being operated by said respondent.

PAR. 6. The aforesaid acts and things done and performed by said respondent has had and now has the tendency and capacity to mislead and deceive the general public, and particularly the said applicants who apply for positions as managers or other representatives of said respondent in response to said advertisements as set forth in paragraph 3 herein, into the belief that said respondent is an old established firm engaged in the sale and distribution of cosmetics and toilet preparations with substantial capital; that there is a substantial demand for said "Coronet" line of cosmetics and toilet preparations; that managers and other representatives of said respondent have made substantial profits and earnings in the sale of respondent's

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"Coronet" line of cosmetics and toilet preparations; that any man of good character, without experience, by the investment of a small amount of capital in said business, may make substantial profits or earnings within a short period of time; that letters of reference furnished by said respondent are bona fide, and that statements contained therein are true; that said applicants would be given exclusive territories where they would have no competition in the sale of said "Coronet" line of cosmetics and toilet preparations; that the money invested by said applicants or prospective managers or other representatives would be refunded upon the return of said "Coronet" line of cosmetics and toilet preparations purchased by them if said applicants or prospective managers or other representatives were unable to dispose of said "Coronet" line of cosmetics or toilet preparations; and that after the original purchase said applicants will be furnished additional supplies of the "Coronet" line of cosmetics and toilet preparations on a "profit sharing plan"; and in said belief said applicants have been and are now induced to purchase and enter into agreements to purchase the said "Coronet" line of cosmetics and toilet preparations from said respondent.

The truth and fact is that said respondent has been engaged in the sale of cosmetics and toilet preparations for a short time, to-wit, less than 5 years, and is a relatively small and unknown factor in the cosmetic and toilet preparation field; that there is a very limited demand for said "Coronet" line of cosmetics and toilet preparations on the part of the buying public; that the portfolio of letters of reference used by said respondent in the solicitation of the appointment of managers or other representatives contains statements which are not true in fact, and letters which are unauthorized; that there is keen competition in the sale of cosmetics and toilet preparations; that managers or other representatives of said respondent had not realized the substantial profits or earnings represented by said respondent as aforesaid; that the said respondent has not refunded and does not now refund the purchase price of said "Coronet" cosmetics and toilet preparations which said applicants, as managers or other representatives, were or are unable to sell, and which were or are returned to the said respondent; and that said managers or other representatives have not been and are not now furnished additional supplies of the "Coronet" line of cosmetics and toilet preparations on a "profit sharing plan."

PAR. 7. The aforesaid acts and things done and performed and representations made by said respondent have had and do now have the tendency to cause the various applicants or prospective managers or other representatives, acting in the belief that said representations

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are true, to enter into contracts or agreements for the sale of his products with said respondent rather than with other persons engaged in the interstate sale of cosmetics and toilet preparations, and thereby tends to divert trade to said respondent from his said competitors engaged in the interstate sale of cosmetics and toilet preparations.

PAR. 8. The aforesaid acts and things done and performed by said respondent, Harold L. Rothschild, trading and doing business as Coronado Manufacturing Co., are to the prejudice of the public and the 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 the Federal Trade Commission Act, the Federal Trade Commission, on May 29, 1936, issued and served its complaint in this proceeding upon the respondent, Harold L. Rothschild, individually and trading under the name and style of Coronado Manufacturing 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 the complaint were introduced by Reuben J. Martin, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly appointed by it. Respondent was not represented by counsel and introduced no testimony or other evidence in opposition to the complaint. The 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, the testimony and other evidence and briefs in support of the complaint and in opposition thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Harold L. Rothschild, is an individual trading under the name and style "Coronado Manufacturing Com-

pany." Since about January, 1933, respondent has been engaged in the sale and distribution of cosmetics and toilet preparations between and among the various States of the United States. His place of business during said period has been in St. Paul, Minnesota. In the course and conduct of his business respondent is in active and substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of cosmetics and toilet preparations in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. Respondent disposes of his product through distributors who are required to deposit \$300, whereupon they receive an assortment of respondent's products together with 30 display cases, and, in accordance with respondent's sales plan, they place said display cases containing the products of respondent, in drug stores and other establishments, the proprietors of which sell the products and receive a commission on such sales from the distributor. Respondent's annual sales amount to from \$50,000 to \$75,000.

PAR. 3. Respondent, in the course and conduct of his said business, employs supervisors who visit various cities throughout the United States and advertise in the Business and Opportunity columns of local daily newspapers for distributors of respondent's products. These supervisors pay their own traveling expenses and the costs of the advertisements, but the respondent furnishes the copy used in the advertisements. The supervisor is paid by the respondent a commission of 25 percent on the amount of business placed by him with the distributors.

PAR. 4. By means of advertising and through representations made by respondent's representatives known as supervisors, the respondent has represented that he has been established in business since 1923 and that a substantial demand has been established for his cosmetics and toilet preparations. By the same means the respondent has variously represented that distributors will receive \$50 weekly with steady increase; that distributors are earning \$10 a day to \$5,000 a year, even though they have no sales experience, and that the least the distributor would earn would be \$40 a week; and in some instances has guaranteed a minimum income of between \$3,000 and \$5,000 a year. Respondent further causes to be exhibited to the applicants a list containing the names of persons who are represented as receiving such amounts and also letters purporting to be from distributors showing they were selling large quantities of respondent's merchandise. It is also represented to applicants that respondent's supervisors would assist them in disposing of the merchandise, and that if the applicants were unable to dispose of the merchandise their

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money would be refunded upon the return of such merchandise to the respondent. Applicants are further informed that after having made the original purchase they would be furnished with additional supplies of cosmetics and toilet preparations under a profit sharing plan. The applicant is also told he would be given new and exclusive territory. Approximately 300 distributors located in various States throughout the United States were secured as the result of such representations.

PAR. 5. All of the representations referred to in the foregoing paragraph are false. In truth and in fact respondent established this business in 1933 and has not established a substantial demand for his preparations. Distributors do not earn the amounts which respondent alleges can be earned, nor have any of respondent's distributors earned the amounts which respondent alleges to have been earned. Numerous distributors instead of earning a profit have suffered substantial losses, in some instances the loss of the entire investment, and in others losses ranging from \$165 to \$285. One of respondent's supervisors admitted that none of said distributors had met with success in the sale of respondent's products or earned any substantial amount. Respondent's supervisors do not assist the distributor in disposing of this merchandise and respondent fails and refuses to make refund for any such merchandise returned by a distributor. In numerous instances respondent refused to furnish distributors with additional products on a profit sharing basis after they had made the original purchase. In numerous instances also the territory assigned to distributors as new and exclusive territory had previously been worked by other distributors of the respondent, some of whom still held the exclusive agency for such territory.

PAR. 6. The respondent, in order to induce persons to purchase his products and become distributors thereof, caused to be exhibited to them letters setting forth the high quality and salability of his said products. A number of said letters were presented to storekeepers for their signatures at the time the goods were placed with them and before they had time to verify the statements contained therein. Later, they found said products were not of high quality and that there was very little sale for them.

PAR. 7. The false and misleading representations made by the respondent and his agents, as hereinbefore set forth, have caused numerous persons to believe that said statements and representations are true, and to purchase such products in such belief in preference to like products sold in commerce between and among the various States of the United States by his competitors; and as a result, trade has been diverted from such competitors to the respondent.

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CONCLUSION

The practices of the respondent, as set forth in the foregoing findings as to the facts, are to the prejudice and injury of the public and of respondent's competitors and constitutes unfair methods of competition in commerce in violation of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Harold L. Rothschild, individually and trading under the name and style of Coronado Manufacturing Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of cosmetics and toilet preparations in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that any sum required to be paid by any agent, representative or distributor will be refunded, unless such refund is actually made, and if there are any conditions connected with such refund, such conditions must be clearly and unequivocally stated in equal conspicuousness in immediate connection and conjunction with such offer of refund in such a manner that there is no deception as to the terms of such conditions.

2. Representing that he will furnish to distributors of his products additional goods on credit on a profit sharing basis unless such merchandise is actually furnished on credit to be paid for by the distributor out of the profits from the sale thereof.

3. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives or distributors for any given period of time, which is not a true representation of the average net earnings or profits consistently made by his active full-time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

4. Representing any specified sum of money as earnings or profits of any specified agent, salesman, representative or distributor for any

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given period of time which has not in fact been consistently earned net by such agent, salesman, representative or distributor in the ordinary course of business and under normal conditions and circumstances.

5. Representing that the territory assigned any agent, representative, or distributor is new or exclusive territory, unless new or exclusive territory is actually assigned to such agent, representative or distributor.

6. Representing that supervisors employed by the respondent will assist agents, representatives or distributors in the sale of said products when such is not the fact.

7. Representing by the use of false or fictitious testimonial letters or in any other manner that respondent's products have a salability which does not in fact exist.

8. Representing that respondent has been established in business for a long period of time or that a substantial demand has been established for his products when such is not the fact.

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

IN THE MATTER OF
JOSEPH ROSENFELD, INDIVIDUALLY, AND TRADING AS
RIGHTWAY INSTITUTE

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

Docket 3158. Complaint, June 19, 1937—Decision, April 11, 1939

Where an individual engaged, under name "Rightway Institute," in sale, under name "Rightway Method," of courses of instruction represented as treatment and cure for indigestion, heartburn and relief of gas, and in thus selling and distributing, under such various designations as "Rightway Method," "Relief Without Medication," and "Rightway Institute," books and pamphlets which purportedly contained system or method of exercising for the treatment of or relief from conditions above set forth, and in describing, in advertisements, magazines, newspapers, and other media circulated in the various States and in the District of Columbia and in books, pamphlets, circulars and letters distributed from his place of business through the mails and otherwise, his said method to purchasers or prospective purchasers in other States, in competition with many who make and compound various products and publish various books, pamphlets and treatises on methods designed and intended to relieve, cure or treat the various ailments or conditions similiar to those for which he represented his said method as relief or cure, and who do not, in thus selling and distributing their products and publications in commerce among the several States and in said District, in any way misrepresent their nature and character or their effectiveness or their true status as private business vendors—

- (a) Represented, directly or by implication, that his said system or method of exercising was a scientific way to relieve indigestion and stomach and intestinal gas, and that it would cure such ailments and conditions, and that it could be used with safety by all persons suffering therefrom, through such statements, among others, as "The Rightway Method is a wonderful cure and I can recommend it to anyone who is distressed with heartburn caused from indigestion and gas," "Safe! and Sure!," "I can truthfully say that I am entirely cured from my old ailment that I had been troubled with for years," and "SCIENTIFIC GUARANTEED METHOD," and "STOP GAS PAINS"; and
- (b) Represented, through use of word "institute" in aforesaid trade name, which he featured, and through other statements including those hereinabove indicated, that his business was that of an institute or scientific research body conducted by graduate physicians and specially trained experts in physical culture, and that he maintained a trained technical staff of employees and a properly equipped laboratory for the conduct of scientific research and experiments as to use and effect of exercise in treatment and cure of aforesaid ailments and conditions, or that his said system or method of exercising was founded on, or the result of, such research and experiments;

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Facts being he did not conduct an institute or organization for scientific research, had no place of business other than desk space, conducted his business without aid of employees or assistants, was not a physician, had no knowledge of physical culture, and did not have associated with him, or consult with, any physician or specialists in said subject, had never made or had made any physical examination of any customers or prospective customers and users of the system or method, or any clinical test of the therapeutic value thereof, exercises provided could not properly be represented as a treatment or cure for said conditions and would not remove such gas, causes of which can be determined only by physical examination by physicians or specially trained physical experts, and his said system was not a scientific one for aforesaid purposes, nor a safe and sure cure for relief of such pain and distress, and use thereof under certain conditions sometimes attending those suffering therefrom would be dangerous;

With capacity and tendency to mislead and deceive public and persons suffering from indigestion and gas as above set forth, and from pains in stomach and intestines thus caused, and with result that customers and potential customers, through reading of statements as above indicated, were deceived and mislead into false and erroneous belief that such statements were true and that said system or method had a definite and valuable therapeutic effect in the treatment of such conditions and maladies, and with tendency and capacity, because of such erroneous and mistaken belief, to cause members of consuming public to purchase and use such system or method instead of remedies, products and courses of treatment of competitors, devised, intended and used for treatment of same or similar maladies, diseases and conditions, and with effect of diverting trade to him from competitors who do not use such false and deceptive acts and practices in sale of methods of treatment by correspondence and commodities sold for similar ailments and diseases; to the substantial injury of competition in commerce:

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

Before *Mr. Charles P. Vicini*, trial examiner.

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 Joseph Rosenfeld, an individual trading as Rightway Institute, 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 Joseph Rosenfeld, is an individual trading under the name and style Rightway Institute with his principal office and place of business located at 815 South Hill Street, Los Angeles, Calif. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of books, pamphlets, and other literature variously designated "Health Service," "Method of Relief without Medication," and "The Rightway Method." These books and pamphlets describe and set out respondent's methods of undertaking to cure or relieve indigestion, heart burn, excess gas in the stomach and other distressed intestinal and stomach conditions. He causes, and for more than 1 year last past has caused, his said books and pamphlets describing and setting forth his method of treatment, when sold, to be transported through the United States mail from his place of business in Los Angeles, Calif. to the purchasers thereof, some located in the State of California and other (sic) located in various other States of the United States and in the District of Columbia. There is now, and has been for more than 1 year last past, a constant current of trade and commerce in said pamphlets and method of treatment 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 1 year last past has been, in substantial competition with persons, corporations and with firms and partnerships engaged in the sale of similar books and pamphlets undertaking to provide methods for curing, relieving or treating the same ills and conditions of the human body or in the sale of various medical preparations designed, intended, and used for the treatment of the same ills and conditions in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course of the operation of his business, and for the purpose of inducing the purchasing of his books and pamphlets, respondent has caused advertisements to be inserted in newspapers and periodicals of general circulation throughout the United States and has printed and circulated throughout the several States to customers and prospective customers, through the United States mail and otherwise, advertising folders, letters, and literature. In all of said types of advertisements and advertising literature, the respondent has caused his trade name "Rightway Institute" to be prominently and conspicuously displayed, together with such statements as the following:

The Rightway Method is a wonderful cure and I can recommend it to anyone who is distressed with heartburn caused from indigestion and gas.

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And if you decide to try the Rightway Method, the Rightway Institute positively guarantees you that the \$3 you spend will be the last money you will need to spend.

And knowing the "Rightway" not any of you will be without the means for quick, blessed relief from the evils of indigestion no matter where you happen to be.

Do this and you will obtain the same prompt and gratifying results as the other numerous users of the "Rightway."

You can rest assured that with it you get rid of your gas distress promptly. Safe! and Sure!

HOW I RID MYSELF OF GAS PAINS in three minutes.

I can truthfully say I am entirely cured from my old ailment that I had been troubled with for years.

SCIENTIFIC GUARANTEED METHOD.

STOP GAS PAINS.

PAR. 3. All of said statements, together with other similar statements appearing in respondent's advertising that are not herein set out in full purport to be descriptive of respondent's method of undertaking to cure or relieve indigestion, heartburn, excess gas in the stomach and other distressed intestinal and stomach conditions and the effectiveness of respondent's method in curing or relieving said ailments and conditions. Through said statements, the respondent represents that his recommended methods or treatments set out in his books and pamphlets form competent and effective cures or competent and effective treatments for the relief of all cases of indigestion, heartburn, excess gas in the stomach and other distressed intestinal and stomach conditions.

PAR. 4. In addition, the use of the trade name which includes the word "Institute" serves as a representation to members of the public that the respondent is conducting an institute which is some sort of an organization devoted to the scientific study of the various ailments and conditions of the human body hereinabove named and to a study of competent and effective remedies, treatments and cures for said ailments and conditions and that said organization is primarily interested in such scientific investigation rather than in the sale of any books and pamphlets or other articles of commerce.

PAR. 5. In truth and in fact, the representations made by the respondent with respect to the effect of his method of treating the above named ills and conditions are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the study of respondent's books and pamphlets and the use of his method set out herein will not afford relief in three minutes or in any other length of time for all persons suffering from distressed heartburn, indigestion or gas. The methods described in respondent's pamphlets consist principally in a series of body movements which will not have any effect in over-

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coming the causative factors in the production of gas either in the stomach or in the intestines. The use of such body movements will not afford permanent aid in this respect and is not in all cases a reliable procedure for the relief of such ailments and conditions. The use of respondent's method will not afford relief in cases of indigestion.

The respondent does not operate any institute within the commonly accepted meaning of that term. He does not conduct any place where research or scientific investigation is conducted and he maintains no scientific body or group of persons cooperating in research work. The business conducted by the respondent is nothing more than a private venture designed, intended, and used in the furtherance of the sale of his aforementioned books and pamphlets.

PAR. 6. There are among respondent's competitors many who manufacture, distribute and sell various books, pamphlets or products designed, intended and sold for the purpose of curing, relieving, or treating the various ailments and conditions of the human body, hereinabove named, who do not, in any way, misrepresent the nature or character of their respective products or their effectiveness when used and who do not misrepresent their true status as private business ventures.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating and describing his business status and the effectiveness of the methods set out in his books and pamphlets for curing, treating or relieving the aforementioned ailments and conditions of the human body were, and are, calculated to, and had, and now have a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that upon following respondent's methods of treatment, the results claimed will be accomplished. Further, as a consequence of such mistaken and erroneous beliefs, induced as aforesaid, a number of the consuming public have purchased and used a substantial number of respondent's books and pamphlets with the result that trade has been unfairly diverted to the respondent from competitors described in paragraph 6 hereof. As a result thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the several states of the United States.

PAR. 8. 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 the Federal Trade Commission Act, the Federal Trade Commission issued and served its complaint upon respondent, Joseph Rosenfeld, an individual, trading under the name and style, Rightway Institute, charging respondent with the use of unfair methods of competition in commerce, as commerce is defined in said act. After the issuance of said complaint, testimony and other evidence in support of the allegations of said complaint were introduced by Clarence T. Sadler, and Sherman R. Hill, attorneys for the Commission, before Charles P. Vicini, examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by the respondent in his own behalf, and said testimony and other evidence 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 testimony and other evidence and briefs of counsel for the Commission in support of the complaint and that of the respondent in his own behalf; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Joseph Rosenfeld, is an individual trading under the name and style "Rightway Institute," with his principal office and place of business at 815 South Hill Street, Los Angeles, Calif. Respondent sold and distributed in interstate commerce, from 1929 until February 1937, a course of instruction represented as a treatment and cure for indigestion, heartburn, and relief of gas on the stomach and in the intestines, designating such course as the "Rightway Method," and representing that he conducted the "Rightway Institute" and "Rightway Method Company," and that the Rightway Method is a scientific method and a "wonderful cure guaranteed as a means for quick relief from indigestion and gas pains."

PAR. 2. The respondent during the time herein stated in paragraph 1, sold and distributed in commerce between and among the several States of the United States and in the District of Columbia,

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books and pamphlets variously designated under the titles or captions "Rightway Method," "Relief Without Medication," and "Rightway Institute," and others, which contain, or are purported to contain a system, or method of exercising for the treatment of, or relief from indigestion, gas on the stomach and in the intestines, and pains and distress in the stomach and intestines. Respondent likewise caused statements to be published in advertisements, magazines, newspapers, periodicals, and other media, circulated in various States of the United States and in the District of Columbia, and in books, pamphlets, circulars, and letters describing his said method of treatment, distributed by respondent from his place of business in Los Angeles, Calif., through the mails and otherwise, to purchasers or prospective purchasers thereof located in States of the United States other than the State of California and in the District of Columbia.

PAR. 3. In the course of the operation of his said business and for the purpose of inducing the purchase by the public of his said books, pamphlets, and other literature outlining and describing his said system or method, respondent caused his trade name, "Rightway Institute," to be prominently and conspicuously displayed. Respondent also represented that his said method was a scientific method, and guaranteed that the \$3 spent for his method of treatment would be the last money one would need to spend; and made the following further statements and representations:

The Rightway Method is a wonderful cure and I can recommend it to anyone who is distressed with heartburn caused from indigestion and gas.

And if you decide to try the Rightway Method, the Rightway Institute positively guarantees you that the \$3 you spend will be the last money you will need to spend.

And knowing the "Rightway" not any of you will be without the means for quick, blessed relief from the evils of indigestion no matter where you happen to be.

Do this and you will obtain the same prompt and gratifying results as the other numerous users of the "Rightway."

You can rest assured that with it you get rid of your gas distress promptly. Safe! and Sure!

Gas Pains relieved in three minutes.

I can truthfully say I am entirely cured from my old ailment that I had been troubled with for years.

Scientific guaranteed method.

Stop gas pains.

Through these statements and representations respondent represents that his business is that of an institute or scientific research body conducted by graduate medical doctors and specially-trained experts in physical culture; that his method of treatment is a scientific method, the result of research and scientific tests; that the

method will relieve diseases caused from indigestion and gas on the stomach and intestines and will relieve or cure pains in the stomach and intestines produced by gas in the stomach and intestines no matter from what cause; and that the \$3 paid for his method of treatment will be all the expense that will be necessary to effect relief from or cure of such distress, pain or disease.

PAR. 4. An institute as represented by respondent in his advertising matter, as set out in paragraph 3 hereof, signifies an institution or organization for scientific research. In truth and in fact, respondent does not conduct and never has conducted an institute. In conducting similar businesses, as herein stated, respondent used several designations and names for his business other than those set out in his said advertising matter; and, ascertaining that the State Board of Health of the State of California would permit the use of the word "institute" in the manner described by him in the conduct of such business, employed and now employs the word "institute" as described. Respondent has no place of business other than desk space from which his business is transacted, and conducts such business without the aid of employees or assistants. Respondent is not a physician and has no knowledge of physical culture and does not have associated with him and does not consult with any physician or specialist in physical culture in the conduct of his business. Respondent has never made or caused to be made any physical examination of the customers or prospective purchasers and users of his system or method of treatment, and has never made or caused to be made and there has not been made at his instance any clinical test of the therapeutic value of his system or method of treatment sold and shipped as herein set out, the exercises provided for in respondent's system or method cannot be properly represented as a treatment or cure for heartburn caused by indigestion or gas, and would not remove gas from the stomach or intestines. Gas is caused or produced in the human stomach and intestines by various causes, and unless the cause is removed gas will continue to form. The causes of such gas formations can be determined only by physical examination by graduate medical practitioners or specially-trained physical experts. The respondent's suggested system or method will not relieve or cure such condition, irrespective of its cause and respondent's system or method is not a scientific system or method curing indigestion and removing gas from the intestines and stomach; it is not a safe and sure cure for the relief of pain and distress caused by such gas formation. There are certain conditions sometimes attending persons suffering gas pains wherein the use of respondent's system or method would be dangerous.

PAR. 5. There were and are among respondent's competitors many who manufactured and compounded, and who manufacture and compound, various products and publish various books, pamphlets and treatises on methods designed and intended for the purpose of relieving, curing or treating the various ailments or conditions of the human body, similar to or like those which respondent represented his method would relieve or cure, who sold and distributed and who sell and distribute, said products and publications in commerce between and among the several States of the United States and in the District of Columbia, who did not and do not in any way misrepresent the nature and character of their respective products, methods and treatments, or their effectiveness when used, and who did not and do not misrepresent their true status as private business ventures.

PAR. 6. The statements and representations made by respondent, as set out in paragraph 3 hereof, have the capacity and tendency to mislead and deceive the public and persons suffering from indigestion and gas on the stomach and in the intestines and who suffer from pains in the stomach and intestines caused from gas due to indigestion or other causes. Customers and potential customers throughout the several States of the United States, reading the statements made by respondent as set out in paragraph 3 hereof, have been deceived and misled into the false and erroneous belief that the said statements of the respondent were and are true, and that the system or method referred to has a definite and valuable therapeutic effect in the treatment of indigestion and the maladies and diseases causing gas and pain in the stomach and intestines. The said statements and representations also have had and have a tendency and capacity to cause members of the consuming public, because of said erroneous and mistaken belief, to purchase and use the system or method of treatment offered for sale and sold by the respondent instead of purchasing and using the remedies, products and courses of treatment of competitors of the respondent devised, intended and used for the treatment of the same or similar maladies, diseases and pathological conditions of the human body. Substantial testimony of expert and lay witnesses shows, and the Commission finds, that the respondent's representations, as aforesaid, relative to the method or course of treatment sold by him, are exaggerated, misleading, false, and deceptive and tend to and do divert trade to respondent from those of his competitors who do not use such false and deceptive acts and practices in the sale of methods of treatment by correspondence, and commodities sold for like or similar ailments and diseases, for which

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respondent represents his methods to be a cure, with the result that substantial injury has been and is now being done by respondent to competition in commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, Joseph Rosenfeld, are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and constitute violations of Section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (no answer having been filed by 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, briefs filed herein by Carrel F. Rhodes, counsel for the Commission, and by respondent, Joseph Rosenfeld, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Joseph Rosenfeld, individually, or trading as the Rightway Institute, or any other trade name, his representatives, agents and employees, in connection with the offering for sale, sale and distribution of courses of instruction in the system or method of exercising, now known as the Rightway Method, whether sold under that name or any other name, or any other similar or comparable system or method of exercising, under whatever name sold, and in connection with the offering for sale, sale and distribution of books, pamphlets, or other written matter describing said system or method of exercising, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said system or method of exercising is a scientific way to relieve indigestion or stomach and intestinal gas.

2. Representing, directly or by implication, that said system or method of exercising will cure indigestion or stomach and intestinal gas.

3. Representing, directly or by implication, that said system or method of exercising can be used with safety by all persons suffering from indigestion or stomach and intestinal gas.

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4. Representing through the use of the word "institute" in his trade name or through the use of any other word or words, or in any other manner, that the respondent maintains a trained technical staff of employees and a properly equipped laboratory for the conduct of scientific research and experiments as to the use and effect of exercising in the treatment and cure of indigestion or stomach and intestinal gas, or that respondent's said system or method of exercising is founded on or the result of such research and experiments, unless and until respondent actually operates and controls an establishment staffed and equipped for the conduct of such scientific research and experiments wherein respondent's system or method of exercising has been scientifically tested and proven by recognized standards.

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

J. P. SHEEHAN, INDIVIDUALLY AND TRADING AS
NATIONAL ADVERTISERS COMPANY

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

Docket 3705. Complaint, Feb. 10, 1939—Decision Apr. 11, 1939

Where an individual engaged in sale and distribution of watches, radios, pipe sets, electric mixers, and a variety of other articles of merchandise to purchasers in various other states and in the District of Columbia; in selling and distributing his said merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes by which said merchandise was sold and distributed to the ultimate consumers thereof wholly by lot or chance, and under which he distributed to purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of his said products, and circulars explaining his plan of selling said push cards in accordance with which and explanatory legend set forth on cards, amount paid for chance by purchaser was dependent upon number pushed by chance, and receipt of certain number or making of last sale entitled purchaser securing said number or making such sale to fountain pen, and receipt or failure to receive electric shaver or article being thus disposed of was dependent upon success or failure in selecting from list of feminine names on card, name corresponding to that concealed within card's master seal; and

Supplied thereby and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with such or similar plan through which, by various push cards supplied by him, and varying from that described in detail only, sale of all his merchandise aforesaid was accomplished, and under which plan fact as to whether purchaser received an article of merchandise or nothing for amount of money paid, and which of said articles, if any, purchaser received, and whether article received was without cost to person, was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, contrary to established public policy of the United States Government and in violation of the criminal laws 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 something by a chance, or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by his said sales plan or method employed by him in the sale and distribution of his merchandise and by element of chance involved therein, and were thereby induced to buy and sell his said products in preference to merchandise offered and sold by said competitors who do not use such or equivalent method, and with the result, through use of such method and because of said game of chance, of unfairly diverting trade to him from his competitors aforesaid who do not use such or equivalent method:

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

Mr. L. P. Allen, Jr. for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that J. P. Sheehan, individually and trading as National Advertisers Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, J. P. Sheehan, is an individual trading as National Advertisers Co., with his principal office and place of business located at 230 East Ohio Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of watches, radios, pipe sets, pen and pencil sets, electric mixers, silverware, electric roasters, vacuum cleaners, electric toasters, electric dry shavers, cameras, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from his aforesaid place of business in Illinois to purchasers thereof in the various other States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent in soliciting the sale of and in selling and distributing his merchandise in commerce, as hereinabove described, furnishes, and 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 sold and distributed to the ultimate consumers thereof wholly by lot or chance.

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The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public in commerce, as hereinabove described, certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said products and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 48 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 48 small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

Person Selecting Name Under Seal Receives A Guaranteed

\$15.00

STREAMLINER

Electric Dry Shaver

Numbers 1 to 29 Pay

What You Draw

Numbers Over 29 pay only 29¢

NO HIGHER

Number 33 and Last Sale

Each Receive a

TARCO FOUNTAIN PEN

Do not
remove seal
until entire
card is sold

Write Your Name Opposite Name You Select on Reverse Side

Push Out With Pencil

Sales of respondent's products by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, or whether a person shall receive an article of merchandise without cost, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed matter for

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use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 an article of merchandise at a price much less than the normal retail price thereof. 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 10, 1939 issued and served its complaint in this proceeding upon the respondent, J. P. Sheehan, individually, and trading as National Advertisers Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 20, 1939, the respondent filed his answer, in which answer he admitted that from on or about April 15, 1938 to on or about December 31, 1938, he was engaged in business as described in the complaint, and for further answer admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearing as to said facts. 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 matter and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent J. P. Sheehan is an individual trading as National Advertisers Co. with his principal office and place of business located at 230 East Ohio Street, Chicago, Ill. Respondent, within the period above set forth, was engaged in the sale and distribution of watches, radios, pipe sets, pen and pencil sets, electric mixers, silverware, electric roasters, vacuum cleaners, toasters, electric dry shavers, cameras, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent caused said products, when sold, to be transported from his aforesaid place of business in Illinois to purchasers thereof in various other States of the United States and in the District of Columbia at their respective points of location. There was within the period above set forth a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent in soliciting the sale of and in selling and distributing his merchandise in commerce, as hereinabove described, furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises or lottery schemes by which said merchandise was sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was substantially as follows:

Respondent distributed to the purchasing public in commerce, as hereinabove described, certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said products and circulars explaining respondent's plan of selling said push cards. One of respondent's push cards bears 48 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 48 small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

Person Selecting Name Under Seal Receives A Guaranteed

\$15.00

STREAMLINER

Electric Dry Shaver

Numbers 1 to 29 Pay

What you Draw

Numbers Over 29 Pay only 29¢

NO HIGHER

Number 33 and Last Sale

Each Receive a

TARCO FOUNTAIN PEN

Do Not

remove seal

until entire

card is sold

Write Your Name Opposite Name You Select on Reverse Side

Push Out With Pencil.

Sales of respondent's products by means of said push cards were made in accordance with the above-described legends and instructions. Said prizes or premiums were allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser received an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise

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the purchaser received, if any, or whether a person should receive an article of merchandise without cost, was thus determined wholly by lot or chance.

Respondent furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards was the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnished the said push cards used the same in purchasing, selling, and distributing respondent's merchandise, 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 his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sold or distributed merchandise in competition with the respondent as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and were 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, had a tendency and capacity to, and did, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's

competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening proceeding and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, J. P. Sheehan, individually and trading as National Advertisers Co., or under any other name or names, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of watches, radios, pipe sets, pen and pencil sets, electric mixers, silverware, electric roasters, vacuum cleaners, electric toasters, electric dry shavers, cameras, or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others, punchboards, push or pull cards or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping or transporting to agents or to distributors or members of the public, punchboards, push or pull cards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of punchboards, push or pull cards or other lottery devices.

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

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. IN THE MATTER OF

REEVES PARVIN & COMPANY, TRI-STATE BROKERAGE
COMPANY, FRANCIS B. REEVES, JR., 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 3129. Complaint, May 15, 1937¹—Decision, Apr. 15, 1939

Where six corporations engaged in manufacture of various commodities, and in sale and shipment thereof to a wholesale grocer and to other purchasers, and individual engaged as broker in sale of such commodities in their behalf, and others engaged in such sale, and as thus engaged in competition one with the other; in selling such products—

- (a) Granted, paid, transmitted and delivered so-called brokerage fees or commissions ranging from 1 to 5 percent of the amount of each purchase on sales on orders placed with such various sellers by such wholesale grocer through the medium of a certain brokerage company, which (1) was the corporate affiliate of such wholesale grocer, (2) was under identical control with it through common stock ownership and control by the president and active chief executive of both, (3) distributed, in the form of dividends, all the profits resulting from the receipt of such so-called brokerage fees or commissions, to said president, by whom such amounts, in accordance with agreement theretofore entered into, were transmitted and paid over to said wholesale grocer, and, (4) in connection with such various transactions, acted for and in behalf of said wholesale grocer only, and under its control, and did not represent said sellers as their agent or act for or in their behalf or under their control, or render or intend to render them any services in connection with sale of commodities to such wholesale grocer; and

Where said wholesale grocer, engaged in active competition with other wholesale grocers doing business in territories served by it, and purchasing commodities for resale to the retail trade from manufacturers, producers, and distributors located in various States, and the aforesaid individual, its president and chief executive officer, as of said brokerage company, and latter itself—

- (b) Accepted and received, on purchases on orders placed by said wholesale grocer through such brokerage company and buyer-controlled intermediary, so-called brokerage fees or commissions, as above set forth, in connection with which said brokerage company neither rendered nor intended to render to sellers any services in connection with sale of such commodities to said wholesale grocer, and in connection with which said individual and common officer and stockholder was possessed of no knowledge with regard to customer or consumer demand, requirements of said wholesale grocer or obligations thereof to such various sellers, while acting in his capacity as president and chief executive officer of said wholesale grocer, which was not equally available to him while acting in his capacity as such

¹ Complaint published as amended by order of the Commission amending complaint and record, dated September 15, 1937.

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president and executive officer of said brokerage concern, and who performed no function, while acting in latter capacity, which could not have been performed by him in his other capacity, and in connection with which various sales, as aforesaid, no selling services were rendered to such sellers by either of said concerns or their agents, and in connection with which purchases any benefits which might accrue to the sellers from negotiations or dealings involved were wholly incidental to the purchasing services rendered said wholesale grocer by its said brokerage company:

Held, That such payment and transmittal of brokerage fees or commissions in substantial amounts, as above set forth, and receipt thereof, as aforesaid, upon such purchases, constituted violation of paragraph (c) of Section 2 of the Clayton Act, as amended.

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

Mr. J. J. Smith, Jr. for the Commission.

Saylor, Slocum & Ferguson, of Philadelphia, Pa., and *Mr. Louis A. Spiess* and *Mr. John Walsh*, of Washington, D. C., for *Reeves, Parvin & Co.*, *Tri-State Brokerage Co.* and *Francis B. Reeves, Jr.*

Spencer, Ogden, Spencer & Gandy, of Rochester, N. Y., for *W. N. Clark Co.*

Price Brothers, of New York City, for *Natural Sugars, Inc.*

Parker & Dawson, of New York City, for *Nectar Syrup Corporation*.

Mr. James A. McAllister, of Cambridge, Md., for *Phillips Sales Co., Inc.*

COMPLAINT¹

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:

¹ Complaint published as amended as of date of issuance by "Order Amending Complaint and Record" dated September 15, 1937, so as to name as respondent, Robert W. Mairs, individually, trading and doing business as Robert W. Mairs & Co. instead of Robert W. Mairs & Co., a corporation and to name as respondent in lieu of Phillips Packing Co., Inc., Phillips Sales Co., Inc. and to make corresponding changes thus made necessary in par. 4 of the complaint.

PARAGRAPH 1. Respondent, Reeves, Parvin & Co., 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 400 Chestnut Street in the city of Philadelphia, State of Pennsylvania.

PAR. 2. The respondents, Tri-State Brokerage Co., 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 400 Chestnut Street, in the city of Philadelphia, State of Pennsylvania.

PAR. 3. Respondent, Francis B. Reeves, Jr., is a resident of the city of Philadelphia, State of Pennsylvania, with an office and place of business located at 400 Chestnut Street in said city and State.

PAR. 4. Respondent, W. N. Clark Co., 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 333 Hollenbeck Street, in the city of Rochester, State of New York. Respondent Robert W. Mairs is a resident of the city of Baltimore, State of Maryland, engaged in trading and doing business as Robert W. Mairs & Co. and maintains his office and principal place of business at 211 East Pleasant Street, in the city of Baltimore, State of Maryland. Respondent, Martin Gillet & Co., is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with an office and principal place of business located at Lombard and Cheapside Streets, in the city of Baltimore, State of Maryland. Respondent, H. J. McGrath Co., is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with an office and principal place of business located at Lakewood Avenue, in the city of Baltimore, State of Maryland. Respondent, Natural Sugars, 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 120 Wall Street in the city and State of New York. Respondent, Nectar Syrup Corporation, 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 228 West Broadway in the city and State of New York. Respondent, Phillips Sales Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with an office and principal place of business located in the city of Cambridge, State of Maryland.

PAR. 5. Said respondent, Reeves, Parvin & Co., named in paragraph 1 above, is engaged in the business of purchasing commodities, particularly food stuffs, usually from sellers, including respondent sellers, named in paragraph 4 above, located in states other than the state

in which said respondent, Reeves, Parvin & Co., is located, and of reselling such commodities to its customers.

Said respondent, Reeves, Parvin & Co., is a Delaware corporation, the majority of whose capital stock is owned and controlled by its President and a member of its board of directors, said respondent, Francis B. Reeves, Jr., named in paragraph 3 above, who also is president and a member of the board of directors of said respondent, Tri-State Brokerage Co., named in paragraph 2 above, a Delaware Corporation, all of whose capital stock is owned and controlled by said respondent, Francis B. Reeves, Jr. All directors of said respondent, Tri-State Brokerage Co., are also directors of said respondent, Reeves, Parvin & Co.; and the officers and employees of said respondent, Tri-State Brokerage Co., are also officers or employees of said respondent, Reeves, Parvin & Co. Said respondent, Tri-State Brokerage Co., occupies and uses one office which is also occupied and used by said respondent, Reeves, Parvin & Co.

The ownership, control and management of said respondent, Tri-State Brokerage Co., is identified and affiliated with the ownership, control and management of said respondent, Reeves, Parvin & Co., through the person and active management of said respondent, Francis B. Reeves, Jr., who is president, director and majority stockholder of both of said respondent corporations, Reeves, Parvin & Co., and Tri-State Brokerage Co.

Said respondent, Reeves, Parvin & Co., a Delaware corporation, being engaged in the wholesale grocery business, maintains an office and principal place of business in the city of Philadelphia, State of Pennsylvania, and, while not engaging in merchandising in said city of Philadelphia, does maintain warehouses and sales organizations in the City of Wilmington, in the State of Delaware and in the cities of Huntingdon, Allentown, and Altoona, in the State of Pennsylvania.

PAR. 6. Said respondent, Tri-State Brokerage Co., named in paragraph 2 above, is the purchasing agency and corporate affiliate of said respondent, Reeves, Parvin & Co., and is engaged in the business of providing purchasing services for said respondent, Reeves, Parvin & Co.; approximately 96 percent of all business done by said respondent, Tri-State Brokerage Co., between June 19, 1936 and January 1, 1937, was involved in orders for the purchase of commodities placed by said respondent, Reeves, Parvin & Co.

Said respondent, Tri-State Brokerage Co., in the course and conduct of its business, pursues a policy and practice of purchasing commodities, particularly food stuffs, chiefly for said respondent, Reeves, Parvin & Co., from numerous and diverse manufacturers, processors,

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distributors and producers, located in the several States of the United States, certain of whom are named in paragraph 4 above and joined as respondents herein, and herein more particularly described and referred to for convenience as respondent sellers.

In the course and conduct of its business as aforesaid, said respondent, Tri-State Brokerage Co., represents and acts in fact for and in behalf, and is subject to the control of said respondent, Reeves, Parvin & Co. in the purchase of commodities, particularly food stuffs, 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, Reeves, Parvin & Co.

PAR. 7. Said respondent, Francis B. Reeves, Jr., named in paragraph 3 above, is now, and has been since June 19, 1936, president, director and majority stockholder in both of said respondent corporations, Reeves, Parvin & Co. and Tri-State Brokerage Co., owning and controlling 55 percent of all the capital stock of said respondent, Reeves, Parvin & Co. and all of the capital stock of said respondent, Tri-State Brokerage Co., and taking an active part in the management of the business of both of said respondents, Reeves, Parvin & Co., and Tri-State Brokerage Co.

PAR. 8. Said respondent sellers, named in paragraph 4 above, are typical and representative members of a group or class of manufacturers, processors, producers, and distributors, too numerous to be individually named herein as respondents, and who are engaged in the common practice of selling some of their commodities, in interstate commerce, through said respondent, Tri-State Brokerage Co., to said respondent, Reeves, Parvin & Co.

PAR. 9. Said respondent, Tri-State Brokerage Co., in the course and conduct of its said business, and while acting in fact for and in behalf, and subject to the control, of said respondent, Reeves, Parvin & Co., transmits and executes orders for the purchase of commodities, particularly foodstuffs, for said respondent, Reeves, Parvin & Co., with said respondent sellers named in paragraph 4 above, and other sellers, who are, in most cases, located in states of the United States other than the state in which said respondents, Reeves, Parvin & Co., and Tri-State Brokerage Co., are located. As a result of the transmission and execution of said orders by said respondent, Tri-State Brokerage Co., while acting in fact for and in behalf, and subject to the control, of said respondent, Reeves, Parvin & Co., and the acceptance and fulfilment of said orders by said respondent sellers, named in paragraph 4 above, and other sellers, commodities, particularly foodstuffs, are, in the case of each

such order and in a continuous succession of such orders, sold, transported and delivered by one or more of said respondent sellers, and other sellers, to said respondent, Reeves, Parvin & Co. By such means, and in the manner stated, all of said respondents cause to be transported, from one state to another, goods and commodities to be resold to the customers of said respondent, Reeves, Parvin & Co. or to consumers. In the operations and activities hereinabove referred to, each and every one of said respondents is engaged, in interstate commerce, in practices which contemplate and result in the transportation of goods and commodities in interstate commerce and in making sales or purchases which directly affect and bring about interstate commerce.

PAR. 10. In the course and conduct of the buying and selling transactions hereinabove referred to, resulting in the transportation and delivery of goods and commodities from one or more of said respondent sellers, and other sellers, to said respondent, Reeves, Parvin & Co., by means of the purchasing services of said respondent, Tri-State Brokerage Co., as agent and representative for said respondent, Reeves, Parvin & Co., acting in fact for and in behalf, and subject to the control, of said respondent, Reeves, Parvin & Co., said respondent sellers, and other sellers, have transmitted and paid, or have allowed and credited, and do transmit and pay, or do allow and credit, to said respondent, Tri-State Brokerage Co., so-called brokerage fees or commissions, the amount of which varies, but which amount is usually between 1 percent and 5 percent of the quoted price agreed upon by the buyer, said respondent, Reeves, Parvin & Co. and by each individual respondent seller named in paragraph 4 above and other individual sellers, in each such individual transaction of sale and purchase of goods and commodities in interstate commerce. Said respondent, Tri-State Brokerage Co., has and does accept and receive, hold and retain, such so-called brokerage fees and commissions for the use and benefit of said respondent, Reeves, Parvin & Co., and has transmitted and paid over and does transmit and pay over such so-called brokerage fees and commissions so received to said respondent, Reeves, Parvin & Co., by means of dividend payments to said respondent, Francis B. Reeves, Jr., as the owner of all its capital stock, who likewise owns a majority of the capital stock of the said respondent, Reeves, Parvin & Co., and which dividend payments, representing in fact, so-called brokerage fees and commissions received by said respondent, Tri-State Brokerage Co., in the manner hereinabove described, minus the expense of operation, are or have been directly transmitted and paid over, or allowed and credited, by said respondent, Francis B. Reeves, Jr., to the said respondent, Reeves, Parvin & Co.

PAR. 11. In the aforesaid transactions, said respondent, Tri-State Brokerage Co., is the agent and representative, acting in fact for and in behalf, and subject to the control, of said respondent, Reeves, Parvin & Co. In fact, such so-called brokerage fees or commissions are not transmitted and paid over, nor allowed and credited, by said respondent sellers, and other sellers, to said respondent, Tri-State Brokerage Co., nor are the same accepted, received, held or retained by the said respondent, Tri-State Brokerage Co., as payment for any services rendered to said respondent sellers, or other sellers, by said respondent, Tri-State Brokerage Co., but on the contrary such so-called brokerage fees and commissions are so paid and received for the use and benefit of said respondent, Reeves, Parvin & Co. No services are or have been rendered to said respondent sellers, or other sellers, by said respondent, Reeves, Parvin & Co., or by said agent, said respondent, Tri-State Brokerage Co., in connection with the sale or purchase in interstate commerce of goods, wares or merchandise, for which said so-called brokerage fees or commissions are or have been paid or received. The transmission and payment or allowance and credit, of said so-called brokerage fees and commissions, by said respondent sellers, and other sellers, to said respondent, Reeves, Parvin & Co., through said agent and representative, said respondent, Tri-State Brokerage Co., and said respondent, Francis B. Reeves, Jr., and the receipt and acceptance of such so-called brokerage fees and commissions by said respondent, Reeves, Parvin & Co. from said respondent sellers, or other sellers, through said agent and representative, said respondent, Tri-State Brokerage Co., and said respondent, Francis B. Reeves, Jr., in the manner and under the circumstance hereinabove set forth, is in violation of the provisions of subsection (c) of Section 2 of the act described in the preamble hereof. The acceptance and receipt of said so-called brokerage fees and commissions by said respondent, Tri-State Brokerage Co., while acting in fact for and in behalf, and subject to the control, of said respondent, Reeves, Parvin & Co., from said respondent sellers or other sellers, and the acceptance and receipt thereof for the use and benefit of said respondent, Reeves, Parvin & Co., 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 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on the 15th day of May 1937, issued and served its complaint in this proceeding upon the respondents named above, charging

them with violation of Section 2, subsection (c) of the 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 Mr. J. J. Smith, Jr., attorney for the Commission, and testimony and other evidence in opposition to the allegations of the complaint were introduced by Mr. Kenneth Souser and Mr. Louis A. Spiess for Reeves Parvin & Co., Tri-State Brokerage Co., and Francis B. Reeves, Jr.; Mr. Howard C. Spencer, of Spencer, Ogden & Spencer, for W. N. Clark Co.; Mr. Leroy L. Wallace and Mr. James A. McAllister for Phillips Packing Co., Inc., and Phillips Sales Co., Inc.; Mr. Reed B. Dawson, of Parker & Dawson, for Nectar Syrup Corporation; and by Mr. Eric Jacobsen for Martin Gillet & Co., of which he is vice president. Said evidence was adduced at hearings held by John W. Norwood, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came up 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 argument of counsel aforesaid; 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, Reeves Parvin & Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. It is engaged in the wholesale grocery business, maintaining its executive office in Philadelphia, Pa., and branch warehouses which are in charge of, and operated by, employees at Wilmington, Delaware, and Huntingdon, Altoona and Allentown, Pa. With the exception of some buying done by respondent Francis B. Reeves, Jr., from its executive office in Philadelphia, Pa., at the request of respondent Reeves Parvin & Co.'s branch managers, all of its merchandising activities are conducted from the aforesaid branch warehouses by the respective employees in charge thereof. The employees in charge of the warehouses of Reeves Parvin & Co. are known as branch managers; they are authorized to buy merchandise for resale from the respective warehouses operated by them and they do the greater part of such buying, being allowed considerable latitude in conducting the company's business in their territory. Each of said branch managers owns a small block of stock in the respondent

Reeves Parvin & Co., but they are employed on a month to month basis and are subject to discharge at any time.

The officers of Reeves Parvin & Co. are: Francis B. Reeves, Jr., president, John White, vice president, Urban Doolittle, secretary, H. R. Boynton, treasurer, F. X. Wood, assistant secretary and treasurer. The directors of Reeves Parvin & Co. are: Francis B. Reeves, Jr., Johnson Reeves, F. X. Wood, H. R. Boynton, and others. Reeves Parvin & Co. has outstanding 5,753 shares of stock, 3,218 shares of which are owned by the respondent Francis B. Reeves, Jr.

PAR. 2. Respondent Tri-State Brokerage Co. is a corporation under the laws of the State of Delaware, with principal office and place of business at 400 Chestnut Street, Philadelphia, Pa. It conducts a limited brokerage business in groceries, chiefly foodstuffs, for which it places orders with and solicits orders for various sellers, producers of said commodities, some of whom are named and reported herein as respondent sellers. The greater part of this respondent's business comes to it through merchandise purchased through it by respondent Reeves, Parvin & Co., but, acting in the capacity of broker, this respondent does sell some outside concerns the products of manufacturers and producers. The respondent brokerage company is a corporate affiliate and under identical control with respondent Reeves, Parvin & Co., as shown below. In the conduct of its business this respondent causes goods on its sales and orders to be sold and shipped from the States of New York, Maryland, and elsewhere, into the States of Delaware and Pennsylvania in competition with other brokers and purchasers likewise engaged in commerce.

The officers of Tri-State Brokerage Co. are: Francis B. Reeves, Jr., president, Johnson Reeves, vice president, F. X. Wood, secretary and treasurer.

The aforesaid individuals also comprise the board of directors of the Tri-State Brokerage Co.

PAR. 3. Respondent Francis B. Reeves, Jr., an individual, is a resident of Blue Bell, Montgomery County, Pa., with office and place of business at 400 Chestnut Street, Philadelphia, Pa. He is president, director, and majority stockholder of Reeves, Parvin & Co., and is the active chief executive thereof, having the responsibilities, powers, and duties of active management and supervision of the business of the corporation and the duty of seeing that all orders and resolutions of the board of directors are carried into effect. Through the Tri-State Brokerage Co. and the Reeves Parvin & Co. this respondent is actively engaged in the purchase, sale and shipment of merchandise from States of sale and origin to other States of the United States as shown herein.

This respondent is also president, director, and owner of all of the outstanding stock of respondent Tri-State Brokerage Co., and is its active chief executive and the manager of its business, giving his personal attention to the orders of Reeves, Parvin & Co.

PAR. 4. The respondent, W. N. Clark Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having an office and principal place of business located at 333 Hollenbeck Street, Rochester, N. Y.

The respondent, Robert W. Mairs, is an individual doing business under the name and style of Robert W. Mairs & Co., with his office and principal place of business in Baltimore, Md.

The respondent, Martin Gillet & Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, having an office and principal place of business at Lombard and Cheapside Streets, Baltimore, Md.

The respondent, H. J. McGrath Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, having an office and principal place of business located on Lakewood Avenue, Baltimore, Md.

The respondent, Natural Sugars, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having an office and principal place of business located at 120 Wall Street, New York, N. Y.

The respondent, Nectar Syrup Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having an office and principal place of business located at 228 West Broadway, New York, N. Y.

The respondent Phillips Sales Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, having an office and principal place of business located in Cambridge, Md.

With the exception of the respondent, Robert W. Mairs, each of the respondents, hereinabove named in this paragraph, is engaged in manufacturing various commodities which they sell and ship to respondent Reeves, Parvin & Co., and to other purchasers thereof, each seller competing with other manufacturers and sellers of similar commodities in endeavoring to sell and ship the same to respondent Reeves, Parvin & Co., and to competitors of respondent Reeves, Parvin & Co.

The respondent, Robert W. Mairs, is a field broker engaged in selling commodities to respondent Reeves, Parvin & Co., and to other purchasers thereof, as the agent and on behalf of the manufacturers and sellers of said commodities, competing with other field brokers

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in endeavoring to sell commodities to respondent Reeves, Parvin & Co., and to competitors of said respondent Reeves, Parvin & Co.

The respondents hereinabove named in this paragraph will hereinafter be referred to as seller respondents.

PAR. 5. The respondent, Reeves, Parvin & Co., is engaged in active competition with other wholesale grocers doing business in the territories served by it. In the course and conduct of their respective businesses, respondent Reeves, Parvin & Co., and its competitors, purchase commodities for resale to the retail trade from manufacturers, producers and distributors located in various States of the United States, and cause such commodities to be shipped from the various States in which they are manufactured and produced to the respective places of business of the respondent Reeves, Parvin & Co., and its competitors located in States other than the State of origin of such commodities.

PAR. 6. Since June 19, 1936, in the course and conduct of the wholesale grocery business of the respondent Reeves, Parvin & Co., as described in paragraph 5 hereof, orders for a substantial quantity of its stock requirements have been, and are, placed by the respondent Reeves, Parvin & Co., with the seller respondents and other sellers through the medium of the respondent Tri-State Brokerage Co., pursuant to which orders commodities have been, and are, sold and shipped in interstate commerce as aforesaid by the seller respondents and other sellers to the respondent Reeves, Parvin & Co. On such transactions of purchase and sale between the respondent Reeves, Parvin & Co., and the seller respondents and other sellers since June 19, 1936, the seller respondents and other sellers have granted, paid, transmitted and delivered, and do grant, pay, transmit and deliver, to the respondent Tri-State Brokerage Co., so-called brokerage fees or commissions ranging from 1 to 5 percent of the amount of each purchase.

During the period from 1933 to May 15, 1937, the date of the issuance of the complaint herein, the seller respondents and other sellers paid and transmitted to the respondent Tri-State Brokerage Co., so-called brokerage fees or commissions upon the purchases made through it by respondent Reeves, Parvin & Co., and by other wholesalers, as follows:

| | On Reeves Parvin & Co.'s purchases | On purchases of other wholesalers | Total |
|-----------|------------------------------------------|-----------------------------------------|-----------|
| 1933----- | \$4, 570 | \$7, 384 | \$11, 954 |
| 1934----- | 5, 236 | 2, 822 | 8, 058 |
| 1935----- | 5, 458 | 897 | 6, 355 |
| 1936----- | 8, 779 | 598 | 9, 377 |
| 1937----- | 3, 381 | 115 | 3, 496 |

The so-called brokerage fees or commissions paid and transmitted by the seller respondents and other sellers to the respondent Tri-State Brokerage Co. upon the purchases made through it by the respondent Reeves Parvin & Co. since June 19, 1936, comprise over 95 percent of the total income of the respondent Tri-State Brokerage Co.

Where considerations of price and quality are equal, the respondent Reeves Parvin & Co. purchases through respondent Tri-State Brokerage Co., and its branch managers from time to time recommend respondent Tri-State Brokerage Co. to sellers and sellers to respondent Tri-State Brokerage Co., with the view to the formation of a brokerage connection between them, as a result of which, respondent Tri-State Brokerage Co. has obtained such connections with sellers who have paid brokerage to it upon the purchases of respondent Reeves Parvin & Co.

PAR. 7. All of the profits of the respondent Tri-State Brokerage Co. resulting from the receipt of the so-called brokerage fees or commissions paid by the seller respondents and other sellers upon the purchases made through it by the respondent Reeves Parvin & Co., as aforesaid, are periodically distributed to respondent Francis B. Reeves, Jr., in the form of dividends.

All dividends declared and paid to respondent Francis B. Reeves, Jr., by respondent Tri-State Brokerage Co. from the profits earned, as aforesaid, are transmitted and paid over to respondent Reeves Parvin & Co. in accordance with an agreement entered into between respondents Francis B. Reeves, Jr., and Reeves Parvin & Co. at the time of the organization of respondent Tri-State Brokerage Co., which agreement is evidenced by the following excerpt from the minutes of a meeting held by the executive committee of respondent Reeves Parvin & Co. on May 14, 1928:

It was resolved that Reeves, Parvin & Co. take over the interests of Francis B. Reeves, Jr., in the merchandise brokerage business which he proposes to conduct under the name of Reeves, Davis Co., and therefore for this purpose, they appropriate the sum of \$5,000 to be paid to the Reeves, Davis Co. as and when required, on which interest of 6 percent is to be paid before any profits are provided, and the profits due Francis B. Reeves, Jr., from the Reeves, Davis Co. to accrue to Reeves, Parvin & Co. and to be paid over to Reeves, Parvin & Co. as (and) when received by Francis B. Reeves, Jr.

Dividends declared and paid by respondent Tri-State Brokerage Co. to respondent Francis B. Reeves, Jr., and by him transmitted and paid over to respondent Reeves Parvin & Co. as aforesaid during the period from the year 1933 to May 15, 1937, are as follows:

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| | |
|------------|----------|
| 1933 ----- | \$3, 000 |
| 1934 ----- | 2, 000 |
| 1935 ----- | 2, 500 |
| 1936 ----- | 5, 500 |
| 1937 ----- | 1, 500 |

PAR. 8. The function of, and the services performed by, brokers representing sellers in connection with the sale of commodities is to find customers for sellers and, acting under and subject to the control of sellers, to sell commodities to those customers for and on behalf of sellers and as the agents of said sellers; the brokers' function in such cases is a selling function, and the service rendered by them is a selling service rendered to sellers.

PAR. 9. In all of the transactions of purchase and sale of commodities, as set forth in paragraph 6 hereof, wherein the respondent Tri-State Brokerage Co. purchases commodities for the respondent Reeves Parvin & Co. or negotiates or deals with the seller respondents and other sellers in connection with the purchase of commodities by, or the sale thereof to, the respondent Reeves Parvin & Co., the respondent Tri-State Brokerage Co. acts for and in behalf of the respondent Reeves Parvin & Co. only and under its control, and in such transactions the respondent Tri-State Brokerage Co. does not intend to, and in fact does not, represent the seller respondents or other sellers as their agent or act for or in behalf or under the control of the seller respondents or other sellers, and does not intend to, and in fact does not, render to the seller respondents or other sellers any services in connection with the sale of commodities to the respondent Reeves Parvin & Co.

In all such transactions since June 19, 1936, wherein the respondent Tri-State Brokerage Co. has purchased commodities for the respondent Reeves Parvin & Co. or negotiated or dealt with the seller respondents and other sellers in connection with the purchase of commodities by, or the sale thereof to, the respondent Reeves Parvin & Co., the following circumstances and conditions have existed:

Respondent, Francis B. Reeves, Jr., has been president and chief executive officer of, has owned the controlling interest in, and has been vested with the general and active management of the business of, each of the respondents Reeves Parvin & Co. and Tri-State Brokerage Co.

All of the officers and directors of the respondent Tri-State Brokerage Co. have owned stock in the respondent Reeves Parvin & Co.

Respondent, Francis B. Reeves, Jr., has been paid a substantial salary by the respondent Reeves Parvin & Co. and has been allowed a drawing account by the respondent Tri-State Brokerage Co.

The respondents, Reeves Parvin & Co. and Tri-State Brokerage Co. have jointly occupied the same office and have used the same telephone, have shared the services of a stenographer, the books of the two companies have been kept by the same person, and the letter-heads used by both companies in their regular business with sellers and others bear the same city, street and room number.

There has been no knowledge with regard to customer or consumer demand, requirements of the respondent Reeves Parvin & Co., or obligations of the respondent Reeves Parvin & Co. to the seller respondents or other sellers, available to the respondent Francis B. Reeves, Jr., while acting in his capacity as president and chief executive officer of the respondent Reeves Parvin & Co. which has not been equally available to him while acting in his capacity as president and chief executive officer of the respondent Tri-State Brokerage Co.

There has been no function performed by the respondent Francis B. Reeves, Jr., while acting in his capacity as president and chief executive officer of the respondent Tri-State Brokerage Co. which could not have been performed by him in his capacity as president and chief executive officer of the respondent Reeves Parvin & Co.

PAR. 10. No selling services in connection with the purchase of commodities by, or the sale thereof to the respondent Reeves Parvin & Co. are intended to be, or are, rendered to the seller respondents or other sellers by the respondents Tri-State Brokerage or Reeves Parvin & Co. or by any agent, representative or employee of either of said respondents.

In all matters and transactions wherein the respondent Tri-State Brokerage Co. negotiates or deals with sellers in connection with the purchase of commodities by, or the sale thereof to, the respondent Reeves Parvin & Co., the respondent Tri-State Brokerage Co. is the agent and representative of the respondent Reeves, Parvin & Co., and acts in fact for and in behalf, and is subject to the direct control, of the respondent Reeves Parvin & Co. and any benefits which may accrue to the seller respondents or other sellers from such negotiations or dealings are benefits wholly incidental to the purchasing services rendered the respondent Reeves Parvin & Co. by the respondent Tri-State Brokerage Co.

PAR. 11. The seller respondents are fairly representative of a large group of sellers engaged in manufacturing various commodities which they sell and ship in interstate commerce as aforesaid to the respondent Reeves Parvin & Co. and to other purchasers thereof. Each of the seller respondents actively competes with other manufacturers and sellers of similar commodities in soliciting sales for,

and in selling and shipping, the same in interstate commerce as aforesaid to the respondent Reeves Parvin & Co., and to competitors of respondent Reeves Parvin & Co.

CONCLUSION

The Commission concludes as follows with regard to the application of paragraph (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, to the facts heretofore found:

The respondent, Tri-State Brokerage Co., is a buyer-controlled intermediary within the meaning of said paragraph of said Act, and in all transactions wherein the respondent Tri-State Brokerage Co., purchases commodities for the respondent Reeves Parvin & Co. or negotiates or deals with sellers in connection with the purchase of commodities by, or the sale thereof to, the respondent, Reeves Parvin & Co., the respondent Tri-State Brokerage Co. acts for and in behalf, and subject to the direct control, of the respondent Reeves Parvin & Co. within the meaning of said paragraph of said act.

Since June 19, 1936, the seller respondents and other sellers have paid and transmitted so-called brokerage fees or commissions in substantial amounts to, and the same have been accepted and received by, the respondent Tri-State Brokerage Co. upon the purchases of the respondent Reeves Parvin & Co.

The payment of brokerage to, and the receipt thereof by, a buyer on his own purchases, whether the same is paid directly to the buyer or transmitted to him through an intermediary set up or employed by him for that purpose, is a practice prescribed by said paragraph of said act.

Since June 19, 1936, respondent Tri-State Brokerage Co. has paid dividends in substantial amounts to respondent Francis B. Reeves, Jr., from the profits made from the payment of the so-called brokerage fees and commissions paid and delivered to respondent Tri-State Brokerage Co. by respondent sellers and other sellers upon the purchases of the respondent Reeves Parvin & Co., all of which dividends have been transmitted and paid over by respondent Francis B. Reeves, Jr. to respondent Reeves Parvin & Co.

No selling services whatsoever were in fact rendered to sellers in connection with the purchases of the respondent Reeves Parvin & Co. by either the respondent Tri-State Brokerage Co. or the respondent Francis B. Reeves, Jr., or the respondent Reeves Parvin & Co., within the meaning of said paragraph of said act.

Since June 19, 1936, the seller respondents and other sellers have paid and transmitted so-called brokerage fees or commissions in substantial amounts to, and the same have been received by, the respondent

ent, Tri-State Brokerage Co., the respondent, Reeves Parvin & Co. and the respondent Francis B. Reeves, Jr., upon the purchases of the respondent Reeves Parvin & Co. in violation of paragraph (c) of Section 2 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the parties respondent named in the caption hereof, testimony and other evidence, taken before John W. Norwood, an examiner for the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed in support of said complaint and in opposition thereto and the oral arguments of J. J. Smith, Jr., counsel for the Commission, and the several counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that the said parties respondent have violated, and are now violating, 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":

It is ordered, That the respondents W. N. Clark Co., Martin Gillet & Co., H. J. McGrath Co., Natural Sugars, Inc., Nectar Syrup Corporation, Phillips Sales Co., Inc., their respective officers, representatives, agents, and employees, and Robert W. Mairs, in connection with the sale of commodities in interstate commerce to the respondent, Reeves, Parvin & Co., do forthwith cease and desist from granting, paying, transmitting, and delivering to any one of the respondents Tri-State Brokerage Co., Reeves Parvin & Co., their respective officers, representatives, agents, and employees, and Francis B. Reeves, Jr., either in his capacity as an officer, director or employee of either of said respondents Tri-State Brokerage Co. or Reeves Parvin & Co., or in his indi-

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vidual capacity, in connection with the purchases of commodities in interstate commerce by the respondent Reeves Parvin & Co., do forthwith cease and desist from accepting or receiving from sellers any fees or commissions as brokerage or allowance in lieu thereof.

It is further ordered, That the respondents Reeves Parvin & Co., Tri-State Brokerage Co., their respective officers, representatives, agents, and employees, and the respondent Francis B. Reeves, Jr., either in his capacity as an officer, director or employee of either of said respondents Reeves Parvin & Co. or Tri-State Brokerage Co., or in his individual capacity, in connection with the purchases of commodities in interstate commerce by the respondent Reeves Parvin & Co., do forthwith cease and desist from accepting or receiving from sellers any fees or commissions as brokerage or allowance in lieu thereof.

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

IN THE MATTER OF
PASCAL COMPANY, INC.

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

*Docket 2945. Complaint, Oct. 15, 1936—Decision, Apr. 18, 1939*¹

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, and was the one sure relief available for treatment of asthma, and constituted a "doctor" ever ready to relieve asthmatics, through such statements, among others, as "For Asthma * * *," "* * * only one Remedy for Asthma And that Remedy is Breatheasy," "* * * 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";

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, proper diet is very important in many cases and may become means of effecting a cure, and said product should not be taken at all in many cases in which diet is essential, and is no less dangerous to use because taken through "nebulizer" than if taken through hypodermic injection;

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

¹ For prior findings and order, see 26 F. T. C. 740.

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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 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. 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 the 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 Co., 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 1 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 "Breath-easy," 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 1 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, said respondent is now and for a long time, to wit, for more than 1 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 advertisement 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

Breatheasy is a creation of a physician, who himself suffered from asthma, and was developed until now it gives absolute, instant and complete relief.

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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, buoyant 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 Co., 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.

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 power and duties, and for other purposes."

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 15th day of October 1936, issued and on October 20, 1936, served its complaint in this proceeding upon the respondent, Pascal Co., 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 advised in the premises found that this proceeding was in the interest of the public and made its findings as to the facts and its conclusion drawn therefrom on September 8, 1937. Thereafter, on February 16, 1938, on motion of Clarence L. Gere, counsel for the respondent, the Commission made its modified findings as to the facts and its conclusion drawn therefrom. Thereafter, the proceeding regularly came on for final hearing on the motion of W. T. Kelley, chief counsel for the Commission, to further modify the findings as to the facts and the conclusion drawn therefrom, and on the objection of respondent thereto, and the Commission having duly considered the same and being now fully advised in the premises and in accordance with its order entered herein granting said motion, finds that this proceeding is in the interest of the public, and makes this its modified findings as to the facts and its conclusion drawn therefrom.

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Pascal Co., 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 1 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."

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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 the 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:

For ASTHMA
"Breatheasy"
(trademark)

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 exzematous 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, buoyant 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

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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)

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 physi-

cian 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 epinephrin is manufactured. The product epinephrin is a solution of epinephrin hydrochlorides, at least 2½ percent, put up in physiological salt solution 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 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 for thirty years in the palliative treatment of asthma to temporarily relieve asthmatic spasms and has been customarily administered to the patient hypodermically.

PAR. 7. True asthma, is defined as "A condition of shortness of breath caused by the constriction of the bronchial muscles and by the exudation of mucus 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.

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 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 Co., Inc., are to the prejudice of the public and competitors of the re-

spondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the motion of W. T. Kelley, chief counsel for the Commission, to modify the findings as to the facts and the conclusion drawn therefrom and the order to cease and desist issued in this proceeding on February 16, 1938, upon the objection of respondent thereto, and the Commission having duly considered said motion and the record herein, and having granted said motion, and being now fully advised in the premises.

It is ordered, That the respondent, Pascal Co. 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 will give relief to those suffering from asthma, other than temporary relief from asthmatic spasms.

(e) Said preparation is the one sure relief available for the treatment of asthma.

(f) Said preparation is a "doctor" ever ready to relieve asthmatics.

(g) And from making any other similar representations of like import or effect as to the therapeutic or medicinal value of said preparation.

It is further ordered, That the respondent, Pascal Co., 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.

Syllabus

IN THE MATTER OF

CANADIAN CHAMOIS & LEATHER CORPORATION

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

Docket 3691. Complaint, Jan. 24, 1939—Decision, Apr. 18, 1939

Where a corporation engaged in sale, under trade name "Cham-O-Line," of leather interlinings for coats and similar garments, to purchasers in commerce between the several States and in the District of Columbia, in substantial competition with others engaged in manufacture, sale and distribution of leather interlinings for coats, and also with those thus engaged in such manufacture, sale and distribution of coat linings not of leather, in commerce as aforesaid and in said District, and including, among such competitors, manufacturers of products similar to those made and sold by it who do not in any wise designate same as "chamois" or represent their said products, through use of words and phrases such as "Cham-O-Line," with view to misleading and deceiving purchasers and prospective purchasers into belief they are chamois—

Made use of its corporate name, including word "Chamois," in offer and sale of its said product as aforesaid, and stamped on said product, which it thus invoiced and sold, word "Cham-O-Line," and made use of tags featuring head of a goat and, conspicuously, words "Interlined with 'CHAM-O-LINE,'" together with, in smaller, less conspicuous type, words "The New Chamois-Like Animal Hide Interlining * * *" and, at bottom, "'Cham-O-Line' will not shrivel or dry up like ordinary Chamois," which it furnished to purchasers and customers by whom coats and garments made by them with its said product were advertised as having interlinings as represented by it, and tags furnished as aforesaid were affixed to such coats and garments, and by some of whom said garments, thus tagged and interlined, were advertised in said connection as "a new Chamois interlining—especially treated to prevent it becoming stiff when cleaned" or as "chamois-lined Back";

Notwithstanding fact that product dealt in and represented by it as above set forth was not in fact the skin of the chamois antelope or the oil-tanned inner skin of the sheep, as long commercially known and understood from word "chamois" as meaning very soft and pliable product commercially sold under said name, but was made from wild pig and skins other than oil-tanned inner sheepskin or the practically extinct chamois antelope, and, while having same general appearance, did not have peculiar qualities or properties of articles known to trade and public as chamois;

With effect of misleading and deceiving purchasers of said product, through use of its aforesaid designations, advertisements, letterheads, invoices, price lists, and tags as above set forth, into the belief that it was the skin of the chamois antelope or oil-tanned inner skin of the sheep, or chamois, and into purchase of said product in such erroneous belief in preference to products of its competitors, and with result of placing in hands of dealers and retailers means of misleading and deceiving pur-

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chasing public, and with capacity and tendency to deceive and mislead purchasers and prospective purchasers as above set forth, and with result of thereby unfairly diverting trade to it from competitors likewise engaged in sale and distribution of similar products in commerce and in said District:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Mr. Victor F. Boire, of Plattsburgh, N. Y., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Canadian Chamois & Leather Corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Canadian Chamois & Leather 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 place of business located at 220 West Nineteenth Street in the city of New York, in the State of New York.

Respondent is now, and for some time past has been, engaged in the business of selling leather interlinings for coats and similar garments under the trade name "Cham-O-Line" in commerce between and among the State of New York and the several States of the United States and in the District of Columbia. When said product is sold respondent transports it from its place of business in the State of New York to the purchasers thereof located in States other than the State of New York and in the District of Columbia.

There is now and for some time past there has been a current of trade and commerce in said products thus sold and distributed by respondent between and among the various States of the United States and in the District of Columbia. Respondent is now and for some time past has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the manufacture, sale, and distribution of leather interlining for coats, as well as others engaged in the manufacture, sale and distribution of coat linings not of leather, in commerce among the several States of the United States and in the District of Columbia.

PAR. 2. Respondent, in offering for sale and selling its said product between and among the various States of the United States and in the District of Columbia, now represents, and for some time past has represented through its corporate name containing the word "chamois" and by advertisements, price lists, letterheads, invoices, and in other ways, as hereinafter more fully set out, that the aforesaid product is chamois. Respondent sells and has sold its said interlining product to purchasers who used and now use said product in the manufacture of coats and similar garments, which coats and similar garments said purchasers in turn advertise as having interlinings as represented by respondent. The said interlining product thus sold and invoiced by respondent to such customers had and still has the name "Cham-O-Line" stamped thereon. Tags were and are furnished by respondent to purchasers for their use. Said customers use and have used said tags by affixing the same to coats and similar garments in which respondent's said product was and is attached as an interlining. Said tags feature the head of a goat and the conspicuously printed words "Interlined with 'CHAM-O-LINE.'" In smaller, less conspicuous type appear the words "The New Chamois-Like Animal Hide Interlining * * *" and, at the bottom of the tag, "'Cham-O-Line' will not shrivel or dry up like ordinary Chamois."

Respondent sold and now sells said interlining product to purchasers located in various States. Certain of said purchasers who used and now use the aforesaid tags on garments interlined with said product and which they offered and now offer for sale and sold, caused and now cause their said garments to be advertised as "a new Chamois interlining—especially treated to prevent it becoming stiff when cleaned" or as "chamois-lined back."

PAR. 3. Chamois has its origin in the name of an European antelope, the skin of which is made into a soft, pliable leather which is used in the manufacture of gloves and for the polishing of silver and metals, and makes a desirable leather lining in a coat. The chamois antelope is now practically extinct, and its skin is no longer an article of commerce. At the present and for a long time last past, the word "chamois" as 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." Said product likewise is valuable for polishing and cleaning purposes, and for coat interlinings, possessing particularly the power of quickly absorbing moisture and returning thereafter, when dried, to its original softness and pliable quality. The only trade name and designation given to the skin of a chamois antelope and to oil dressed

sheepskin is the word "chamois," and the word "chamois" means to the retail trade and to the public either the skin of a chamois antelope or the oil-tanned skin of a sheep.

PAR. 4. In truth and in fact, the product dealt in and as represented by respondent, as set out in paragraphs one and two hereof is not in fact the skin of the chamois antelope or the oil-tanned skin of the sheep, but is an article manufactured from wild pig, and skins other than oil-tanned sheepskin or the chamois antelope, and have the same general appearance but not the peculiar qualities or properties of articles known to the public and trade as "chamois."

PAR. 5. The use by respondent of the aforesaid designations of its product, and of the advertisements, letterheads, invoices, price lists and tags described in paragraph 2 hereof, has the capacity and tendency to mislead and deceive, and has misled and deceived purchasers of the aforesaid product of respondent into the belief that such product is chamois, to wit: the skin of the chamois antelope or the oil-tanned skin of the sheep, and into the purchase of said product of respondent in such erroneous belief in preference to the products of its said competitors, and has placed and places in the hands of dealers and retailers the means of misleading and deceiving the purchasing public.

PAR. 6. Among the competitors of respondent mentioned in paragraph 1 hereof, are manufacturers of products similar to those made and sold by respondent, but who do not in anywise designate such products as "chamois" or represent them, through the use of words and phrases such as "Cham-O-Line," with a view to misleading and deceiving purchasers and prospective purchasers into the belief that they are chamois.

PAR. 7. The above alleged acts and practices of respondent have the capacity and tendency to deceive and mislead purchasers and prospective purchasers into the erroneous belief that the interlining product sold by respondent is chamois and into the purchase of said product on account of such belief. Thereby trade is unfairly diverted to respondent from respondent's competitors in commerce as herein set out, referred to in paragraph 5 hereof and as a consequence thereof substantial injury is done, 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.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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Findings

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 24, 1939, issued, and on January 26, 1939, served, its complaint in this proceeding upon respondent, Canadian Chamois & Leather Corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 29, 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, Canadian Chamois & Leather 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 place of business located at 220 West Nineteenth Street in the city of New York, in the State of New York.

Respondent is now, and for some time past has been, engaged in the business of selling leather interlinings for coats and similar garments under the trade name "Cham-O-Line" in commerce between and among the State of New York and the several States of the United States and in the District of Columbia. When said product is sold respondent transports it from its place of business in the State of New York to the purchasers thereof located in States other than the State of New York and in the District of Columbia.

There is now and for some time past there has been a current of trade and commerce in said product thus sold and distributed by respondent between and among the various States of the United States and in the District of Columbia. Respondent is now and for some time past has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the manufacture, sale and distribution of leather interlining for coats, as well as others engaged in the manufacture, sale, and distribution of coat linings not of leather, in commerce among the several States of the United States and in the District of Columbia.

PAR. 2. Respondent, in offering for sale and selling its said product between and among the various States of the United States and in the District of Columbia, now represents, and for some time past has represented through its corporate name containing the word "chamois" and by advertisements, price lists, letterheads, invoices, and in other ways, as hereinafter more fully set out, that the aforesaid product is chamois. Respondent sells and has sold its said interlining product to purchasers who used and now use said product in the manufacture of coats and similar garments, which coats and similar garments said purchasers in turn advertise as having interlinings as represented by respondent. The said interlining product thus sold and invoiced by respondent to such customers had and still has the name "Cham-O-Line" stamped thereon. Tags were and are furnished by respondent to purchasers for their use. Said customers use and have used said tags by affixing the same to coats and similar garments in which respondent's said product was and is attached as an interlining. Said tags feature the head of a goat and the conspicuously printed words "Interlined with 'CHAM-O-LINE'." In smaller, less conspicuous type appear the words "The New Chamois-like Animal Hide Interlining * * *" and, at the bottom of the tag, "'Cham-O-Line' will not shrivel or dry up like ordinary Chamois."

Respondent sold and now sells said interlining product to purchasers located in various States. Certain of said purchasers who used and now use the aforesaid tags on garments interlined with said product and which they offered and now offer for sale and sold, caused and now cause their said garments to be advertised as "a new Chamois interlining—especially treated to prevent it becoming stiff when cleaned" or as "chamois-lined Back."

PAR. 3. Chamois has its origin in the name of an European antelope, the skin of which is made into a soft, pliable leather which is used in the manufacture of gloves and for the polishing of silver and metals, and makes a desirable leather lining in a coat. The chamois antelope is now practically extinct, and its skin is no longer an article of commerce. At the present and for a long time last past, the word "chamois" as 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." Said product likewise is valuable for polishing and cleaning purposes, and for coat interlinings, possessing particularly the power of quickly absorbing moisture and returning thereafter, when dried, to its original softness and pliable quality. The only trade name and designation given to the skin of a chamois antelope and to oil dressed sheepskin is the word "chamois," and the word "chamois" means to the retail trade and to the public

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Conclusion

either the skin of a chamois antelope or the oil-tanned skin of a sheep.

PAR. 4. In truth and in fact, the product dealt in and as represented by respondent, as set out in paragraphs 1 and 2 hereof, is not in fact the skin of the chamois antelope or the oil-tanned inner skin of the sheep, but is an article manufactured from wild pig, and the skins other than oil-tanned inner sheepskin or the chamois antelope, and have the same general appearance but not the peculiar qualities or properties of articles known to the public and trade as "chamois."

PAR. 5. The use by respondent of the aforesaid designations of its product, and of the advertisements, letterheads, invoices, price lists, and tags described in paragraph 2 hereof, has the capacity and tendency to mislead and deceive, and has misled and deceived purchasers of the aforesaid product of respondent into the belief that such product is chamois, to-wit: the skin of the chamois antelope or the oil-tanned inner skin of the sheep, and into the purchase of said product of respondent in such erroneous belief in preference to the products of its said competitors, and has placed and places in the hands of dealers and retailers the means of misleading and deceiving the purchasing public.

PAR. 6. Among the competitors of respondent mentioned in paragraph 1 hereof, are manufacturers of products similar to those made and sold by respondent, but who do not in any wise designate such products as "chamois" or represent them, through the use of words and phrases such as "Cham-O-Line," with a view to misleading and deceiving purchasers and prospective purchasers into the belief that they are chamois.

PAR. 7. The above alleged acts and practices of respondent have the capacity and tendency to deceive and mislead purchasers and prospective purchasers into the erroneous belief that the interlining product sold by respondent is chamois and into the purchase of said product on account of such belief. Thereby trade is unfairly diverted to respondent from respondent's competitors likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint to be true, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Canadian Chamois & Leather Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of leather interlinings for coats and similar garments in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the word "Chamois" in its corporate or trade name or otherwise, or through the use of any words or terms of similar import or meaning, or through any other means or device, or in any other manner, that respondent is a manufacturer of leather products made of Chamois, unless said products are in fact made from the skin of the Alpine antelope or Chamois or the oil dressed inner part of a sheep's skin.

2. Using the words "Chamois," "Cham-O-Line" or any word or words, phrases, terms or names simulating the word "Chamois," alone or in conjunction with any other word or words, in any manner whatever, to describe, designate, or refer to leather products not made from the skin of the Alpine antelope or Chamois or the oil dressed inner part of a sheep's skin.

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

AMERICAN MERCHANDISE CO., INC., AND HARRY GREENBERG AND LEO JOSEFSBERG, DOING BUSINESS AS GREENBERG AND JOSEFSBERG AND AS AMERICAN MERCHANDISE COMPANY, G & J MANUFACTURING CO., AND G & J PRODUCTS

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

Docket 2960. Complaint, Dec. 2, 1936¹—Decision, Apr. 19, 1939

Where a corporation and two partners, owners of the stock thereof and in control of its sales activities and policies as respects acts and practices below set forth, engaged, among other things, in importation of merchandise, including glove hands and thumbtacks, into the United States, and in the sale and distribution thereof to purchasers in the various other States and in the District of Columbia for resale to purchasing public, in substantial competition with others engaged in sale and distribution of such products—

- (a) Removed from glove hands, quantities of which they had thus imported from Japan and which, at time of entry, bore, in conformance with applicable laws of the United States, words "Made in Japan" or "Japan," and sold said products, to which they had attached cuffs made in the United States, with no words or marks thereon indicating foreign origin of said product to purchasers, by whom said gloves were resold to members of purchasing public, not informed by brand or mark as to origin thereof, and substantial number of members of which understand and believe that, absent indication of foreign origin on article of merchandise, such article was made or manufactured in the United States; and
- (b) Removed from their packages, upon which were set forth, in conformance with applicable laws of the United States, words "Made in Germany" or "Germany," said thumbtacks, and sold same repacked in new containers with no words or marks thereon indicating said products' foreign origin to purchasers, by whom such products were resold to members of purchasing public, not informed by brand or mark as to said thumbtacks' German origin, and substantial number of members of which understand and believe that, absent indication of foreign origin on article of merchandise, such article was made or manufactured in the United States;

With effect of misleading and deceiving members of purchasing public in various States and in said District into erroneous and mistaken belief that such merchandise was made in the United States, for purchase of which there is a preference on part of substantial number of dealers in said products and articles and members of purchasing public in the various States, and into buying substantial quantities of such merchandise because of such erroneous and mistaken belief, and with result that trade in commerce among the various States and in said District was unfairly diverted to them from competitors aforesaid who truthfully brand, represent and mark their respective products:

¹ Amended.

Complaint

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

Mr. John N. Wheelock for the Commission.

Tilson, Dunning, Stanley & McCuen, of Washington, D. C., for respondents.

Krause, Hirsch & Levin, of New York City, for trustee in bankruptcy for American Merchandise Co., Inc.

AMENDED COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the American Merchandise Co., Inc., a corporation, and Harry Greenberg and Leo Josefsberg, copartners, doing business under the firm name Greenberg & Josefsberg, and under the trade names American Merchandise Co., G & J Manufacturing Co., and G & J Products, 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 this, its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Merchandise Co., is a corporation, incorporated on or about June 18, 1933, under the laws of the State of New York, and having at all times since its incorporation its usual and principal place of business in the city of New York at the same place hereinafter mentioned as the place of business of the other respondents. At all times since the incorporation of the American Merchandise Co., Inc., the respondents Greenberg and Josefsberg are and have been the owners of all the shares of its capital stock and in control of its management and operation.

PAR. 2. Respondents, Harry Greenberg and Leo Josefsberg, are and have been copartners doing business under the firm name, Greenberg & Josefsberg, at all times since on or about January 21, 1930, in the city and State of New York and now having a place of business at 27-33 West Twenty-third Street, in said city. During said times the respondents, as copartners, also are and have been doing business at their said place of business under the trade names, American Merchandise Co., G & J Manufacturing Co., and G & J Products.

PAR. 3. During all of the times above mentioned, the respondents are and have been engaged, among other things, in the importation

of merchandise into the United States, including gloves and thumbtacks, and in the business of the sale of such merchandise, including the gloves and thumbtacks mentioned and referred to in paragraph 6 hereof, to individuals, firms, and corporations, purchasers of the merchandise, dealers therein for resale to the public, located in the various States of the United States other than New York or the State of origin of the shipment.

The respondents have caused and still cause the said merchandise, when so sold by them, to be transported from the State of New York, or from the State of origin of the shipment, to, into, and through other States and the District of Columbia, to the purchasers thereof, located in said other States and the District of Columbia.

PAR. 4. During all the times above mentioned and referred to, other individuals, firms, and corporations, hereinafter referred to as sellers, located in various States of the United States, are and have been engaged; some of them in the business of the domestic manufacture and sale of similar merchandise including gloves and thumbtacks; and others in the business of the importation and sale of such merchandise to dealers for resale to the public, purchasers thereof, located in the District of Columbia and the various States of the United States. The sellers, respectively, have caused the merchandise including gloves and thumbtacks, when so sold by them, to be transported from the State of the seller or from the State of origin of the shipment, to, into, and through other States and the District of Columbia to the purchasers located in said other States and the District of Columbia.

PAR. 5. During all the times above mentioned and referred to, the respondents are and have been in substantial competition in interstate commerce in the sale of the merchandise above referred to, including gloves and thumbtacks, with the other individuals, firms, and corporations, referred to as sellers in paragraph 4 hereof.

PAR. 6. During all the times above mentioned, the respondents caused quantities of gloves and thumbtacks to be imported from Japan and Germany, respectively, and at the time of the entry of the same into the United States the gloves were, all of them, marked "Made in Japan" or "Japan," and the packages or containers of the thumbtacks were, all of them, marked "Made in Germany" or "Germany," indicating that the country of origin of the gloves was Japan and that Germany was the country of origin of the thumbtacks.

After the gloves and thumbtacks were entered in the United States, the respondents caused the words or marks indicating their foreign origin to be removed therefrom and thereafter sold the gloves and thumbtacks, as set forth in paragraph 3 hereof, to the dealers referred

to in said paragraph 3, without any words or marks thereon indicating foreign origin, and caused them to be offered for sale and resold by the dealers to members of the public in that condition, without informing the dealers or the public to whom they were resold that the gloves and thumbtacks were the products of foreign countries.

PAR. 7. Prior to and during all the times above mentioned, a substantial number of dealers in merchandise, and of the public, in the United States had a preference, in purchasing articles of merchandise, for articles of merchandise of United States origin and it has been required by law that articles of merchandise of foreign origin imported into the United States shall be marked, stamped, branded, or labeled in legible English, in a conspicuous place, in such manner as to indicate the country of origin.

The offering for sale and the sale by the respondents of gloves and thumbtacks made in foreign countries without any words or marks thereon indicating their foreign origin, constituted a representation by the respondents that the gloves and thumbtacks, above referred to, offered for sale, and sold by respondents, were made in the United States. The said representations by the respondents were untrue and they had the capacity and tendency to mislead and to deceive dealers and members of the public, purchasers of gloves and thumbtacks, and dealers and members of the public were misled and deceived thereby into the belief that they were true, and in reliance upon such belief into purchasing the respondents' said gloves and thumbtacks in preference to those made in the United States and sold by was thereby diverted to respondents from their competitors.

PAR. 8. The above acts and things done and caused to be done by the respondents were and are, each and all, to the injury and 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 the Federal Trade Commission Act, the Federal Trade Commission on the 2d day of December 1936, issued and served its amended complaint in this proceeding upon said respondents, American Merchandise Co., Inc., and Harry Greenberg and Leo Josefsberg, copartners doing business under the firm name of Greenberg and Josefsberg and under the trade names of American Merchandise Co., G & J Manufacturing Co., and G & J

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Products, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 23d day of December 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 and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, 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 American Merchandise Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of New York and having its office and principal place of business at 27-33 West Twenty-third Street, in the city of New York, State of New York. The said corporation was incorporated on or about the 18th day of June 1933. At all times since the incorporation thereof, the respondents, Harry Greenberg and Leo Josefsberg have been the owners of all the shares of capital stock of said corporation and have controlled the sales activities and policies of said corporation with respect to the acts and practices herein set forth.

PAR. 2. Respondents Harry Greenberg and Leo Josefsberg are, and have been, copartners since on or about January 21, 1930, doing business under the firm name Greenberg and Josefsberg and under the trade names American Merchandise Company, G & J Manufacturing Co., and G & J Products, and having their office and principal place of business at 27-33 West Twenty-third Street, in the city of New York, State of New York.

PAR. 3. During all the times mentioned herein, the respondents have been engaged, among other things, in the importation of mer-

chandise, including glove hands and thumbtacks, into the United States, and in the sale and distribution of such merchandise to the purchasers thereof for resale to the purchasing public. The respondents have caused such merchandise, when sold by them, to be transported from their aforesaid place of business in the State of New York, or from the State of origin of the shipment thereof, to the purchasers thereof at their respective points of location in the various States of the United States, other than the State of origin of the shipment thereof, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said merchandise among and between the various States of the United States and in the District of Columbia.

PAR. 4. During all the times mentioned herein, the respondents have been engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other individuals, partnerships and corporations engaged in the business of the sale and distribution of gloves and thumbtacks.

PAR. 5. The respondents have caused quantities of glove hands to be imported from Japan into the United States and have caused quantities of thumbtacks to be imported from Germany into the United States. At the time of the entry of the same into the United States, the glove hands were marked "Made in Japan" or "Japan," and the packages containing the thumbtacks were marked "Made in Germany" or "Germany," which indicated that Japan was the country of origin of the glove hands and that Germany was the country of origin of the thumbtacks. During all the times above mentioned, it was required by the applicable laws of the United States that, at the time of the importation thereof, the said glove hands and the packages containing the said thumbtacks be so marked as to indicate the country of origin thereof.

After the respondents caused the glove hands to be imported into the United States, respondents caused the words or marks indicating their foreign origin to be removed therefrom and caused to be placed on the glove hands, cuffs made in the United States. After respondents caused the thumbtacks to be imported into the United States, the respondents caused the said tacks to be removed from the packages containing such tacks, on which was indicated the country of their origin, and caused such thumbtacks to be repacked in new packages or containers. The respondents, thereafter, sold the gloves and thumbtacks to the purchasers referred to in paragraph 3 hereof, without any words or marks on the glove hands of such gloves or on the

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packages, containing such thumbtacks, indicating their foreign origin. The purchasers of such gloves and thumbtacks from the respondents caused such merchandise to be resold to members of the purchasing public, who were not informed by brand or mark on such merchandise, that the glove hands were made in Japan and that the thumbtacks were made in Germany.

PAR. 6. During all the times mentioned herein, a substantial number of dealers in gloves and thumbtacks and members of the purchasing public, situated in the various States of the United States, have had, and now have, a preference in purchasing gloves and thumbtacks for gloves and thumbtacks made in the United States.

PAR. 7. During all the times mentioned herein, it has been the understanding and belief of a substantial number of members of the purchasing public that unless there is indicated on an article of merchandise a foreign country as the place of origin of such merchandise, that such article of merchandise was made or manufactured in the United States.

PAR. 8. The aforesaid acts and practices of the respondents in removing said marks or brands from the glove hands and in reboxing said thumbtacks and in offering for sale and selling such merchandise without any brands or marks thereon, or the containers thereof, indicating the foreign origin of such merchandise, have the capacity and tendency to, and do, mislead and deceive members of the purchasing public situated in various States of the United States and in the District of Columbia into the erroneous and mistaken belief that such merchandise was made in the United States and into purchasing substantial quantities of such merchandise because of said erroneous and mistaken belief. As a result, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondents from their said competitors who truthfully brand, represent and mark their respective products.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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, and a stipulation as to the facts entered into between

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respondents herein 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 the Federal Trade Commission Act.

It is ordered, That the respondents American Merchandise Co., Inc., a corporation, its officers, representatives, agents, and employees, and Harry Greenberg and Leo Josefsberg, individually and as copartners doing business under the firm name Greenberg and Josefsberg, and under the trade names of American Merchandise Company, G & J Manufacturing Co., and G & J Products, or under any other firm or trade name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of imported thumbtacks, glove hands, and other similar imported products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist:

1. Causing the brands or marks on imported glove hands, or other similar products, which indicate the foreign origin or manufacture of such merchandise, to be removed, erased, or concealed so as to mislead or deceive purchasers and prospective purchasers with reference to the foreign origin or manufacture thereof.

2. Causing such imported thumbtacks, or other similar products, to be removed from the containers on which are brands or marks indicating the foreign origin or manufacture of such merchandise and to be placed in containers bearing no such brands or marks so as to mislead or deceive purchasers and prospective purchasers with reference to the foreign origin or manufacture thereof.

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

Syllabus

IN THE MATTER OF

J. PALAZZOLO

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

Docket 3062. Complaint, Feb. 16, 1937—Decision, Apr. 19, 1939

Where an individual engaged in offer and sale of various toilet preparations, including one known as "Otello Water" and "L'Acqua Otello," for head, scalp, and hair; in advertising his said product in circulars and folders and in the papers and other publications circulated throughout the United States, and by various broadcasts—

- (a) Represented said "L'Acqua Otello" or "Otello Water" as not a dye, but "a preparation which gives your hair a natural color and vitality," and "a miraculous water which regenerates the hair bulb and brings back vitality," and which "rejuvenates the roots of the hairs, thus bringing back the natural color of the hair and vitality," and "restores gray hair to its natural color or vitality," facts being said product was a dye, contained in equal quantities ingredients which are constituent parts of similar hair dyes known and advertised as such, was not in any sense a miraculous water, and did not have what could be termed in any sense water as a component part, and would not rejuvenate the roots or bulbs of the hair or give hair a natural color and vitality, or restore natural color to gray hair; and
- (b) Represented that said preparation ended and destroyed dandruff and stopped it and baldness and falling hair, and restored to its natural color or vitality gray hair, facts being it was not an effective cure for falling hair and dandruff and would not end latter and baldness and stop falling hair and destroy dandruff, nor give hair a natural color and vitality, or produce any new hair, and representations made by him with respect to nature and effect of his product were false and misleading;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and with result, as direct consequence of such mistaken and erroneous belief induced by his said advertising and representations as above set forth, that substantial number of purchasing public bought substantial quantities of his said product and trade was unfairly diverted to him from others engaged in like and similar business and in sale of preparations for head and hair, and who truthfully advertise their products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. George G. Lake, 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 J. Palazzolo, an individual, of New York City, N. Y., 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 will be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, J. Palazzolo, is an individual trading as J. Palazzolo, with his office and principal place of business located at 436 East Fourteenth Street, New York City, State of New York. Respondent is now, and has been for several years last past, engaged, among other things, at said location, in the manufacture and sale of a hair dye for use in the dyeing of white or gray hair, which he designates and has designated "Otello Water" and also "L'Acqua Otello." He sells said product directly to the consumers and also to druggists, who in turn sell the same directly to consumers. Respondent's method of sale is usually through the mails.

In the course and conduct of his business respondent ships, or causes to be shipped or transported, his said product when so sold from the State of New York to said purchasers thereof located in points in various States of the United States other than the State of New York. There is now, and has been during all of the times herein mentioned, a constant current of trade in commerce of said product so sold by said 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 said business respondent is now, and has been during all the times herein mentioned, engaged in substantial competition with various corporations, firms, and individuals selling or offering for sale to the general public, hair dyes and compounds used for the purpose of dyeing white and gray hair, 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 as aforesaid, respondent, in soliciting the sale and in selling said product, has advertised the same in newspapers, magazines, and periodicals of general circulation, by means of radio broadcasts, and in pamphlets, printed testimonials, and other printed matter, and by and through

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the use of photographs and other pictures and on labels attached to, and in circulars inclosed in, the boxes or containers thereof. In, by, and through each and all of the advertising media above enumerated respondent has made and is making, expressly or by implication, the following statements or representations:

(a) L'Acqua Otello is not a dye but is a preparation which gives your hair a natural color, vitality.

(b) Otello Water for gray hair is not a tincture but a compound that restores gray hair to its natural color.

(c) It (Otello Water) ends dandruff, baldness.

(d) Otello Water is not a dye but a miraculous water which regenerates the hair bulb and brings back vitality.

(e) Otello Water destroys dandruff, stops falling hair.

(f) Otello Water for white hair is not a dye.

(g) Otello Water restores gray hair to its natural color or vitality.

(h) Otello Water rejuvenates the roots of the hairs thus bringing back the natural color of the hair and vitality.

PAR. 4. The statements and representations set forth in the preceding paragraph are false and misleading in that:

(a) "Otello Water" or "L'Acqua Otello" is a dye.

(b) The use of "Otello Water" will not restore gray hair to its natural color or vitality.

(c) The use of "Otello Water" does not regenerate the hair bulb.

(d) The use of "Otello Water" does not end dandruff or baldness or affect the same beneficially.

(e) The use of "Otello Water" does not stop falling hair.

(f) "Otello Water" is not a miraculous water. It is not a water at all and it is a misnomer to call it a water. It is in fact a typical lead and sulphur hair dye.

(g) "Otello Water" for white hair is a dye.

(h) "Otello Water" does not restore gray hair to its natural color or vitality.

(i) The use of "Otello Water" does not rejuvenate the roots of the hair and does not bring back the natural color of the hair and vitality.

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 the 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 products, 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 within the intent and meaning

of Section 5 of an Act of 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 the Federal Trade Commission Act, the Federal Trade Commission on February 16, 1937, issued and thereafter served its complaint in this matter upon respondent Joseph Palazzolo, individually and trading as J. Palazzolo, charging him with 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 complaint were introduced by Merle P. Lyon, attorney for the Commission, and by respondent on behalf of himself, before John J. Keenan, an examiner of the Commission theretofore duly designated by it. All of 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; 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 Joseph Palazzolo, trading under the trade name and style of J. Palazzolo, with his principal place of business at 436 East Fourteenth Street, New York City, N. Y., has been engaged in the business of offering for sale and selling various toilet preparations, among which is a preparation known as "Otello Water" and "L'Acqua Otello," a preparation, for use on the head, scalp and hair. Respondent causes said preparation, when sold, to be transported from his aforesaid place of business in the State of New York to purchasers thereof at respective points of location in various States of the United States other than in the State of New York. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between the various States of the United States. In the course and conduct of his said business respondent has been and is now in active competition with various partnerships, corporations and other firms or individuals also engaged in the sale and distribution of like and

similar preparations 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, in soliciting the sale of the said preparations dealt in by him and in particular "Otello Water," also known as "L'Acqua Otello," and in selling and distributing same and in inducing the public to purchase said preparations, has, by means of various advertising circulars and folders, and by means of advertisements inserted in the daily newspapers and other publications circulated throughout the United States and by various radio broadcasts, made statements and representations concerning the character and nature of said preparation and concerning the results obtained from its use. Among the said representations made by respondent are the following:

(a) L'Acqua Otello is not a dye, but is a preparation which gives your hair a natural color and vitality.

(b) Otello Water for gray hair is not a tincture but a compound which restores gray hair to its natural color.

(c) It (Otello Water) ends dandruff and baldness.

(d) Otello Water is not a dye but a miraculous water which regenerates the hair bulb and brings back vitality.

(e) Otello Water Destroys Dandruff; stops falling hair.

(f) Otello water for white hair is not a dye.

(g) Otello Water restores gray hair to its natural color or vitality.

(h) Otello Water rejuvenates the roots of the hairs, thus bringing back the natural color of the hair and vitality.

PAR. 3. The aforesaid statements by the respondent, together with statements of similar import and meaning not herein set out but disseminated as aforesaid, purport to be descriptive of respondent's preparation and its effectiveness in use. In the manner and by the means aforesaid respondent represents directly and by implication that such preparation is an effective cure for dandruff and falling hair, will give the hair a natural color and vitality, restores the natural color to gray hair, ends dandruff and baldness, destroys dandruff and stops falling hair, rejuvenates the roots of the hair and thus restores the natural color and vitality to the hair, and that such preparation is not a dye but is a miraculous water which rejuvenates the hair bulb and brings back vitality to the hair.

PAR. 4. The representations made by the respondent with respect to the nature and effect of the product when used are false and misleading in that the respondent's preparation is not an effective cure for dandruff and falling hair. Said product will not give the hair a natural color and vitality. Said product will not restore the natural color to gray hair; will not end dandruff and baldness;

destroy dandruff, and stop falling hair. Said product will not rejuvenate the roots of the hair and thus restore the natural color and vitality to the hair. Said preparation is a dye and not a miraculous water which rejuvenates the hair bulb and brings vitality back to the hair. The formula for the said preparation contains, among other things, precipitated sulphur and lead acetate in equal quantities, which ingredients are constituent parts of similar hair dyes that are known and advertised as hair dyes. The said preparation is not in any sense a miraculous water. The only liquid ingredients in said preparation are glycerin and bayrum, and therefore it does not have what can be termed in any sense water as a component part. Users of said preparation will not have the roots or bulbs of the hair rejuvenated; will not secure a natural color and vitality of the hair; will not end dandruff and baldness, and will not stop falling hair or produce any new hair. The said preparation is in truth and in fact a hair dye.

PAR. 5. Each of the false, misleading, deceptive, and untrue representations made by respondent in offering for sale and selling his product were and are calculated to and had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous belief, induced by the advertising and representations of the respondent, as aforesaid, a substantial number of the purchasing public have purchased a substantial quantity of said product, with the result that trade has been unfairly diverted from other corporations, individuals, firms and partnerships engaged in like and similar business and in the sale of preparations for the head and hair, who truthfully advertise their products.

CONCLUSION

The acts and practices of the respondent herein, as set out in the foregoing findings as to the facts, 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 the provisions of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in

support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Merle P. Lyon, counsel for the Commission, and by George G. Lake, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Joseph Palazzolo, individually and trading as J. Palazzolo, or under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of the hair and scalp lotion or preparation now designated by the names "Otello Water" and "L'Acqua Otello," or any other preparation composed of substantially similar ingredients, or possessing substantially similar properties, whether sold under those names or under any other names, do forthwith cease and desist from:

1. Representing that said preparation is not a dye or is other than a dye.

2. Representing that the use of said preparation will restore the natural color to the hair, regenerate the hair bulb, restore vitality to the hair or rejuvenate, invigorate, or nourish the roots of the hair.

3. Representing that said preparation is a cure or remedy for dandruff or will destroy dandruff.

4. Representing that the use of said preparation will cause a new growth of hair, will cause hair to regrow or will prevent the falling of hair.

5. Representing through the use of the word "water" in the trade name of said preparation or in any other manner or by any other means or device that said preparation is a water.

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
EARL M. LOBAN, INDIVIDUALLY AND TRADING AS CEN-
TURY BUSINESS SERVICE, ACME DIVIDEND SYSTEM
AND CENTURY PUBLISHING 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 3731. Complaint, Mar. 6, 1939—Decision, Apr. 20, 1939

Where an individual engaged in sale and distribution of sales promotion cards, which were so designed and arranged as to involve use of a lottery scheme or gift enterprise when used by dealers in promoting and increasing sales of their merchandise to public and which included—

(1) Group of cards arranged for punching out and recording amounts of merchants' customers' sales with totals ranging, as the case might be, from \$5.50 to \$20, and which contained concealed legends on cards entitling holder, upon completion of total sales provided for on card, to amounts ranging from 20 cents to \$5 in accordance with particular legend secured by chance by holder of particular card; and

(2) Other sales promotion cards for use in various types of business but involving same general plan;

Sold to dealers such assortments, together with various display circulars and advertisements for use in distributing and using said cards in various ways involving lottery, game of chance, or gift enterprise in suggested distribution by dealer customers, by whom said cards were distributed to own customers and prospective customers and awards thereon made as called for by particular concealed legends as contained on particular cards when treated so as to reveal nature of such particular legend and chance award thus called for; contrary to an established public policy of the United States Government and in competition with various sellers and distributors of sales promotion cards, premium cards, price competition cards, coupons, and trade stamps, which, when used by dealers do not involve lottery scheme, game of chance, or gift enterprise, and in competition with many who sell and distribute various sales cards or devices for increasing sales of dealers and who are unwilling to offer or sell cards or devices designed and arranged as above found, or otherwise designed or arranged so as to involve game of chance, lottery scheme or gift enterprise and refrain therefrom;

With result that consuming public was induced to deal with or purchase merchandise from dealers using his cards in preference to purchasing merchandise from dealers using devices of his competitors because of lottery scheme, game of chance, or gift enterprise connected with said cards, and with result, through his use of such methods in designing and arranging his cards and distributing them as aforesaid, of unfairly diverting trade to himself from his said competitors who do not use such or equivalent methods:

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

Mr. L. P. Allen, Jr. for the Commission.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Earl M. Loban, individually and trading as Century Business Service, Acme Dividend System and Century Publishing Co., Inc., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Earl M. Loban, is an individual trading as Century Business Service, Acme Dividend System and Century Publishing Co., Inc., with his principal office and place of business located at 401 and 402 Lafayette Building, Waterloo, Iowa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of sales promotion cards to dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, his said sales cards, when sold, to be transported from his principal place of business in the city of Waterloo, Iowa, to purchasers thereof located in the various States of the United States, other than the State of Iowa, and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such sales promotion cards in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is in competition with other individuals and with corporations and with partnerships engaged in the sale and distribution of sales promotion cards, trade cards, discount cards, premium cards, coupons, and trading stamps 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 in commerce, as described in paragraph 1 hereof, respondent sells and has sold cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise, when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondent sells and distributes several groups of sales promotion cards, but they all involve a lottery scheme or gift enterprise and vary only in detail. The sales promotion cards in one such group are herein described for the purpose of showing arrangement, design and principle involved. On the front of such cards is the following:

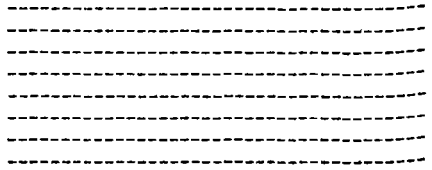
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20 20 20 20 20 15 15 15 15 15 15 15 15 15 15
 20 20 20 20 20 25 25 25 25 25 25 25 25 25 25

COURTESY GIFT CARD

The "CONCEALED
 COURTESY GIFT"
 within the square at
 right may be of a 25c
 50c, \$1.00, \$2.50,
 or \$5.00 "in trade"
 value!



**NO COURTESY GIFT
 LESS THAN 25c**

No card honored if mutilated. Do not Mutilate

Present this card to us each time your cash purchases amount to 10c or over.
 When they total the amount punched in the margin we will pay you the
 "Courtesy Gift."

No. C11

10 10 10 10 10 10 10 10 10 10 10 10 10 10 10
 50 50 50 35 35 35 35 5 5 5 5 5 5 5 5 10

In the ruled square referred to on the face of the card is printed in invisible ink amounts ranging from 25 cents to \$5. These amounts are revealed upon the application of sufficient heat to scorch the chemicals in the said ink, but until such heat is applied the legend in the said square is effectively concealed from the holder of said card. The amount which the holder of said card will receive in trade is thus determined wholly by lot or chance.

On the reverse side or back of the said sales promotion card is the following language:

SAVE

THIS

CARD

IT IS VALUABLE

This is a new and interesting plan whereby we show our appreciation of your patronage through a "Courtesy Gift."

THANK YOU

Name-----

[Merchant's advertisement]

Other cards in this group, sold and distributed by the respondent, provide for recording sales of from \$5.50 to \$20 worth of merchandise by the numbers ranged around the border of the card and provide for the winning of amounts from 25 cents to \$5 by the legends written with invisible ink in the ruled or blank squares or blank circles. Other cards in the same group are prepared primarily for

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automobiles, gasoline, and service stations and provide for the purchase of 75 gallons of gasoline and 5 quarts of oil by the numbers ranged around the border of the card and provide for the winning of from 25 cents to \$5 in trade by the legend written in invisible ink in the blank circle therein.

The respondent sells and distributes other sales promotion cards for use in various types of business, but the ones described above illustrate the general plan of such cards.

Respondent furnishes his dealers with various display posters and circulars and with advertisements to be used and which are used by said dealers in distributing and using said cards.

PAR. 3. The dealers to whom respondent sells assortments of said sales promotion cards, distribute the same to their customers and prospective customers and honor the awards as shown when the squares and circles on the said cards are scorched so as to reveal the legend written in invisible ink. The respondent in his literature and by his representations suggests various methods for the use of said cards by their dealers, all of which methods involve a lottery, game of chance, or gift enterprise.

PAR. 4. There are in competition with respondent various sellers and distributors of sales promotion cards, premium cards, price concession cards, coupons and trading stamps, which, when used by dealers, do not involve a lottery scheme, game of chance, or gift enterprise. Many persons, firms, and corporations who sell and distribute various cards or devices for promoting or increasing the sales of dealers are unwilling to offer for sale or sell cards or devices so designed and arranged as above alleged, or otherwise designed and arranged, as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

PAR. 5. The use by respondent of said methods in designing and arranging his said cards and distributing the same for redistribution to the public, is a practice of the sort which is contrary to an established public policy of the government of the United States and is in violation of criminal laws. The consuming public is induced to deal with or purchase merchandise from dealers using respondent's cards in preference to using the devices of respondent's competitors, because of the lottery scheme, game of chance, or gift enterprise connected with respondent's said cards. The use by respondent of said methods in designing and arranging his said cards and distributing them as aforesaid, because of said game of chance, has a tendency and capacity to and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method,

and as a result thereof substantial injury is being and has been 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 aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 6, 1939, issued and served its complaint in this proceeding upon Earl M. Loban, individually, and trading as Century Business Service, Acme Dividend System and Century Publishing Co., Inc., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 24, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint, and waived all intervening procedure and further hearing as to said facts. 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 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, Earl M. Loban, is an individual trading as Century Business Service, Acme Dividend System and Century Publishing Co., Inc., with his principal office and place of business located at 401 and 402 Lafayette Building, Waterloo, Iowa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of sales promotion cards to dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, his said sales cards, when sold, to be transported from his principal place of business in the city of Waterloo, Iowa, to purchasers thereof located in the various States of the United States, other than the State of Iowa, and in the District of Columbia, at their respective points of location. There is now, and

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has been for some time last past, a course of trade by said respondent in such sales promotion cards in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is in competition with other individuals and with corporations and with partnerships engaged in the sale and distribution of sales promotion cards, trade cards, discount cards, premium cards, coupons, and trading stamps 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 in commerce, as described in paragraph 1 hereof, respondent sells and has sold cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise, when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondent sells and distributes several groups of sales promotion cards, but they all involve a lottery scheme or gift enterprise and vary only in detail. The sales promotion cards in one such group are herein described for the purpose of showing arrangement, design and principle involved. On the front of such cards is the following:

20 20 20 20 20 15 15 15 15 15 15 15 15 15 15
20 20 20 20 20 25 25 25 25 25 25 25 25 25 25

COURTESY GIFT CARD

The "CONCEALED
COURTESY GIFT"
within the square at
right may be of a 25¢,
50¢, \$1.00, \$2.50,
or \$5.00 "in trade"
value!
NO COURTESY GIFT

LESS THAN 25¢

No card honored if mutilated. Do not Mutilate

Present this card to us each time your cash purchases amount to 10¢ or over. When they total the amount punched in the margin we will pay you the "Courtesy Gift."

No. C11

10 10 10 10 10 10 10 10 10 10 10 10 10 10 10
50 50 50 35 35 35 35 5 5 5 5 5 5 5 5 5 10

In the ruled square referred to on the face of the card is printed in invisible ink amounts ranging from 25 cents to \$5. These amounts are revealed upon the application of sufficient heat to scorch the

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chemicals in the said ink, but until such heat is applied the legend in the said square is effectively concealed from the holder of said card. The amount which the holder of said card will receive in trade is thus determined wholly by lot or chance.

On the reverse side or back of the said sales promotion card is the following language:

SAVE

THIS

CARD

IT IS VALUABLE

This is a new and interesting plan whereby we show our appreciation of your patronage through a "Courtesy Gift."

THANK YOU

Name -----

[Merchant's advertisement]

Other cards in this group, sold and distributed by the respondent, provide for recording sales of from \$5.50 to \$20 worth of merchandise by the numbers ranged around the border of the card and provide for the winning of amounts from 25 cents to \$5 by the legends written with invisible ink in the ruled or blank squares or blank circles. Other cards in the same group are prepared primarily for automobiles, gasoline and service stations and provide for the purchase of 75 gallons of gasoline and 5 quarts of oil by the numbers ranged around the border of the card and provide for the winning of from 25 cents to \$5 in trade by the legend written in invisible ink in the blank circle therein.

The respondent sells and distributes other sales promotion cards for use in various types of business, but the ones described above illustrate the general plan of such cards.

Respondent furnishes his dealers with various display posters and circulars and with advertisements to be used and which are used by said dealers in distributing and using said cards.

PAR. 3. The dealers to whom respondent sells assortments of said sales promotion cards, distribute the same to their customers and prospective customers and honor the awards as shown when the squares and circles on the said cards are scorched so as to reveal the legend written in invisible ink. The respondent in his literature and by his representations suggests various methods for the use of said cards by their dealers, all of which methods involve a lottery, game of chance or gift enterprise.

PAR. 4. There are in competition with respondent various sellers and distributors of sales promotion cards, premium cards, price con-

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cession cards, coupons, and trading stamps, which, when used by dealers, do not involve a lottery scheme, game of chance, or gift enterprise. Many persons, firms, and corporations who sell and distribute various cards or devices for promoting or increasing the sales of dealers are unwilling to offer for sale or sell cards or devices so designed and arranged as above found, or otherwise designed and arranged, as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

PAR. 5. The use by respondent of said methods in designing and arranging his said cards and distributing the same for redistribution to the public, is a practice of the sort which is contrary to an established public policy of the Government of the United States and is in violation of criminal laws. The consuming public is induced to deal with or purchase merchandise from dealers using respondent's cards in preference to using the device of respondent's competitors, because of the lottery scheme, game of chance, or gift enterprise connected with respondent's said cards. The use by respondent of said methods in designing and arranging his said cards and distributing them as aforesaid, because of said game of chance, has a tendency and capacity to and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and answer of the respondent in which answer respondent admitted all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Earl M. Loban, individually and trading as Century Business Service, Acme Dividend System, and Century Publishing Co., Inc., or trading under any other name or names, his representatives, agents, and employees directly or through

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any corporate or other device in connection with the offering for sale, sale and distribution of sales promotion schemes or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing sales promotion cards or any other device so designed that their use by the retail dealers constitute or may constitute the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to, or placing in the hands of retail dealers or others, sales promotion cards or sales booster plans or schemes or any other devices which are used or which may be used without alteration or rearrangement thereof to conduct a lottery, game of chance, or gift enterprise when distributed to the consuming public.

3. Furnishing or supplying to dealers display posters or circulars or other advertising literature bearing legends or statements informing the public as to the manner in which said sales promotion cards or other lottery devices are to be or may be distributed and used.

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

UNITED STATES RUBBER COMPANY AND U. S. TIRE
DEALERS CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECS. (a) AND (d) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914.

Docket 3685. Complaint, Jan. 6, 1939—Decision, Apr. 25, 1939

Where a corporation which was engaged chiefly in producing, manufacturing, distributing, and selling rubber and rubber products of many kinds, including automotive vehicle tires, i. e., casings and tubes, directly and through certain wholly owned or controlled subsidiary corporations, some of which, in turn, owned or controlled, through voting stock ownership, still other operating companies, and which, together with its various subsidiaries, was one of the four largest manufacturers of tires in the United States, selling and distributing its tires, directly and through its subsidiaries, in competition with others engaged in manufacture and sale of such products, to and through, principally, (1) manufacturers of automotive vehicles using tires for original equipment and spares, (2) certain wholesalers, mail order houses, and retail store chains for whom tires were made by it and who resold same under their own private brands or trade-marks, and (3) wholesale and retail tire dealers and service stations numbering many thousands and located in many cities and towns throughout the United States; and operations of which various wholesalers, mail order houses, retail store chains, and wholesale and retail tire dealers and service stations, as above set forth, were competitive in resale by said wholesalers, mail order houses, and chains of said tires purchased from it and its subsidiaries under private brands or trade-marks in competition with other dealers selling tires of said corporation and subsidiaries under their own brands, and also, in some places, in resale of its said products at retail between customers purchasing such tires as "distributors" (and service stations of oil companies purchasing as "distributors") and "service station dealers" and other retailers purchasing tires from said corporation and subsidiaries or their distributors—

(a) Discriminated in price between certain mail order houses and chain stores and other purchasers, through sale to such mail order houses and chains of large quantities of tires bearing the brands, markings, and designs specified, respectively, by said purchasers, at prices different and lower than the prices charged and allowed by it to other purchasers of its tires of like grade and quality bearing its own brands, and under contracts entered into with such mail order houses and chains, by whom tires thus purchased by them and bearing their own brands, markings, and designs were resold and offered for resale throughout the United States or in large territories therein, in substantial competition with other dealers in tires manufactured by it under its own brands, and by other manufacturers;

With the result that effect of such discrimination in price had been and might be substantially to lessen competition and to create a monopoly of the line of commerce in which it and its subsidiaries were engaged, and in line of commerce in which purchasers from it, as above set forth, were engaged, and to

injure, destroy and prevent competition with it and its manufacturing subsidiaries and with mail order houses and chain store customers in question, in sale, and distribution of such products; and

Where said corporation, and subsidiary engaged chiefly in distribution and sale of rubber products, including tires made by said corporation and by other corporations owned or controlled by it, and which distributed to tire jobbers, distributors, and dealers at wholesale and at retail and, at least prior to January 1, 1939, through company-owned stores, such tires, and merchandising and pricing policies of which subsidiary were determined, dictated, and controlled by said corporation, and which had same president, secretary, treasurer, and comptroller as did such corporation—

(b) Discriminated in price between certain large purchasers of tires bearing their brands and other purchasers of their tires, through contracts entered into for sale of their said tires at prices different and lower, after deducting amounts of various discounts, commissions, and rebates not allowed to all purchasers, than the prices charged and allowed by them for tires of same grade and quality to other customers whose purchases or requirements were smaller in amount than those of such dealers, oil companies and others with whom they entered into such contracts, and who, knowingly receiving benefit of such discriminations, competed in many places and territories in resale of their said tires at retail and to commercial accounts with other customers of said corporation and subsidiary, who did not receive benefits of such lower net prices, and vendee or service stations of which oil companies resold such tires at retail in many localities in competition with tire dealers purchasing directly from said corporation and subsidiary and their customers;

With result that effect of such discrimination in price had been and might be substantially to lessen competition and tend to create a monopoly in the line of commerce in which said corporation and subsidiary were engaged, and to injure, destroy, and prevent competition with them and with their customers receiving the benefit of such discrimination, and with the customers of their customers aforesaid who had knowingly received benefit thereof;

(c) Discriminated in price between certain purchaser users and consumers of tires, including so-called commercial accounts, and other retail purchasers for tires of same grade and quality, through selling former at prices different and lower than prices charged latter through retail stores which they owned and operated in certain of the principal cities in the United States, in competition with other retail tire dealers in their respective sales territories;

With result that effect of such discrimination in price had been and might be substantially to injure, destroy, and prevent competition with them in the retail distribution and sale of tires in the sales territories in which their company-owned stores were located:

Held, That such varying prices or price differentials, as hereinabove referred to, did not make only due allowance for differences in cost of manufacture, sale, or delivery resulting from differing methods or quantities in which tires were sold or delivered by them, or either of them, to the purchasers respectively involved, and that said corporation, and said corporation and its aforesaid subsidiary, by discriminating in price between different purchasers of tires of like grade and quality, as hereinabove set forth, violated subsection (a) of section 2 of the Clayton Act as amended; and

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Where said corporation and its subsidiary—

(d) Paid and contracted to pay to certain oil companies to which they sold large quantities of tires, and which (1), while principally engaged in distribution and sale of oil and petroleum products, were also engaged in sale of automobile equipment and accessories, (2) marketed tires thus purchased chiefly through oil and gasoline stations which they either owned and operated or leased to the operators, and (3) were permitted thus to purchase tires from said corporation and subsidiary on terms, as to trade, functional, quantity, and volume discounts allowed, at least as favorable as the best terms accorded by said corporation and subsidiary to wholesale tire dealers, certain discounts or "overriding" commissions, which commissions were paid as compensation and in consideration for services furnished by such oil companies in connection with sales and involving exercise of influence and the giving of merchandise and assistance by said oil companies in securing such customers and sales for said corporation and subsidiary, and which "overriding" commissions were in addition to the allowance of the discounts above referred to and applied to sales made by said corporation and its subsidiary to more than 2,800 service stations, widely distributed throughout the greater part of the United States, and were not available on proportionally equal terms to other customers of said corporation and subsidiary competing with said oil companies in the distribution of such tires:

Held, That such payments and contracts to pay to those engaged in distribution and sale of oil and petroleum products, and purchasing such tires from said corporation or its subsidiary, on sales by either said corporation or subsidiary to operators of gasoline stations and jobbers selling products distributed and sold by those engaged in distribution of oil and petroleum products, etc., as above set forth, as compensation, or in consideration, for any services furnished by or through them in connection with sale or offer of casings and tubes or tires manufactured, sold or offered by either said corporation or subsidiary, and not made available on proportionally equal terms to all other customers of said corporation and subsidiary competing with said oil companies in distribution of such tires, constituted violation of subsection (d) of section 2 of the Clayton Act as amended.

Mr. Cyrus B. Austin for the Commission.

Arthur, Dry & Dole, of New York City, for respondents.

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" (U. S. C. title 15, sec. 13, the Clayton Act), as amended, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the above-named respondents, and each of them, have violated the provisions of subsections (a) and (d) of section 2 of said act, as amended, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent United States Rubber Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with principal office and place of business located at 1790 Broadway, New York, N. Y. Said respondent is engaged chiefly in the business of producing, manufacturing, distributing, and selling rubber and rubber products of many kinds, including automotive vehicle tire casings and tubes (hereinafter referred to as "tires"). Said business was formerly carried on by said respondent directly under its own name, but since 1935 said respondent has produced, manufactured, distributed, and sold said products chiefly by and through certain wholly owned (or controlled through 100 percent voting stock ownership) subsidiary corporations, some of which in turn own or control through voting stock ownership still other operating companies.

PAR. 2. The principal operating subsidiary of respondent United States Rubber Co. engaged in the manufacture and sale of tires is United States Rubber Products, Inc. (hereinafter referred to as "Products Corporation"), a Delaware corporation organized (under a different name) in 1928. All of the capital stock of said corporation is owned by said respondent. Its principal office is located in said respondent's office building at 1790 Broadway, New York City, and the presidents, first vice presidents, secretaries, treasurers, and comptrollers, respectively, of the two companies are the same persons. Most of the tires manufactured and sold by said respondent in the United States are manufactured and sold by it through and by the instrumentality of said Products Corporation. The production, merchandising, and pricing policies of said Products Corporation are determined, dictated, and controlled by said respondent.

PAR. 3. Respondent owns all of the capital stock of Meyer Rubber Co., a corporation. Meyer Rubber Co. owns approximately 63 percent of the voting stock of Gillette Rubber Co. (hereinafter referred to as "Gillette"), a Wisconsin corporation with principal office located at Eau Claire in that State. Meyer Rubber Co. also owns all of the voting stock of the Samson Corporation (subject to the right of holders of the Samson Corporation 6 percent noncumulative preferred stock to vote when no dividends have been paid for more than 1 year, which right, when in effect, reduces the voting power held by Meyer Rubber Co. to about 58 percent). Meyer Rubber Co. and the Samson Corporation own about 98 percent of the voting stock of Samson Tire and Rubber Corporation (hereinafter referred to as "Samson"), a Delaware corporation with principal office located in Los Angeles, Calif. Both Gillette and Samson are engaged in the business of manufacturing and selling tires. Respondent United

States Rubber Co., through the exercise of voting power held as above stated, has the power to and does determine, dictate, and control the production, merchandising, and pricing policies of Gillette and of Samson.

PAR. 4. Respondent U. S. Tire Dealers Corporation (hereinafter referred to as "Dealers Corporation") is a corporation organized in 1936 and existing and doing business under and by virtue of the laws of the State of Delaware, with principal office located at 1790 Broadway, New York, N. Y. All of the capital stock of said respondent is owned by respondent United States Rubber Co. Said Dealers Corporation is an operating subsidiary of United States Rubber Co., being engaged chiefly in the distribution and sale of rubber products, including tires, manufactured by other corporations owned or controlled by United States Rubber Co. Tires are distributed and sold by said Dealers Corporation to tire jobbers, distributors, and dealers (both wholesalers and retailers), through company-owned stores, and to consumers. The merchandising and pricing policies of said Dealers Corporation are determined, dictated, and controlled by respondent United States Rubber Co.; and the presidents, secretaries, treasurers, and comptrollers, respectively, of said respondents are the same persons.

PAR. 5. Respondent United States Rubber Co., together with its said subsidiaries, is one of the four largest manufacturers of tires in the United States. The three principal outlets to and through which said respondent, through its subsidiaries, sells and distributes its tires are (1) manufacturers of automotive vehicles using tires for original equipment and spares, (2) certain wholesalers, mail order houses, and retail store chains for whom tires are manufactured by respondent and who resell the same under their own private brands or trade-marks, (3) wholesale and retail tire dealers and service stations, numbering many thousand, located in many cities and towns throughout the United States. Sales to such tire dealers of tires bearing respondents' brands are made by respondent Dealers Corporation pursuant to "distributor sales agreements" and "service station dealer sales agreements," entered into from year to year, which provide that tires will be sold to the distributor or dealer at the prices shown in said respondents' current price list known as "United States Prices," less certain trade, functional, quantity, and volume discounts.

PAR. 6. In the course and conduct of their respective businesses said respondents, and each of them (United States Rubber Co. through its said subsidiaries), transport tires, or cause the same to be transported from the places where such tires are manufactured or stored to their customers and purchasers thereof located in other

States of the United States and the District of Columbia; and there is and has been at all times herein mentioned a current of trade and commerce in respondents' tires between the States wherein respondents' factories or warehouses are located and various other States of the United States. Said tires are sold by said respondents for use, consumption, or resale within the United States and the District of Columbia.

PAR. 7. Respondents distribute and sell tires in the same territories and places as, and in competition with, various other persons and corporations engaged in the manufacture and sale of tires. Through the stores owned and operated by respondent Dealers Corporation in some 20 cities in the United States, respondents compete in the sale of tires with independent wholesale and retail tire dealers doing business in the same sales territories. The wholesalers, mail order houses, and retail store chains which purchase tires from respondent United States Rubber Co. and its subsidiaries under private brands or trade-marks resell such tires in many parts of the United States in competition with other tire dealers selling United States brands of tires. Competition also exists in many places in the resale of respondents' tires at retail between customers purchasing such tires as "distributors" (and service stations of oil companies which purchase as distributors), and "service station dealers" and other retailers purchasing tires from respondents or their distributors.

PAR. 8. In the course and conduct of its interstate business above described, respondent United States Rubber Co., through its subsidiaries Products Corporation, Gillette, and Samson, sells and has sold large quantities of tires to Montgomery Ward & Co., Inc., Atlas Supply Co., Western Auto Supply Co., Western Auto Supply Agency of Los Angeles, and Arkansas Fuel Oil Co., bearing brands, markings, and designs specified, respectively by said purchasers. Each of said purchasers resells such tires, and offers the same for resale, throughout the United States or in large territories therein, in substantial competition with other dealers in tires manufactured by said respondent under its own brands and by other manufacturers. Said respondent has since June 19, 1936, sold such special brand tires to said named purchasers, respectively, and has entered into contracts with each of them for the sale of such tires, at prices different and lower than the prices charged and allowed by it to other purchasers of its tires of like grade and quality bearing its own brands. By so doing respondent has discriminated in price between each of said named purchasers and other purchasers of its tires.

PAR. 9. The effect of the discrimination in price described in paragraph 8 hereof has been and may be substantially to lessen competi-

tion and tend to create a monopoly in the line of commerce in which respondent United States Rubber Co. and its subsidiaries are engaged, and in the line of commerce in which the purchasers from respondent named in said paragraph 8 are engaged; and to injure, destroy, and prevent competition with said respondent and its manufacturing subsidiaries, and with their said named customers, in the sale and distribution of tires.

PAR. 10. Respondents in the course and conduct of their said business since June 19, 1936, have sold tires bearing respondents' brands to different purchasers at substantially differing prices resulting from the allowance to some purchasers of various discounts, commission, and/or rebates which have not been allowed to all purchasers. Respondents sell, have sold, and have entered into contracts for the sale of their tires to certain dealers, oil companies, and others purchasing such tires in large quantities or volume at prices different and lower (after deducting the amounts of such discounts, commissions, and rebates) than the prices charged and allowed by them for tires of the same grade and quality to other customers whose purchases or requirements are smaller in amount. By so doing respondents have discriminated in price between such large purchasers and other purchasers of their tires. Said large purchasers have knowingly received the benefit of such discrimination. In many places and territories said large dealers compete in the resale of respondents' tires at retail and to commercial accounts with others of respondents' customers not receiving the benefit of such lower net prices; and service stations operated by or purchasing such tires from said oil companies resell the same at retail in many localities in competition with tire dealers purchasing directly from respondents and with their customers.

PAR. 11. The effect of the discrimination in price described in paragraph 10 hereof has been and may be substantially to lessen competition and tend to create a monopoly in the line of commerce in which respondents are engaged, and to injure, destroy, and prevent competition with respondents and with their customers receiving the benefit of said discrimination and with the customers of respondents' said customers who have knowingly received the benefit of said discrimination.

PAR. 12. In the course and conduct of their said business respondents have offered for sale and sold their tires, since June 19, 1936, through retail stores owned and operated by respondents in 20 or more of the principal cities in the United States. In the conduct of such business said stores are engaged in competition with other retail tire dealers in their respective sales territories. Through said stores respondents have sold and offered to sell tires to certain users and consumers there-

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of, including so-called "commercial accounts," at prices different and lower than the prices charged other retail purchasers for tires of the same grade and quality, thereby discriminating in price between such purchasers.

PAR. 13. The effect of the discrimination in price described in paragraph 12 hereof has been and may be substantially to injure, destroy, and prevent competition with respondents in the retail distribution and sale of tires in the sales territories where their company-owned stores are located.

PAR. 14. In the course and conduct of their said business respondents have entered into contracts for the sale of their tires, which contracts are now in force, and have sold large quantities of such tires thereunder to certain corporations principally engaged in the distribution and sale of oil and petroleum products but also engaging in the sale of automobile equipment and accessories. The tires purchased by said oil companies are marketed by them chiefly through oil and gasoline stations either owned and operated by them or leased by them to the operators. Said oil companies purchase tires from respondents on terms, as to trade, functional, quantity, and volume discounts allowed, at least as favorable as the best terms accorded by respondents to wholesale tire dealers. Respondents have contracted for the payment and have paid to certain of said oil companies, since June 19, 1936, in addition to the allowance of the aforementioned discounts, a commission of 7½ percent (formerly 5 percent on sales to jobbers) on sales of tires by respondents and their distributors to operators of oil stations and jobbers selling the petroleum products of said oil companies, as compensation and in consideration for the services of such oil companies in connection with such sales, where such sales are secured through the influence and merchandising assistance of said oil companies. Respondents have contracted to pay and have paid, and are now following the practice of paying such "overriding" commissions, amounting to substantial sums of money, to their following customers, among others: Socony-Vacuum Oil Co., Inc., and its operating subsidiaries and affiliates; American Oil Co.; Pan-American Petroleum Corporation; Tide Water Associated Oil Co. The said agreements for the payment of such commission to said named customers apply to sales made by respondents to more than 2,800 service stations widely distributed throughout the greater part of the United States. Such commission and the payment thereof in consideration for such services are not available on proportionally equal terms to all other customers of respondents competing with said oil companies in the distribution of such tires.

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," (the Clayton Act), as amended, the Federal Trade Commission, on January 6, 1939, issued its complaint against the above-named respondents and caused such complaint to be served as required by law, charging that said respondents were and had been discriminating in price between different purchasers from them of automotive vehicle tire casings and tubes of like grade and quality in interstate commerce, in violation of the provisions of section 2 (a) of said act, and had been paying commissions to certain of such purchasers for services furnished by them in connection with the sale of such tire casings and tubes, in violation of the provisions of section 2 (d) of said act.

Respondents duly filed their joint answer to said complaint, which answer admits all the material facts alleged in said complaint excepting the facts alleged in paragraph 2 thereof. As to paragraph 2 of the complaint, the answer alleges that United States Rubber Products, Inc., an operating subsidiary of respondent U. S. Rubber Co., was dissolved and wholly liquidated on or about December 31, 1938, and that said respondent United States Rubber Co., succeeded to the business theretofore carried on by United States Rubber Products, Inc., in the manufacturing and selling of automotive vehicle tire casings and tubes. Said answer further waives the taking of evidence and all other intervening procedure herein and consents that upon said complaint and answer an order be issued requiring said respondents to cease and desist from the acts and practices alleged in said complaint to be in violation of the provisions of said act.

This proceeding regularly coming on to be heard upon said complaint and answer, filing of briefs, and presentation of oral argument have been waived, the Commission, having duly considered the same and being fully advised in the premises, and being of the opinion that the respondents and each of them have been and are violating the provisions of subsections (a) and (d) of section 2 of the Clayton Act, now makes these its findings as to the facts:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent United States Rubber Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with principal office and place of business located at 1790 Broadway, New York, N. Y. Said respondent is engaged chiefly in the business of producing, manufacturing, dis-

tributing, and selling rubber and rubber products of many kinds, including automotive vehicle tire casings and tubes (hereinafter referred to as "tires"). Said respondent produces, manufactures, distributes, and sells said products directly and through certain wholly owned or controlled subsidiary corporations, some of which in turn own or control through voting stock ownership still other operating companies.

PAR. 2. Prior to January 1, 1939, the principal operating subsidiary of respondent United States Rubber Co. engaged in the manufacture and sale of tires was United States Rubber Products, Inc., a Delaware corporation organized in 1928. All of the capital stock of said corporation was owned by said respondent and its principal office was located in said respondent's office building at 1790 Broadway, New York City. On or about December 31, 1938, said United States Rubber Products, Inc., was dissolved and wholly liquidated and respondent United States Rubber Co. succeeded to its business of manufacturing and selling tires.

PAR. 3. Respondent owns all of the capital stock of Meyer Rubber Co., a corporation. Meyer Rubber Co. owns approximately 63 percent of the voting stock of Gillette Rubber Co. (hereinafter referred to as "Gillette"), a Wisconsin corporation with principal office located at Eau Claire in that State. Meyer Rubber Co. also owns all of the voting stock of the Samson Corporation (subject to the right of holders of the Samson Corporation 6 percent noncumulative preferred stock to vote when no dividends have been paid for more than 1 year, which right, when in effect, reduces the voting power held by Meyer Rubber Co. to about 53 percent). Meyer Rubber Co. and the Samson Corporation own about 98 percent of the voting stock of the Samson Tire & Rubber Corporation (hereinafter referred to as "Samson"), a Delaware corporation with principal office located in Los Angeles, Calif. Both Gillette and Samson are engaged in the business of manufacturing and selling tires. Respondent United States Rubber Co., through the exercise of voting power held as above stated, has the power to and does determine, dictate, and control the production, merchandising, and pricing policies of Gillette and of Samson.

PAR. 4. Respondent U. S. Tire Dealers Corporation (hereinafter referred to as "Dealer Corporation") is a corporation organized in 1936 and existing and doing business under and by virtue of the laws of the State of Delaware, with principal office located at 1790 Broadway, New York, N. Y. All of the capital stock of said respondent is owned by respondent United States Rubber Co. Said Dealers Corporation is an operating subsidiary of United States Rubber Co., being engaged

chiefly in the distribution and sale of rubber products, including tires, manufactured by respondent United States Rubber Co. and by other corporations owned or controlled by United States Rubber Co. Tires are distributed and sold by said Dealers Corporation to tire jobbers, distributors, and dealers (both wholesalers and retailers), and, at least prior to January 1, 1939, through company-owned stores. The merchandising and pricing policies of said Dealers Corporation are determined, dictated, and controlled by respondent United States Rubber Co.; and the presidents, secretaries, treasurers, and controllers, respectively, of said respondents are the same persons.

PAR. 5. Respondent United States Rubber Co., together with its said subsidiaries, is one of the four largest manufacturers of tires in the United States. The three principal outlets to and through which said respondent, directly and through its subsidiaries, sells and distributes its tires are (1) manufacturers of automotive vehicles using tires for original equipment and spares, (2) certain wholesalers, mail order houses, and retail store chains for whom tires are manufactured by respondent and who resell the same under their own private brands or trade-marks, (3) wholesale and retail tire dealers and service stations, numbering many thousand, located in many cities and towns throughout the United States. Sales to such tire dealers of tires bearing respondents' brands are made by respondent Dealers Corporation pursuant to "distributor sales agreements" and "service station dealer sales agreements," entered into from year to year, which provide that tires will be sold to the distributor or dealer at the prices shown in said respondents' current price lists known as "United States Prices," less certain trade, functional, quantity, and volume discounts.

PAR. 6. In the course and conduct of their respective businesses said respondents, and each of them, transport tires, or cause the same to be transported, from the places where such tires are manufactured or stored to their customers and purchasers thereof located in other States of the United States and the District of Columbia; and there is and has been at all times herein mentioned a current of trade and commerce in respondents' tires between the States wherein respondents' factories or warehouses are located and various other States of the United States. Said tires are sold by said respondents for use, consumption or resale within the United States and the District of Columbia.

PAR. 7. Respondents distribute and sell tires in the same territories and places as, and in competition with, various other persons and corporations engaged in the manufacture and sale of tires. Through the stores owned and operated by respondent Dealers Corporation in various cities in the United States, respondents competed in the sale of

tires with independent wholesale and retail tire dealers doing business in the same sales territories. The wholesalers, mail order houses, and retail store chains which purchase tires from respondent United States Rubber Co. and its subsidiaries under private brands or trade-marks resell such tires in many parts of the United States in competition with other tire dealers selling United States brands of tires. Competition also exists in some places in the resale of respondents' tires at retail between customers purchasing such tires as "distributors" (and service stations of oil companies which purchase as distributors), and "service station dealers" and other retailers purchasing tires from respondents or their distributors.

PAR. 8. In the course and conduct of its interstate business above described, respondent United States Rubber Co., directly and through its subsidiaries Gillette and Samson (and prior to 1939 through United States Rubber Products, Inc.), sells and has sold large quantities of tires to Montgomery Ward & Co., Inc., Atlas Supply Co., Western Auto Supply Co., Western Auto Supply Agency of Los Angeles, and Arkansas Fuel Oil Co., bearing brands, markings, and designs specified, respectively by said purchasers. Each of said purchasers resells such tires, and offers the same for resale, throughout the United States or in large territories therein, in substantial competition with other dealers in tires manufactured by said respondent under its own brands and by other manufacturers. Said respondent has since June 19, 1936, sold such special brand tires to said named purchasers, respectively, and has entered into contracts with each of them for the sale of such tires, at prices different and lower than the prices charged and allowed by it to other purchasers of its tires of like grade and quality bearing its own brands. By so doing respondent has discriminated in price between each of said named purchasers and other purchasers of its tires.

PAR. 9. The effect of the discrimination in price described in paragraph 8 hereof has been and may be substantially to lessen competition and tend to create a monopoly in the line of commerce in which respondent United States Rubber Co. and its subsidiaries are engaged, and in the line of commerce in which the purchasers from respondent named in said paragraph 8 are engaged; and to injure, destroy, and prevent competition with said respondent and its manufacturing subsidiaries, and with said named mail order house and chain store customers, in the sale and distribution of tires.

PAR. 10. Respondents in the course and conduct of their said business since June 19, 1936, have sold tires bearing respondents' brands to different purchasers at substantially differing prices resulting from the allowance to some purchasers of various discounts, commissions,

and/or rebates which have not been allowed to all purchasers. Respondents sell, have sold, and have entered into contracts for the sale of their tires to certain dealers, oil companies, and others purchasing such tires in large quantities or volume at prices different and lower (after deducting the amounts of such discounts, commissions, and rebates) than the prices charged and allowed by them for tires of the same grade and quality to other customers whose purchases or requirements are smaller in amount. By so doing respondents have discriminated in price between such large purchasers and other purchasers of their tires. Said large purchasers have knowingly received the benefit of such discrimination. In many places and territories said large dealers compete in the resale of respondents' tires at retail and to commercial accounts with others of respondents' customers not receiving the benefit of such lower net prices; and service stations operated by or purchasing such tires from said oil companies resell the same at retail in many localities in competition with tire dealers purchasing directly from respondents and with their customers.

PAR. 11. The effect of the discrimination in price described in paragraph 10 hereof has been and may be substantially to lessen competition and tend to create a monopoly in the line of commerce in which respondents are engaged, and to injure, destroy, and prevent competition with respondents and with their customers receiving the benefit of said discrimination and with the customers of respondents' said customers who have knowingly received the benefit of said discrimination.

PAR. 12. In the course and conduct of their said business since June 19, 1936, and during the years 1936, 1937, and 1938, respondents have offered for sale and sold their tires through retail stores owned and operated by respondents in certain of the principal cities in the United States. In the conduct of such business said stores were engaged in competition with other retail tire dealers in their respective sales territories. Through said stores respondents sold and offered to sell tires to certain users and consumers thereof, including so-called "commercial accounts," at prices different and lower than the prices charged other retail purchasers for tires of the same grade and quality, thereby discriminating in price between such purchasers.

PAR. 13. The effect of the discrimination in price described in paragraph 12 hereof has been and may be substantially to injure, destroy, and prevent competition with respondents in the retail distribution and sale of tires in the sales territories where their company-owned stores are located.

PAR. 14. It does not appear from the facts before the Commission that the price differentials described in paragraphs 8, 10, and 12

hereof make only due allowance for, and it is therefore found that said differentials do not make only due allowance for, differences in cost of manufacture, sale, or delivery resulting from differing methods or quantities in which tires are sold or delivered by said respondents, or either of them, to the purchasers described, respectively, in said paragraphs.

PAR. 15. In the course and conduct of their said business respondents have entered into contracts for the sale of their tires, which contracts are now in force, and have sold large quantities of such tires thereunder to certain corporations principally engaged in the distribution and sale of oil and petroleum products but also engaging in the sale of automobile equipment and accessories. The tires so purchased by said oil companies are marketed by them chiefly through oil and gasoline stations either owned and operated by them or leased by them to the operators. Said oil companies are permitted to purchase tires from respondents on terms, as to trade, functional, quantity, and volume discounts allowed, at least as favorable as the best terms accorded by respondents to wholesale tire dealers. Respondents have also contracted for the payment of and have paid to certain of said oil companies, since June 19, 1936, in addition to the allowance of the aforementioned discounts, a commission of 7½ percent (formerly 5 percent on sales to jobbers) on sales of tires by respondents and their distributors to operators of oil stations and jobbers selling the petroleum products of said oil companies. Said commission has been paid as compensation and in consideration for the services furnished by such oil companies in connection with such sales, the nature of such services being the exercise of influence and the giving of merchandising assistance by said oil companies in securing such customers and sales for respondents. Respondents have contracted to pay and have paid, and are now following the practice of paying such "overriding" commissions, amounting to substantial sums of money, to their following customers, among others: Socony-Vacuum Oil Co., Inc., and its operating subsidiaries and affiliates; American Oil Co.; Pan-American Petroleum Corporation; Tide Water Associated Oil Co. The said agreements for the payment of such commissions to said named customers apply to sales made by respondents to more than 2,800 service stations widely distributed throughout the greater part of the United States. Such commissions and the payment thereof in consideration for such services are not available on proportionally equal terms to all other customers of respondents competing with said oil companies in the distribution of such tires.

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Order

CONCLUSIONS

The Commission concludes:

1. That respondent United States Rubber Co., by discriminating in price between different purchasers of tires of like grade and quality as set forth in paragraph 8 of the foregoing findings, has violated and is violating subsection (a) of section 2 of the Clayton Act, as amended.

2. That respondents United States Rubber Co. and U. S. Tire Dealers Corporation, and each of them, by discriminating in price between different purchasers of tires of like grade and quality as set forth in paragraph 10 and in paragraph 12 of said findings, have violated and, as to the discrimination set forth in said paragraph 10, are violating subsection (a) of subsection 2 of the Clayton Act as amended.

3. That respondents United States Rubber Co. and U. S. Tire Dealers Corporation, and each of them, by engaging in the acts and practices described in paragraph 15 of said findings, have violated and are violating subsection (d) of section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the joint answer of the respondents by which said respondents admit all the material allegations of fact in said complaint (excepting the allegations of paragraph 2 thereof) and waive the taking of testimony and all intervening procedure, and the Commission being of the opinion upon the facts so admitted that said respondents, and each of them, have violated the provisions of subsections (a) and (d) of Section 2 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, and having made its report stating its findings as to the facts.

It is ordered, That the respondent, United States Rubber Co. and its officers, representatives, agents, and employees, in connection with the distribution and sale of automotive vehicle tire casings and tubes in commerce between the several States of the United States and in the District of Columbia, do forthwith cease and desist from discriminating in price, either directly or indirectly, or by or through its subsidiaries U. S. Tire Dealers Corporation, Meyer Rubber Co., Gillette Rubber Co., the Samson Corporation, Samson Tire & Rubber Corporation, or any of them, or by or through any other persons or corporations owned or controlled by it through stock ownership or

otherwise, between Montgomery, Ward & Co., Inc., Atlas Supply Co., Western Auto Supply Co., Western Auto Supply Co. of Los Angeles, and Arkansas Fuel Oil Co., or any one or more of them, and other purchasers of such products of like grade and quality by selling such products to Montgomery, Ward & Co., Atlas Supply Co., Western Auto Supply Co., Western Auto Supply Co. of Los Angeles, or Arkansas Fuel Oil Co. at net realized prices different and lower than the net realized prices at which such products of like sizes, grade, and quality are sold to other purchasers thereof for resale, except to the extent that such differential or differentials shall make only due allowance for differences in cost of manufacture, sale, or delivery, if any, resulting from differing methods or quantities in which such products are to such purchasers sold or delivered. "Net realized price" for the purposes of this order shall mean the net amount of money paid by a purchaser for such a tire casing or tube after taking into account all discounts (excepting uniform cash discounts available to all purchasers), commissions, rebates, refunds, and other price adjustments; provided, that any such price adjustments depending upon varying costs of sale and delivery shall be concluded expeditiously after the end of the annual or shorter period for which such costs are computed.

It is further ordered, That the respondents United States Rubber Co. and U. S. Tire Dealers Corporation, and their respective officers, representatives, agents, and employees, in connection with the distribution and sale of automotive vehicle tire casings and tubes bearing said respondents' brands in commerce between the several States of the United States and in the District of Columbia, do forthwith cease and desist (a) from discriminating in price, directly or indirectly, between different purchasers of such tire casings and tubes of like grade and quality by granting or allowing the cumulative discounts (dependent upon and varying according to total volume of purchases during a specified period) heretofore granted and allowed by said respondents; (b) from discriminating in price, directly or indirectly, between different purchasers of such tire casings and tubes of like grade and quality competing in the resale thereof, by granting or allowing to some of such purchasers discounts, commissions, and rebates heretofore granted and allowed in connection with the sale of such tire casings and tubes as set forth in paragraph 10 of said findings as to the facts, which are not granted or allowed to other such purchasers; (c) from discriminating in price, directly or indirectly, between different purchasers of such tire casings and tubes of like grade and quality by means of price differences resulting from the granting or allowing of any other such discounts, commissions, re-

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bates, or price reductions, where the effect of such price differences may be substantially to lessen competition or tend to create a monopoly in a line of commerce in which either of respondents or any of their customers are engaged, or to injure, destroy, or prevent competition with either of respondents or with any of their customers, or with any customers of a customer of either of said respondents who has knowingly received the benefit of such discrimination, except where such discounts, rebates, or price reductions make only due allowance for differences in cost resulting from differing methods or quantities in which such tire casings or tubes are to such purchasers sold or delivered; provided, however, that nothing contained in this paragraph or in the next following paragraph hereof shall be construed as preventing either of said respondents from showing that any discount, commission, rebate, or lower price hereafter granted or allowed by it, not granted or allowed to other purchasers, was given in good faith to meet an equally low price of a competitor.

It is further ordered, That the respondents, United States Rubber Co. and U. S. Tire Dealers Corporation, and their respective officers, representatives, agents, and employees, in connection with the distribution and sale of automotive vehicle tire casings and tubes in commerce between the several States of the United States through retail stores owned or operated by either of said respondents, do forthwith cease and desist from discriminating in price, directly or indirectly, between different purchasers of such products of like grade and quality by selling such products to some users and consumers thereof, including so-called "commercial accounts," at prices different and lower than the prices charged other retail purchasers thereof, except to the extent that such differential or differentials shall make only due allowance for differences in cost of manufacture, sale, or delivery, if any, resulting from differing methods or quantities in which such products are to such purchasers sold or delivered.

It is further ordered, That the respondents, United States Rubber Co. and U. S. Tire Dealers Corporation, and their respective officers, representatives, agents, and employees, in connection with the distribution and sale of automotive vehicle tire casings and tubes in commerce between the several States of the United States and in the District of Columbia, do forthwith cease and desist from paying or contracting to pay to any person, firm, or corporation engaged in the distribution and sale of oil and petroleum products and purchasing such tire casings and tubes from either of said respondents for resale (including the oil companies named in paragraph 15 of said findings as to the facts), a commission of 7½ percent on sales by either of said

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respondents to operators of oil and gasoline stations and jobbers selling products distributed or sold by such person, firm, or corporation, or any other payment or commission as compensation or in consideration for any services furnished by or through such person, firm, or corporation in connection with the sale or offering for sale of tire casings and tubes, manufactured, sold, or offered for sale by either of said respondents, unless such payment or commission is made available on proportionally equal terms to all other customers of said respondents competing with such person, firm, or corporation in the distribution of such tire casings and tubes.

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

Syllabus

IN THE MATTER OF
QUALITY BAKERS OF AMERICA ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF PARA. (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 3218. Complaint, Aug. 28, 1937—Decision, Apr. 27, 1939

Where a corporation, stock of which was held exclusively by some seventy non-competitive wholesale baking concerns located in various sections of the United States, and which constituted membership of said bakers' unincorporated association, designed and used to facilitate and further the objectives, operations, policies, and business of said corporation and the stockholders of said corporation, which,

(1) Was engaged in purchasing commodities as purchasing agent for its stockholders and members, as aforesaid, of said association;

(2) Constituted the operative agency acting in behalf of said association and members thereof;

(3) Conducted numerous activities for said association members, including services as to purchasing, production, engineering, accounting, sales promotion, advertising, planning, publications, and management assistance;

(4) In executing orders placed with it by its said stockholders and association members, transmitted such orders and purchased commodities from one or more of a group of over 200 manufacturers, processors, producers, or distributors located in many different States; and

(5) Was compensated or reimbursed for the cost of such various services under definite arrangements and agreements, entered into between it and the association on the one hand and the members thereof on the other, by which it was agreed that one-half of the brokerage paid on each member's orders should be applied to the credit of the particular member's dues and remaining half applied by the board of directors, as it shall determine, for service purposes for the benefit of the members of the association in question; and

(6) Supplied to stockholders, whose credits for brokerage fees exceeded the amounts charged against them for dues, benefit of special services not included in the services rendered to all stockholders—

(a) Accepted and received, as above set forth, brokerage fees from sellers on purchases of commodities made by its stockholders, while acting as the agent, representative, and intermediary of such stockholders and in their behalf, and while owned and controlled by them, and rendering no service to those selling commodities to it and paying it such brokerage fees, but rendering services to its stockholders in connection with purchase of commodities by them or with operation of their respective businesses, and no selling services to any seller of commodities or services in connection with the sale of a commodity to it or to its stockholders; and

Where wholesale baking concerns, stockholders of said corporation and members of said association, engaged in purchasing commodities, including flour and many other food materials, and a great variety of supplies and equip-

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ment, including machines used in business in question, from sellers in various States, and in transmitting orders for the purchase of merchandise to said corporation or service company—

- (b) Accepted and received, as aforesaid, brokerage or commissions from said corporation and service company in money, credits, benefits and services paid for and furnished from and by such brokerage fees, which were paid by the sellers of commodities in question to such service company; and

Where three corporations engaged in the manufacture and sale of flour—

- (c) Paid, transmitted and granted to said service company, and indirectly to association members through said company, as hereinabove stated, as intermediary acting in fact for such members, commissions and brokerage fees upon the purchases of commodities in question made by such member buyers from such sellers through said service company, in connection with the sale of which commodities and payment of which fees, no service was rendered to any seller so paying:

Held, That such plan of operation and practices and policies of said service company and association, and members and stockholders thereof, resulted in transmission of brokerage fees and commissions from sellers to buyers on transactions involving purchase and sale of commodities in interstate commerce, and that aforesaid acts, practices and policies were violative of the provisions of paragraph (c) of Section 2 of the Clayton Act, as amended.

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

Mr. Allen C. Phelps for the Commission.

Davis, Wagner, Heater & Hallett, of New York City, for respondents, excepting respondent flour manufacturers.

Kingman, Cross, Morley, Cant & Taylor, of Minneapolis, Minn., for Washburn Crosby Co., Inc., and Red Star Milling Co.

Mr. Bradshaw Mintener, of Minneapolis, Minn., for Pillsbury Flour Mills Co.

Foulston, Siefkin, Foulston & Morris, of Wichita, Kans., for Kansas Milling Co.

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," commonly known as the Clayton Act, 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," commonly known as the Robinson-Patman Act, 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 com-

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plaint against the said respondents, stating its charges in that respect as follows:

PARAGRAPH 1. (a) Respondent, Quality Bakers of America, is a voluntary unincorporated association, formed in 1922, having its principal place of business at 120 West Forty-second Street, New York City. It is hereinafter referred to as the "Association" and its members are wholesale baking concerns located in various sections of the United States.

(b) Respondent members of said Association are about 70 in number and are located in various sections of the United States. Said members are corporations, partnerships, and individuals engaged in the wholesale bakery business. All of the members of said Association are not known to the Commission. Those of its officers, executive committee, and representative members who are known, and who can be conveniently reached are specifically named as respondents herein. All the other members of said Association are hereby made respondents without being individually named because they constitute a class or group too numerous to be brought before the Commission in this proceeding without manifest inconvenience and delay. The following named representative members of the Association are made respondents hereto both individually and in their said representative capacity: Respondent, Firch Baking Co., Inc., a Pennsylvania corporation having its principal place of business at Erie, Pa.; Dreikorn Bakery, Inc., a Massachusetts corporation having its principal place of business at 322 Park Street, Holyoke, Mass.; The Jacob Laub Baking Co., an Ohio corporation having its principal place of business at 4909 Lorain Avenue, Cleveland, Ohio; Liberty Baking Co., a Pennsylvania corporation having its principal place of business at 6018 Houston Street, East Liberty, Pittsburgh, Pa.; Stroehmann Brothers Co., a Pennsylvania corporation having its principal place of business at Curtin and Seventh Streets, Harrisburg, Pa.; and Vermont Baking Co., a Vermont corporation having its principal place of business at White River Junction, Vt. Respondent members of the Association, both named and unnamed, are hereinafter collectively referred to as "members." Said members are, among themselves, mutually noncompetitive. Membership is lost whenever a member's trade becomes competitive with the trade of another member or members. Such membership is obtained solely through invitation and election.

(c) Respondents, C. F. Stroehmann, located at Curtin and Seventh Streets, Harrisburg, Pa.; J. P. Duchaine, located at 229 Coffin Avenue, New Bedford, Mass.; Grover C. Patton, located at 434 North Morgan Street, Decatur, Ill.; and W. S. Allison, located at 120 W. Forty-second

Street, New York, N. Y.; are respectively president, vice president, treasurer, and secretary and general manager of the Association, and each of them are members of the executive committee thereof. Respondents, E. J. Derst, located at 408 East Oglethorp Avenue, Savannah, Ga.; W. M. Clemens, located at 19 South Main Street, Dubuque, Iowa; Onil O. Cote, located at 87 Elm Street, Manchester, N. H.; S. S. Watters, located at 6018 Houston Street, East Liberty, Pittsburgh, Pa.; Herbert J. Laub, located at 4909 Lorain Avenue, Cleveland, Ohio; James H. Swan, located at 1801 East Magnolia Avenue, Knoxville, Tenn.; George C. West, located at White River Junction, Vt.; and James B. Dwyer, located at 1902 Cranberry Street, Erie, Pa.; are the other members of the said Executive Committee. The said respondent officers and executive committeemen are made parties respondent hereto in their official capacities and as representatives of the aforesaid class or group of unnamed respondents.

(d) Respondent, Quality Bakers of America, Inc., is a Delaware corporation, having its principal place of business at 120 West Forty-second Street, New York City. It is the operative agency, acts on behalf of the Association, and will be designated and referred to hereinafter as the Service Co. As such, said respondent corporation conducts numerous activities for the members of the Association, including services as to purchasing, production engineering, accounting, sales promotion, advertising, planning, publications, and management assistance. The stock of the Service Co. is held exclusively by members of the Association, no stockholder being entitled to hold more than 10 or less than 5 shares thereof.

PAR. 2. The Association, and its members as aforesaid, in the usual course and conduct of their respective businesses, are engaged in interstate commerce, transporting and causing to be transported their wholesale bakery products from the respective States of their production to their respective customers located in other States. The Service Co., in the regular course and conduct of its business, acting for and on behalf of the Association and its members, in its merchandising activities, heretofore in paragraph 1 mentioned and hereafter in paragraph 3 described, is engaged in purchasing materials, supplies and equipment and in causing the same to be transported from the respective States where located at the time of sale to and into and through other States of the United States wherein the Service Co. and the various respondent members are located.

PAR. 3. Among the services rendered to members of the Service Co. is that of negotiation for the purchase and the purchase and distribution of merchandise. The lines of merchandise so purchased include flour and many other food materials, required by said members in the

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production of their products, and a great variety of supplies and equipment, including machinery, used for the manufacture, packaging, storage, and distribution of wholesale bakery products. Some of the said described merchandise is purchased outright by the said Service Co., payment being made by it to the vendors. In other cases said company does not pay the purchase price nor take title to the merchandise, but purchases same for and on behalf of respondent members of the Association. In said purchasing service the Service Co. sometimes receives the merchandise and reships to the members of the Association, and on other occasions it directs the vendor to ship direct to the members as consignees. The said Service Co. and the Association and its members, through the said Service Co. as intermediary, caused to be transported the various lines of merchandise so purchased including flour, food materials, supplies, and equipment from the State of location where sold to, into and through the various other States of the United States in which the respective members of said Association are located, and into the State of New York where the Service Co. is located. In its said purchasing service the said company is obligated to obtain and actually obtains from vendors the best prices, quality and service that it can on behalf of members and therein acts as intermediary between said vendors and said members.

PAR. 4. In the regular course and conduct of its purchasing service, in interstate commerce as hereinabove alleged, respondent Service Co., for more than 5 years last past has received and accepted from several hundred concerns, or their agents, selling practically all materials, supplies and equipment purchased by said company, valuable price concessions, as brokerages, commissions or other compensation, and allowances or discounts in lieu of brokerage; and the said Service Co. now receives and accepts the same from many such concerns, including those corporate respondents hereinafter referred to as "respondent sellers." Each year of its said operations the said Service Co. has thus received and accepted substantial sums, and in 1936 received and accepted in the aggregate \$181,528.20, as brokerages, commissions or other compensation. The receipts of said company as brokerages and commissions or other compensation all inure to the benefit of the members. One-half thereof is retained by the Service Co. for the purpose of operating the various above-mentioned services maintained and made available to the entire membership by the said company. The remaining one-half thereof is distributed as patronage dividends, proportionally to the individual members, whose purchases are deemed to have earned the so-called brokerages or commissions or other compensation, in the form of credits against dues charged respectively, by the said company, to said members for such of the services, available at cost, as may be individually subscribed to by them.

Under the circumstances as hereinabove set out—namely, that all of the stock in the Service Co. receiving such brokerage fees, compensations and allowances and allowances or discounts in lieu of brokerage, is owned and held by the member buyers of the Association—no services connected with the transactions of sale and purchase of the aforesaid materials, supplies and equipment on which such brokerage fees, compensations and other allowances were and are being paid and made, have either been or are being rendered to the said sellers by the Service Co. or the Association or its members.

PAR. 5. Respondent Washburn Crosby Co., Inc., is a corporation with an office and principal place of business at 80 Broad Street in the city of New York, State of New York. Respondent Pillsbury Flour Mills Co. is a corporation with office and principal place of business at 21 West Street in the city of New York, State of New York. Respondent Red Star Milling Co. is a corporation with an office and principal place of business in the city of Wichita, State of Kansas. Respondent Consolidated Flour Mills Co. is a corporation with an office and principal place of business in the city of Wichita, State of Kansas. Respondent Kansas Milling Co. is a corporation with an office and principal place of business in the city of Wichita, State of Kansas. These last named respondents will hereinafter be designated and referred to as "respondent sellers." Said respondents and each of them in this paragraph named are and for more than 1 year last past have been engaged in the business of manufacturing and selling flour to numerous and divers wholesalers, jobbers, merchants, and dealers, including the aforesaid Service Co., respondent, and respondent members of the aforesaid Association, and in the course of such business cause the said flour when sold to be shipped and transported from the State of its location at the time of said sale to, into and through the various other States of the United States in which the said purchasers are 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 a substantial portion of their commodities, merchandise, flour, food stuffs, equipment, supplies, and machinery in interstate commerce to the aforesaid Service Co., respondent, and to the members of the aforesaid Association for and on behalf of whom the said Service Co., respondent, acts as intermediary, in the manner and form hereinabove described. Said group or class of sellers comprises a large number of corporations, partnerships, and individuals and are too numerous to be individually named herein as respondents or to be brought before

the Commission in this proceeding without manifest inconvenience and delay.

In the course of such commerce said respondent sellers and each of them have paid or granted and are paying or granting to the said Service Co. and to the respondent members through that company as intermediary acting in fact for the respondent members of the aforesaid Association, commissions, brokerage fees, and other compensation and allowances or discounts in lieu thereof upon purchases of said commodities made by respondent buyers from said respondent sellers through said Service Co.

PAR. 6. The payment or granting of such commissions, brokerage fees, and other compensations and allowances or discounts in lieu thereof by said respondent sellers to the Service Co., and the receipt and acceptance thereof by the Service Co. acting as intermediary for and on behalf of the Association, and for and on behalf of each of the aforesaid member respondents, and the participation in and direction or conduct of such activities by the individual respondents acting as officers and members of the executive committee of the aforesaid respondent Association, all in the manner and form aforesaid, are in violation of the provisions of subsection (c) of section 2 of the act described in the preamble hereof.

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 (the Clayton Act), 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 (the Robinson-Patman Act), the Federal Trade Commission, on August 28, 1937, issued and served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with violating the provisions of paragraph (c) of section 2 of said act, as amended. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence were introduced by Allen C. Phelps, attorney for the Commission, before John W. Addison, an examiner for the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Davis, Wagner, Heater & Hallett, attorneys for all of the above named respondents except Washburn Crosby Co., Inc., Pills-

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bury Flour Mills Co., Red Star Milling Co., Consolidated Flour Mills Co., and Kansas Milling Co.; and by Frank J. Morley, A. Lyman Beardsley, and John deLaittre, attorneys for respondents Washburn Crosby Co., Inc., and the Red Star Milling Co.; and by Bradshaw Mintener, attorney for respondent Pillsbury Flour Mills Co., 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 upon the said complaint, answers, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of the said Allen C. Phelps for the Commission and Guy C. Heater of said firm of Davis, Wagner, Heater & Hallett, attorneys for the parties respondent represented by them, and by Bradshaw Mintener, attorney for respondent Pillsbury Flour Mills Co., 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.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Quality Bakers of America is a voluntary unincorporated association formed in 1922, having its headquarters at 120 West Forty-second Street, New York City. The membership of said association comprises about seventy wholesale baking concerns located in various sections of the United States. Among the members of said association are the following respondents, fairly representative of all of said members, to wit: Firch Baking Co., Inc., a Pennsylvania corporation having its principal place of business at Erie, Pa.; Dreikorn Bakery, Inc., a Massachusetts corporation having its principal place of business at 322 Park Street, Holyoke, Mass.; The Jacob Laub Baking Co., an Ohio corporation having its principal place of business at 4909 Lorain Avenue, Cleveland, Ohio; Liberty Baking Co., a Pennsylvania corporation having its principal place of business at 6018 Houston Street, East Liberty, Pittsburgh, Pa.; Stroehmann Brothers Co., a Pennsylvania corporation having its principal place of business at Curtin and Seventh Streets, Harrisburg, Pa.; and Vermont Baking Co., a Vermont corporation having its principal place of business at White River Junction, Vt.

The officers of respondent Quality Bakers of America (hereinafter referred to as the Association) are respondent C. F. Stroehmann, located at Curtin and Seventh Streets, Harrisburg, Pa., president; respondent J. P. Duchaine, located at 229 Coffin Avenue, New Bed-

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ford, Mass., vice president; respondent Grover C. Patton, located at 434 North Morgan Street, Decatur, Ill., treasurer; and respondent W. S. Allison, located at 120 West Forty-second Street, New York, N. Y., secretary. The executive committee of the Association is composed of the above officers and of respondents E. J. Derst, located at 408 East Oglethorp Avenue, Savannah, Ga.; W. M. Clemens, located at 19 South Main Street, Dubuque, Iowa; Onil O. Cote, located at 87 Elm Street, Manchester, New Hampshire; S. S. Waters, located at 6018 Houston Street, East Liberty, Pittsburgh, Pa.; Herbert J. Laub, located at 4909 Lorain Avenue, Cleveland, Ohio; James H. Swan, located at 1801 East Magnolia Avenue, Knoxville, Tenn.; George C. West, located at White River Junction, Vt.; and James B. Dwyer, located at 1902 Cranberry Street, Erie, Pa.

The members of the Association, engaged respectively in the wholesale bakery business, are, among themselves, mutually noncompetitive. Membership in the Association is obtained solely through invitation and election.

The objects of the Association as set forth in its constitution are the following:

(a) To increase the efficiency of each member in every department of his business.

(b) To enable each member to make better bakery products and to market them more efficiently.

(c) To assist each member to gain the recognition of the fact that bakery products of the highest quality are indispensable to the life and health of the community.

(d) To stimulate the desire of each member to be of service to his fellow-members and the public with respect to the foregoing.

PAR. 2. Respondent Quality Bakers of America, Inc. (hereinafter referred to as the Service Co.), is a Delaware corporation having its principal place of business at 120 West Forty-second Street, New York City. The officers of this respondent are the same respondents who are the officers of the Association, as described in paragraph 1 above. The board of directors of this respondent is made up of the said officers and respondents Herbert J. Laub, and James B. Dwyer, described in said paragraph 1.

Respondent Quality Bakers of America, Inc. is engaged in the business of purchasing commodities, as a purchasing agent, for the members of the Association, who are likewise holders of the stock of the Service Co., as hereinafter stated. It is the operative agency and acts on behalf of the Association and its members. As such, said respondent corporation, in addition to its purchasing operations, conducts numerous activities for the members of the Association, in-

cluding services as to purchasing, production, engineering, accounting, sales promotion, advertising, planning, publications, and management assistance. The stock of the Service Co. is held exclusively by members of the Association, as hereinafter stated.

PAR. 3. All the outstanding stock of respondent Quality Bakers of America, Inc. (the Service Co.) is owned by the members of the Quality Bakers of America (the Association). By a resolution of the Service Co. dated April 5, 1937, the minimum amount of stock for each stockholder was set at $7\frac{1}{2}$ shares and the maximum at 15 shares, of a subscription value of \$100 per share. The stockholders of Quality Bakers of America, Inc., as of November 6, 1937, and the number of shares owned by each, were as follows:

| Name | Address | No. shares |
|----------------------------------|---------------------------|-----------------|
| Aikman Port Huron Bread Co..... | Port Huron, Mich..... | 15 |
| Anchor Baking Co..... | Sacramento, Calif..... | 10 |
| The Baker Bread Co..... | Zanesville, Ohio..... | 10 |
| The Frank Baker Bread Co..... | Lima, Ohio..... | 10 |
| Berdan Bread Co..... | Bay City, Mich..... | 10 |
| A. Bowman & Son..... | Roanoke, Va..... | 7 $\frac{1}{2}$ |
| L. Bromm Baking Co., Inc..... | Richmond, Va..... | 10 |
| Cole Baking Co..... | Bluefield, W. Va..... | 15 |
| Cota Brothers, Inc..... | Manchester, N. H..... | 15 |
| Davidson Baking Co..... | Portland, Ore..... | 10 |
| Ed. DeLorge Baking Co., Inc..... | Biddeford, Maine..... | 15 |
| Derst Baking Co..... | Savannah, Ga..... | 15 |
| Dreikorn's Bakery, Inc..... | Holyoke, Mass..... | 15 |
| Eastern Shore Baking Co..... | Salisbury, Md..... | 15 |
| M. Erickson Bakery Co..... | La Crosse, Wis..... | 5 |
| Erwin Erickson..... | La Crosse, Wis..... | 10 |
| Firch Baking Co., Inc..... | Erie, Pa..... | 15 |
| Geneva Baking Co..... | Geneva, N. Y..... | 15 |
| Gorman's Bakery, Inc..... | Central Falls, R. I..... | 15 |
| Graven-Inglis Baking Co..... | Stockton, Calif..... | 5 |
| Hecht's Bakery..... | Bristol, Tenn..... | 10 |
| Herman Hecht..... | Bristol, Tenn..... | 5 |
| Keller Baking Co., Inc..... | Troy, N. Y..... | 15 |
| The Jacob Laub Baking Co..... | Cleveland, Ohio..... | 15 |
| George E. LeStourgeon..... | Bridgeton, N. J..... | 15 |
| Liberty Baking Co..... | Pittsburgh, Pa..... | 15 |
| Maier's Bakery..... | Reading, Pa..... | 15 |
| Müller-Patton Baking Co..... | Rockford, Ill..... | 15 |
| My Bread Baking Co..... | New Bedford, Mass..... | 15 |
| Nolte Baking Co..... | Wheeling, W. Va..... | 7 $\frac{1}{2}$ |
| Polk County Baking Co..... | Lakeland, Fla..... | 7 $\frac{1}{2}$ |
| Purity Baking Co..... | Decatur, Ill..... | 15 |
| Remar Baking Co..... | Oakland, Calif..... | 10 |
| The Reymond Baking Co..... | Waterbury, Conn..... | 15 |
| Sanitary Baking Co..... | Clarksburg, W. Va..... | 15 |
| Saylor's Bakery, Inc..... | Tamaqua, Pa..... | 15 |
| Schaefer's, Inc..... | Springfield, Ohio..... | 15 |
| Sta-Kleen Baking, Inc..... | Lynchburg, Va..... | 15 |
| Staudt's Bakery, Inc..... | Raleigh, N. C..... | 5 |
| Frederick W. Staudt..... | Raleigh, N. C..... | 2 $\frac{1}{2}$ |
| Storck Baking Company..... | Parkersburg, W. Va..... | 15 |
| Stroehmann Brothers Co..... | Altoona, Pa..... | 7 $\frac{1}{2}$ |
| Stroehmann Brothers Co..... | Harrisburg, Pa..... | 15 |
| Stroehmann Brothers Co..... | Norristown, Pa..... | 15 |
| Stroehmann Brothers Co..... | Olean, N. Y..... | 7 $\frac{1}{2}$ |
| Stroehmann Brothers Co..... | Williamsport, Pa..... | 15 |
| Sutorius Bread Co..... | Newton, Kans..... | 15 |
| Swan Brothers, Inc..... | Knoxville, Tenn..... | 15 |
| Swander Baking Co..... | Rapid City, S. Dak..... | 5 |
| Sweeney's Bakery..... | Canton, Ohio..... | 10 |
| Trausch Baking Co..... | Dubuque, Iowa..... | 15 |
| The Uffelmann Baking Co..... | Cincinnati, Ohio..... | 7 $\frac{1}{2}$ |
| Vermont Baking Co..... | White River Jct., Vt..... | 15 |
| Waldensian Baking Co..... | Valdese, N. C..... | 15 |
| Winter's Bakery..... | San Diego, Calif..... | 10 |
| Wm. Wolf Bakery, Inc..... | Baton Rouge, La..... | 15 |
| Wool-Scott Bakery, Inc..... | Ithaca, N. Y..... | 5 |

PAR. 4. Respondents Washburn Crosby Co., Inc., and Red Star Milling Co. were legally dissolved June 1, 1937, prior to the issuance and service of the complaint herein.

Respondent Pillsbury Flour Mills Co. is a Delaware corporation with its general office located in Minneapolis, Minn. Respondent Consolidated Flour Mills Co. is a corporation with its office and principal place of business in the city of Wichita, State of Kansas. Respondent The Kansas Milling Co. is a corporation with its principal office and place of business located in the city of Wichita, State of Kansas.

All these respondents are engaged in the manufacture and sale of flour. Subsequent to June 19, 1936, these seller respondents paid, transmitted and granted to the said Service Co. and indirectly to the respondent members through that company, as hereinafter stated, as intermediary acting in fact for the respondent members of said association, commissions and brokerage fees upon purchases of said commodities made by respondent buyers from said respondent sellers through said Service Co.

PAR. 5. Among the services rendered by the Service Co. to its said stockholders is that of the negotiation for the purchase and the purchase and distribution of merchandise and equipment. The lines of merchandise so purchased include flour and many other food materials, required by said stockholders in the production of their products, and a great variety of supplies and equipment, including machinery, used for the manufacture, packaging, storage, and distribution of wholesale bakery products. Some of the said described merchandise is purchased outright by the said Service Co., payment being made by it to the vendors and said commodities being resold by the Service Co. to its stockholders. In other cases said company does not pay the purchase price nor take title to the merchandise, but purchases same on the order of and on behalf of its stockholders on a brokerage basis, brokerage fees being paid by the vendors to the Service Co. In said purchasing operations the Service Co. usually directs the vendor to ship direct to the stockholders as consignees.

Respondent stockholders of respondent Quality Bakers of America, Inc., and the other stockholders, all of whom are named in paragraph 3 hereof, are severally engaged in purchasing commodities from sellers located in States other than State in which such Service Co. and said stockholders individually maintain their respective principal places of business. Said stockholders, or some of them, daily transmit orders for the purchase of merchandise to respondent Service Co. and such orders in nearly every case are transmitted by mail or other means of communication across State lines. In executing said orders and in purchasing the commodities specified therein, respondent Quality

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Bakers of America, Inc., transmits such orders and purchases commodities from one or more of a group of over 200 manufacturers, processors, producers, or distributors, located in many different States, and who in a large majority of cases are located in a State other than the State of New York, where the Service Co. has its principal office and place of business. As a result of such purchase and sale transactions, respondent Quality Bakers of America, Inc., and each of its said stockholders transport or cause to be transported baker's supplies and commodities from the sellers thereof, located in many different States, to, through and into States other than the State of origin or shipment of such commodities. Said stockholders habitually transmit money or the equivalent thereof in payment of the purchase price for such commodities by United States mail and other means, from their individual places of business, usually across State lines, to the sellers of such merchandise and products, and the Service Co. daily receives brokerage fees on purchases made by its stockholders through it, which are transmitted to it by such sellers located in States other than the State of New York, through the medium of the United States mails and otherwise, most of such remittances crossing State lines between the offices of such sellers and the offices of the Service Co. Such purchases by the Service Co.'s stockholders through the Service Co., and the collection of such brokerage fees by said Service Co., in the manner stated, cannot be accomplished or brought about and is not effectuated except by the use of interstate channels of communication, nor are such commodities so purchased obtained, nor can they be obtained in most cases except by the transportation of the same, at the instance and request of the Service Co. and its stockholders, from one State to, into, or through other States of the United States. In using such methods of ordering, purchasing, and making payment for commodities so purchased and in obtaining and collecting such brokerage fees, respondent Service Co. and its stockholders operate in the channels of interstate commerce and are engaged in such commerce. Respondent Service Co. is an indispensable interrelated instrumentality in the course of such commerce, and its operations cannot be conducted except by means of the use of facilities available in the channels of interstate trade, communication and commerce. Out of the brokerage fees so collected, respondent Service Co. transmits money or its equivalent and services and benefits paid for by such fees from its office in New York to its stockholders in other States. Said Service Co. habitually sends its representatives from New York to its stockholders on their request to provide them with advice, expert knowledge, work, and labor, reports, recommendations, advertising matter and other valuable things, both tangible and intangible. Many of the

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suggestions and recommendations of such representatives and the advertising matter are prepared and reduced to writing in the offices of the Service Co. and transmitted by mail and other means to the stockholders in States other than the State of New York. The operations of respondent Service Co. are centered in its offices in New York, but extend into every State in which one or more of its stockholders and the sellers of commodities with whom it negotiates purchases of commodities are located. The plan of operation of the Service Co. and its stockholders, above described, is an integral whole which cannot be separated into constituent parts without destroying the whole. Said plan of operation contemplates the use of and uses the facilities and instrumentalities of interstate commerce and is effectuated almost entirely through the means and channels of traffic and commerce among and between the several States. Some of said stockholders sell the bakery products which they manufacture in States other than the State in which such products are processed and manufactured, and transport or cause the said products to be transported from their respective places of business to such other States.

PAR. 6. In the course and conduct of its said business, respondent Service Co., since prior to June 19, 1936, has and does receive and accept from the numerous sellers of commodities above referred to, brokerage fees or commissions on purchases made by its stockholders through it, in the manner above stated. During the period from July 1, 1936 to July 1, 1937, the Service Co. executed approximately 13,500 orders for the purchase of commodities on a brokerage fee basis for its stockholders, the purchase price of such commodities being estimated as having aggregated between \$5,500,000 and \$5,900,000 in amount. On such purchases the Service Co. received brokerage fees from the sellers of such commodities totaling \$163,933.84 in amount. Since July 1, 1937 the Service Co. has continued to purchase commodities on a brokerage fee basis for its stockholders in the same manner and using the same methods as those used in its operations before that date.

PAR. 7. Each member of the Association enters into a certain membership and service agreement with the Association and the Service Co., jointly. Among the provisions of such agreement is the following, which has been observed, complied with and effectuated, to wit:

That all brokerage, selling and commissions, selling discounts or other amounts allowed by suppliers of materials, manufactured advertising, machinery and equipment and collected by the QUALITY BAKERS OF AMERICA, INC. shall be applied one-half to the credit of the Member's dues on whose business the brokerage or allowance originated, and the remaining half shall be applied by the Board of Directors in such manner as it shall determine, for service purposes for the benefit of the members of the QUALITY BAKERS OF AMERICA.

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By another of the terms of said membership and service agreement, the members of the Association and the stockholders of the Service Co. agree to pay dues to the Service Co. The amount of said dues for each member-stockholder is determined by the baking capacity of his plant, the minimum being set at the sum of \$25 per week or \$1,300 a year. Such dues are charged on the books of the Service Co. against the individual member-stockholder and are offset by credits for one-half of the brokerage fees collected by the Service Co. on purchases made by such member-stockholder through the Service Co. In 1936, the dues actually charged to stockholders ranged from nothing for suspended members to \$5,920, the latter figure being for a stockholder with five plants. In 1936, of 69 member-stockholders, 36 were credited with more from one-half of the brokerage fees collected by the Service Co. on their purchases than the dues charged against them amounted to. In the cases of all but 10 of said stockholders, the total brokerage fees collected on purchases made by them through the Service Co. exceeded the amount of dues charged against them. During the year 1936 the total amount of brokerage fees collected by the Service Co. amounted to \$181,528.20; of the amount, \$90,760.10 was credited by the Service Co. to the respective accounts of its member-stockholders. Dues charged against all the stockholders during 1936 amounted to \$79,556.

PAR. 8. Each member of the Association (who are likewise stockholders in the Service Co.) has the above described membership agreement and service contract with the Association and Service Co. jointly. Among the provisions in said membership agreement and service contract which are and have been observed and effectuated are the following:

QUALITY BAKERS OF AMERICA, INC. agrees, during the term of this agreement, to furnish the Member, in common with other members, various services or assistance in the management of its bakery, such services to be adjusted to meet the needs of the industry and the members. These services shall be rendered along the following broad lines:

I

EXECUTIVE SERVICE

To advise on bakery management problems.

To issue publications and bulletins to further the interchange of ideas.

To conduct conferences.

To further the development of various departmental activities to the end that all possible efficiencies and economies may be effected for members.

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MANUFACTURING SERVICE

- To render architectural and construction service.
- To advise on equipment.
- To render general operating efficiency service.
- To render production service.
- To advise on ingredients.
- To maintain a bread inspection and scoring service.
- To effect savings through pooled purchases.

III

MERCHANDISING SERVICE

- To render sales promotion service.
- To issue sales bulletins and publications.
- To handle marketing research.
- To prepare an annual advertising campaign on a cost nonprofit basis.
- To handle members' individual advertising requirements.
- To render service on designing packages, trade marks, wrappers, etc.
- To conduct sales and advertising training courses.

IV

ADVISORY SERVICES

To maintain special services in such fields as cost finding, comparisons and analysis; legal problems; trade mark protection; taxes; audits; insurance; general efficiency, etc.

"THE MEMBER AGREES to cooperate in furthering the various policies, plans and activities of the organization, and to carry out the suggestions and recommendations made for the improvement of the Member's business, failure to abide by any of them being sufficient reason for the cancellation of this agreement:—

"That all information, ideas, records, forms, proceedings, or any parts of such, submitted to the Member by the QUALITY BAKERS OF AMERICA, or its operating unit, shall be held and treated as confidential, and used only for the benefit of members in good standing;

"That the Member owns, controls or operates a plant or plants for the manufacture of bakery products in the following named city or cities, a detailed map showing actual trading area covered by all routes to be attached and made a part of this agreement:"

* * * * *

"That inasmuch as this is an organization of non-competitors, if the member shall in any manner become a competitor of any other member in the personal delivery field, the undersigned member consents that automatically he shall be dropped, and that this contract shall terminate, subject however to review by the Executive Committee."

PAR. 9. In the course and conduct of its said business, respondent, Quality Bakers of America, Inc., renders to all stockholders who purchase commodities through it, the services generally described in Paragraph 8 above under the headings "Executive Service," "Manufacturing Service" and "Merchandising Service."

The expense of providing the above services to said buying stockholders is paid from the monies received by the Service Co. from brokerage fees collected and profits on commodities bought and sold by it. Stockholders whose credits for brokerage fees exceed the amounts charged for dues, may and do request the benefit of such services not included in the above services rendered to all stockholders which are denominated special services and generally described under the heading "Advisory Services" in paragraph 8 above. The cost of such special services is charged by the Service Co. against the brokerage credits in excess of dues standing on the books of the Service Co. in favor of the individual buying stockholder receiving such special services.

All said services above described are in fact services rendered to the stockholder by the Service Co., and are designed to be and are services in connection with the purchase of commodities by such stockholders or in connection with the operation of their respective businesses. Such services are not selling services rendered to any seller of commodities, nor services rendered by either the Service Co. or its stockholders in connection with the sale of a commodity by any seller to the Service Co. or its stockholders. There is no evidence in the record that the Service Co. has contracted with any seller to render him any service in connection with the sale of his commodities or to find buyers for him or to promote the sale of his merchandise.

PAR. 10. The Service Co. is a Delaware corporation organized under a general incorporation law governing the organization of corporations for profit. The stockholders elect a board of directors which elects the officers. The board of directors control the direct management, policies and operations of the company, which are similar to those usually followed by corporations operating for profit, except that, exclusive of a nominal stock dividend, one-half of the profits accruing to the Service Co. are distributed to the stockholder on a patronage basis in proportion to the profits realized by the company on brokerage fees or other money received by it on purchasing transactions completed for the individual stockholder.

The stock certificates issued to each stockholder contain the following provisions:

Extract from Article V of By-Laws of Quality Bakers of America, Inc.

SECTION 5. Transfer of Ownership of Stock, No sale, assignment or pledge of the shares of capital stock of this Corporation shall be made by the owner thereof without the written consent of this Corporation; and no stockholder of this Corporation shall have and possess any voting rights on said shares should he for any reason cease to be a member of Quality Bakers of America, an Unincorporated Association; and immediately upon ceasing to be such a member, he shall give and grant unto the Corporation the exclusive right, for a period of six months from the date thereof, to purchase, or nominate a purchaser, for the shares of stock then owned by the stockholder, at the price he shall have paid for the same upon his original subscription therefor; but failure on the part of the Corporation to act within such time, unless extended, shall render this restriction void.

All of the profits of said company inure to the benefit of the stockholders in the form of money and credits and valuable benefits and services.

PAR. 11. In all matters and transactions in which the Service Co. negotiates or deals with sellers in connection with the purchase of commodities by its stockholders, such Service Co. is the agent and representative of such stockholders, acts in fact for them, and in their behalf, and is subject to their direct control.

CONCLUSION

The Commission concludes from the facts:

That respondent, Quality Bakers of America, Inc., and its stockholders are engaged in interstate commerce in all material aspects of the practices involved herein.

That in the course of such commerce, respondent, Quality Bakers of America, Inc. is and has been accepting and receiving brokerage fees from sellers on purchases of commodities made by its stockholders through it, while acting as the agent, representative and intermediary of such stockholders and for them in their behalf and while owned and controlled by such stockholders.

That respondent stockholders and other stockholders of the Service Co. in practice receive such brokerage fees and commissions from respondent Quality Bakers of America, Inc., in money, credits, benefits, and services paid for and furnished from and by means of such brokerage fees.

That said brokerage fees are paid by the sellers of commodities to respondent Service Co., and neither such Service Co. nor any stockholder thereof renders any service, in connection with the sale of commodities, to any seller so paying such fees.

That respondent Quality Bakers of America (The Association) is an organization designed and used to facilitate and further the

objectives, operations, policies and businesses of the Service Co. and its stockholders.

That respondent, Quality Bakers of America, Inc., is not a cooperative association within the meaning of Section 4 of the Robinson-Patman Act.

That the plan of operation and the practices and policies of respondents, Quality Bakers of America, Inc., Quality Bakers of America, and their members and stockholders result in the transmission of brokerage fees and commissions from sellers to buyers on transactions involving the purchase and sale of commodities in the course of interstate commerce.

That said acts, practices, and policies are violative of the provisions, paragraph c of Section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the parties respondent named in the caption hereof, testimony and other evidence, taken before John W. Addison, an examiner for the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed in support of said complaint and in opposition thereto and the oral arguments of Allen C. Phelps, counsel for the Commission and Guy C. Heater and Bradshaw Mintener, counsel for certain of the respondents, and the Commission having made its findings as to the facts and its conclusion that the said parties respondent have violated, and are now violating, 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":

It is ordered, That respondents Quality Bakers of America, an unincorporated association, and Quality Bakers of America, Inc., a corporation, and their respective officers, representatives, agents, and employees, in connection with the purchase of commodities in interstate commerce by any member of said Quality Bakers of America or by any stockholder of said Quality Bakers of America, Inc., do forthwith cease and desist from receiving or accepting any brokerage fees or commissions or any allowances or discounts in lieu thereof,

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and do forthwith cease and desist from granting, paying, transmitting, or delivering any such fees, commissions, allowances, or discounts to said members or stockholders, either directly in the form of money or credits, or indirectly in the form of services, facilities, property, or benefits provided or furnished through or by means of the expenditure or use of any such brokerage fees, commissions, allowances, or discounts.

It is further ordered, That respondents Fircb Baking Co., Inc., Dreikorn Bakery, Inc., The Jacob Laub Baking Co., Liberty Baking Co., Stroehmann Brothers Company and Vermont Baking Co., and their officers, representatives, agents and employees, in connection with the purchase of commodities by said respondents in interstate commerce, do forthwith cease and desist from receiving or accepting from the sellers of such commodities, directly or indirectly, any brokerage fees or commissions or any allowances or discounts in lieu thereof, and from receiving or accepting from respondents Quality Bakers of America or Quality Bakers of America, Inc., any brokerage fees or commissions or any allowances or discounts in lieu thereof, received or accepted by said last-named respondents from such sellers, either in the form of money or credits or in the form of services, facilities, property or benefits provided or furnished by said Quality Bakers of America or Quality Bakers of America, Inc., through or by means of the expenditure or use of any such brokerage fees, commissions, allowances, or discounts.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents Washburn Crosby Co., Inc. and Red Star Milling Co. for the reason that prior to the issuance and service of the complaint herein these respondents were legally dissolved.

It is further ordered, That respondents Pillsbury Flour Mills Co., Consolidated Flour Mills Co. and Kansas Milling Co. and their officers, representatives, agents, and employees, in connection with the sales of commodities in interstate commerce to the stockholders of Quality Bakers of America, Inc., do forthwith cease and desist from paying or granting directly or indirectly, to said Quality Bakers of America, Inc., or to any such stockholder anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof.

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

IN THE MATTER OF
CENTURY METALCRAFT CORPORATION

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

Docket 3601. Complaint, Sept. 22, 1938—Decision, Apr. 29, 1939

Where a corporation engaged in sale and distribution of kitchen utensils under trade name "Silver Seal," and in advertising and selling its said kitchen ware and utensils principally through its agents, representatives or employees who, through personal contacts, advertised, and by personal solicitation, sold, said products through, chiefly, giving manual demonstrations, at its direction, of uses for which it represented its said products to have been made, and making such demonstrations generally before groups of prospective purchasers and accompanying the same by various statements and representations as to character, nature and quality of its said products and their effectiveness for purpose for which sold—

- (a) Represented and implied, as above set forth, that it manufactured the utensils offered and sold by it, and that they contained an appreciable amount of silver and no aluminum, or so little as not to be noticeable, and that the method of cooking made possible by such utensils was new and revolutionary, and that they were more durable and more easy to clean than were the aluminum or granite utensils of competitors, and that they would not pit;

Facts being it did not make such products, they contained no appreciable amount of silver but, on contrary, contained aluminum as their chief constituent metal, method of cooking made possible through use thereof was neither new nor revolutionary, but had been long in use, they were not any more durable or more easily cleaned than the aluminum or granite products made by competitors and would pit as readily as would such competitive products; and

- (b) Represented that competing granite and aluminum utensils were dangerous to the health of consumers of food cooked therein, and represented and implied that certain named competitors were in a precarious financial condition, and that the kitchen utensils sold and distributed by such competitors were inferior in quality to those offered and sold by it; and
- (c) Represented that use of food cooked in its utensils would insure improved health and that certain doctors and hospitals had indorsed and recommended its said products, and that they were used generally by the United States Army during the World War;

Facts being use of aluminum or granite utensils of competitors in no wise affects purity or quality of food cooked therein, use of its said utensils would not insure improved health or have any effect on persons consuming such food prepared therein different from or more beneficial than that occasioned by use of food prepared in aluminum, granite, or other types of utensils made by competitors, and no doctors, officials, or employees of hospitals in capacity of dietary experts had recommended its said utensils, which were not used generally by the Army during the World War, and representations and implications with respect to competitors' precarious

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financial position were without foundation and unfairly defamed and disparaged them, products of which, similarly unfairly defamed and disparaged by it, were not inferior to its own;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that said statements, representations and implications were true, and of causing substantial portion of purchasing public, because of such belief, to buy its said utensils, and with result, as direct consequence thereof, of diverting unfairly trade to it from its competitors engaged in sale and distribution of kitchen ware and utensils in commerce among the various States and in the District of Columbia, and many of whom do not in any manner misrepresent their products or defame and disparage their competitors or competitors' products:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Mr. Edward H. McDermott, Mr. William M. Emery, Mr. Daniel R. LaBar, Mr. R. S. Oldberg, and Mr. John W. Cavanaugh, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Century Metalcraft Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of the 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 against said respondent, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Century Metalcraft Corporation, is a corporation existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 1105 Lawrence Avenue, in the city of Chicago, in the State of Illinois. Respondent is now and since 1933 has been engaged in the sale and distribution of kitchen utensils under the trade name "Silver Seal." Respondent causes and has caused its said products when sold to be transported from its place of business in the State of Illinois to the purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia. Respondent has at all times mentioned herein maintained and now maintains a constant current of trade in commerce in such ware and utensils into and through 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 in competition with other corporations and with individuals, firms, and copartnerships likewise engaged in the sale and distribution of kitchen ware and utensils in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The advertising and selling of respondent's said kitchen ware and utensils are conducted principally through the medium of agents, representatives or employees who through personal contacts advertise and by personal solicitation sell said products.

The method chiefly employed by said agents, representatives or employees of respondent at respondent's direction is the giving of manual demonstrations of the uses for which respondent represents its said products to have been manufactured. These demonstrations are given generally before groups of prospective purchasers and are accompanied by various statements and representations as to the character, nature, and quality of respondent's said product and their effectiveness in use as hereinafter set forth.

PAR. 4. Among and typical of the statements and representations so made and used by the agents, representatives and employees of the respondent at its direction and instigation in connection with the offering for sale, sale and distribution of said products in commerce as hereinabove alleged are those to the effect that said utensils, offered for sale and sold under the trade name "Silver Seal," contain no aluminum or such a small amount of aluminum that the presence of such metal is not noticeable; that the method of cooking made possible by said utensils is new and revolutionary; that said utensils are more durable and more easily cleaned than are aluminum or granite utensils manufactured by competitors; that said utensils will not pit; that competing granite and aluminum utensils are dangerous to the health of consumers of food cooked therein; that the use of food cooked in respondent's said utensils will insure improved health; that certain doctors and hospitals have endorsed and recommended respondent's said utensils, and that said utensils were used generally by the United States Army during the World War.

By the means and in the manner aforesaid respondent further represents and implies that it manufactures the utensils offered for sale and sold by it and that said utensils contain an appreciable amount of silver. Respondent represents and implies that certain named competitors are in a precarious financial condition, and represents that the kitchen utensils sold and distributed by such competitors are inferior in quality to the utensils offered for sale and sold by respondent.

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PAR. 5. The above and foregoing representations so made and used by the respondent in connection with the offering for sale and sale of its said products are grossly exaggerated, false, and misleading. In truth and in fact respondent's said utensils do contain aluminum, aluminum being the chief constituent metal used in the construction of said utensils; the method of cooking "made possible" through the use of said utensils is not new or revolutionary and has long been in vogue; said utensils are not any more durable or more easily cleaned than are aluminum or granite utensils manufactured by competitors of the respondent; and said utensils will "pit" as readily as will utensils manufactured by respondent's competitors. In truth and in fact, food cooked in granite or aluminum utensils manufactured by competitors of the respondent is not dangerous, injurious, or deleterious to the health of the consumers of such food; and the use of aluminum or granite utensils manufactured by competitors of the respondent in no wise affects the purity or quality of food cooked in said utensils. The use of respondent's said utensils in preparing foods will in no wise insure improved health for the consumers of such foods; and the use of foods cooked in respondent's said utensils will not have any effect on the persons consuming food so cooked different from or more beneficial than the effect occasioned by the use of food cooked in aluminum, granite, or other types of utensils manufactured by competitors of the respondent. No doctors or officials or employees of hospitals, in the capacity of dietary experts, have endorsed or recommended respondent's said utensils, and said utensils were not used generally by the United States Army during the World War. The utensils offered for sale and sold by the respondent are not manufactured by the respondent and said utensils do not contain an appreciable amount of silver metal.

Respondent's representations and implications to the effect that certain named competitors are in a precarious financial position, are without foundation and unfairly defame and disparage such competitors. In truth and in fact, the competitors mentioned are not in a precarious financial position or in such a condition as to justify or warrant such representations and implications by the respondent. The products offered for sale and sold by such competitors are not inferior in quality to the products offered for sale and sold by the respondent.

Through the use of the false representations concerning the deleterious effect of the use of food cooked in aluminum and granite utensils and the false representations and implications as to the financial condition of certain named competitors and the false repre-

sentation as to the superior quality of respondent's said utensils, respondent falsely and unfairly defames and disparages its competitors and their products.

The acts and practices of the respondent in using and making the false and deceptive statements, representations, and implications regarding its products and its competitors and their products, as hereinabove alleged, have a tendency and a capacity to, and do, mislead and deceive a substantial number of the members of the purchasing public into the erroneous and mistaken belief that said statements, representations, and implications are true, and cause a substantial portion of the purchasing public, because of said mistaken and erroneous belief, to purchase respondent's said utensils, thereby unfairly diverting trade in said commerce from its competitors to the respondent as described in paragraph 3 hereof, many of whom do not in any manner misrepresent their said products or defame and disparage their competitors or competitors' products. As a consequence, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 22d day of September, A. D., 1938, issued, and on the 23d day of September, A. D., 1938, served, its complaint in this proceeding upon respondent, Century Metalcraft Corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and

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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, Century Metalcraft Corporation, is a corporation existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 1105 Lawrence Avenue, in the city of Chicago, in the State of Illinois. Respondent is now and since 1933 has been engaged in the sale and distribution of kitchen utensils under the trade name "Silver Seal." Respondent causes and has caused its said products when sold to be transported from its place of business in the State of Illinois to the purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia. Respondent has at all times mentioned herein maintained and now maintains a constant current of trade in commerce in such ware and utensils into and through 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 in competition with other corporations and with individuals, firms, and copartnerships likewise engaged in the sale and distribution of kitchen ware and utensils in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The advertising and selling of respondent's said kitchen ware and utensils are conducted principally through the medium of agents, representatives, or employees who through personal contacts advertise and by personal solicitation sell said products.

The method chiefly employed by said agents, representatives, or employees of respondent at respondent's direction is the giving of manual demonstrations of the uses for which respondent represents its said products to have been manufactured. These demonstrations are given generally before groups of prospective purchasers and are accompanied by various statements and representations as to the character, nature, and quality of respondent's said products and their effectiveness in use for the purpose for which they are sold.

PAR. 4. Among and typical of the statements and representations so made and used by the agents, representatives, and employees of the respondent, at its direction and instigation, in connection with the offering for sale, sale and distribution of said products in commerce as herein stated, are those to the effect that said utensils, offered for sale and sold under the trade name "Silver Seal," contain no

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aluminum, or such a small amount of aluminum that the presence of such metal is not noticeable; that the method of cooking made possible by said utensils is new and revolutionary; that said utensils are more durable and more easily cleaned than are aluminum or granite utensils manufactured by competitors; that said utensils will not pit; that competing granite and aluminum utensils are dangerous to the health of consumers of food cooked therein; that the use of food cooked in respondent's said utensils will insure improved health; that certain doctors and hospitals have endorsed and recommended respondent's said utensils, and that said utensils were used generally by the United States Army during the World War.

By the means and in the manner aforesaid respondent represents and implies that it manufactures the utensils offered for sale and sold by it and that said utensils contain an appreciable amount of silver. Respondent represents and implies that certain named competitors are in a precarious financial condition, and represents that the kitchen utensils sold and distributed by such competitors are inferior in quality to the utensils offered for sale and sold by respondent.

PAR. 5. The above and foregoing representations so made and used by the respondent in connection with the offering for sale and sale of its said products are grossly exaggerated, false, and misleading. In truth and in fact respondent's said utensils do contain aluminum, aluminum being the chief constituent metal used in the construction of said utensils; the method of cooking "made possible" through the use of said utensils is not new or revolutionary and has long been in use; said utensils are not any more durable or more easily cleaned than are aluminum or granite utensils manufactured by competitors of the respondent; and said utensils will "pit" as readily as will utensils manufactured by respondent's competitors. In truth and in fact, food cooked in granite or aluminum utensils manufactured by competitors of the respondent is not dangerous, injurious, or deleterious to the health of the consumers of such food; and the use of aluminum or granite utensils manufactured by competitors of the respondent in no wise affects the purity or quality of food cooked in said utensils. The use of respondent's said utensils in preparing foods will in no wise insure improved health for the consumers of such foods; and the use of foods cooked in respondent's said utensils will not have any effect on the persons consuming food so cooked different from or more beneficial than the effect occasioned by the use of food cooked in aluminum, granite, or other types of utensils manufactured by competitors of the respondent. No doctors or

officials or employees of hospitals, in the capacity of dietary experts, have endorsed or recommended respondent's said utensils, and said utensils were not used generally by the United States Army during the World War. The utensils offered for sale and sold by the respondent are not manufactured by the respondent and said utensils do not contain an appreciable amount of silver metal.

Respondent's representations and implications to the effect that certain named competitors are in a precarious financial position, are without foundation and unfairly defame and disparage such competitors. In truth and in fact, the competitors mentioned are not in a precarious financial position or in such a condition as to justify or warrant such representations and implications by the respondent. The products offered for sale and sold by such competitors are not inferior in quality to the products offered for sale and sold by the respondent.

PAR. 6. Through the use of the false representations concerning the deleterious effect of the use of food cooked in aluminum and granite utensils and the false representations and implications as to the financial condition of certain named competitors and the false representation as to the superior quality of respondent's said utensils, respondent falsely and unfairly defames and disparages its competitors and their products.

PAR. 7. The acts and practices of the respondent in using and making the false and deceptive statements, representations, and implications regarding its products and its competitors and their products, as hereinabove found, have a tendency and a capacity to, and do, mislead and deceive a substantial number of the members of the purchasing public into the erroneous and mistaken belief that said statements, representations, and implications are true, and cause a substantial portion of the purchasing public, because of said and mistaken and erroneous belief, to purchase respondent's said utensils. As a direct result thereof trade in commerce, as commerce is defined in the Federal Trade Commission Act, has been diverted unfairly to the respondent from its competitors, described in paragraph 2 hereof, many of whom do not in any manner misrepresent their said products or defame and disparage their competitors or competitors' products.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and respondent's competitors and constitute unfair methods of competition in

commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Century Metalcraft Corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of kitchen utensils in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that doctors or hospitals have endorsed and recommended respondent's utensils unless and until such recommendation and endorsement has been made by doctors who are dietary experts or by hospitals acting by and through their dietary experts.

2. Representing that respondent manufactures said utensils unless and until it owns and operates or directly and absolutely controls the factory or factories wherein the same are manufactured by it.

3. Circulating or publishing unfair or disparaging statements concerning the business status or the quality of the products of the competitors of the respondent.

4. Representing that food cooked in granite or aluminum utensils is dangerous to the health of the consumers of such food.

5. Representing through the use of the term "Silver Seal," or any other term or terms of similar import or meaning, as the trade name for said utensils, or in any other manner, that the usefulness, durability or value of such utensils is enhanced or affected by reason of silver metal contained in such utensils.

6. Representing that the utensils now designated as "Silver Seal" contain no aluminum or are not aluminum.

7. Representing that the utensils now designated as "Silver Seal" are more durable or more easily cleaned than are aluminum or granite utensils; that said utensils will not pit; that the method of cooking made possible by said utensils is new or revolutionary; that the use

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of food cooked in said utensils will insure improved health; or that said utensils were used generally by the United States Army during the World War.

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

FEE & STEMWEDEL, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3202. Complaint, Aug. 11, 1937—Decision, May 2, 1939*

Where a corporation engaged in manufacturing, assembling, and selling and distributing thermometers, hygrometers, barometers, and other weather-indicating instruments, and combinations thereof, including certain barometer models and combination model of thermometer, hygrometer, and barometer, which models it assembled through adding to barometer movements, imported from foreign country and marked "Made in Germany," dial and indicator and placing in case such movements and thereby concealing aforesaid words—

Set forth on the dial of cases enclosing, as aforesaid, said barometers, words "Made in U. S. A. by," followed by corporate name and address, and caused to be riveted on combination instrument words "Airguide Trio, Made in U. S. A. by," followed, as aforesaid, by its corporate name and address, and sold, thus assembled and marked, said instruments to jobbers and dealers, by whom they were in turn resold to public;

With capacity and tendency to deceive purchasers thereof into false and erroneous belief that barometers in question were made in the United States and by it, and with effect of misleading and deceiving members of purchasing public into such erroneous and mistaken belief and into buying its said barometers and "Airguide Trio" by reason thereof, and of thereby diverting unfairly trade in commerce to it from its competitors who truthfully advertise and represent place of manufacture and manufacturer 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. Arthur F. Thomas* and *Mr. John W. Addison*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Wham & O'Brien, 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 Fee & Stemwedel, 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 Commis-

sion that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Fee & Stemwedel, Inc., is a corporation having its principal office and place of business located at 4949 Pulaski Road, in the city of Chicago, in the State of Illinois. Respondent, for more than 2 years last past has been and still is engaged in assembling weather-indicating instruments known as thermometers, hygrometers, and barometers, and in the sale and distribution thereof in commerce between the State of Illinois and the several States of the United States and in the District of Columbia. When said weather-indicating instruments are sold, respondent transports same, or causes the same to be transported, from its place of business in the State of Illinois to the purchasers thereof, located in States of the United States other than the State of Illinois, and in the District of Columbia. There has been for more than 2 years last past, and still is, a constant current of trade and commerce in said weather-indicating instruments so assembled, sold, and distributed 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 2 years last past has been, in substantial competition with other corporations, and with firms, partnerships and individuals engaged in the manufacture, sale and distribution of, or in the assembling and distributing of like and similar weather-indicating instruments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent assembles various models of said weather-indicating instruments, some being a combination of thermometer, hygrometer, and barometer, others being merely barometers. Respondent adds to the complete barometer mechanism a dial and indicator, and places the same in a case, usually made of bakelite. Upon said cases, in which have been placed said barometers provided with the dial, either as a completed instrument or in combination with thermometer and hygrometer, respondent has caused and now causes to be affixed a name plate bearing the words "Made in U. S. A. by Fee & Stemwedel, Inc. Chi." When so assembled, respondent sells and has sold said weather-indicating instruments, upon which appear the phrase "Made in U. S. A.," in commerce, as herein described, to jobbers and directly to persons by whom said instruments are to be used.

PAR. 3. There are among the public many who purchase and use thermometers, hygrometers, barometers, and other weather-indicating

instruments manufactured by manufacturers in the United States of America, in preference to similar weather-indicating instruments manufactured in or imported from foreign lands, believing that weather-indicating instruments manufactured in the United States of America by such manufacturers are superior in quality to those manufactured in and imported from any other country.

PAR. 4. The use by the respondent of the statements and representations set forth in paragraph 2 hereof have the capacity and tendency to deceive purchasers and prospective purchasers of respondent's said weather-indicating instruments into the false and erroneous belief that the barometers and other instruments are made in the United States of America and are manufactured by respondent. In truth and in fact, the barometers and other instruments have not been, and are not now made in the United States of America by respondent or any other American manufacturer, but were made, and are now made in and imported from a country other than the United States of America. Respondent is not the manufacturer of said barometers and other instruments herein referred to.

PAR. 5. There are among the competitors of respondent referred to in paragraph 1 hereof, many manufacturers, assemblers, sellers, and distributors of weather-indicating instruments who truthfully advertise and represent the manufacture and country of origin of their thermometers, hygrometers, and barometers, and who do not advertise and represent that said articles are, or have been, manufactured in the United States of America by them when such is not the case.

PAR. 6. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous belief described in paragraph 4, and into the purchase of respondent's said weather-indicating instruments in and on account of such belief. Thereby trade is unfairly diverted to respondent from those competitors in commerce described and referred to in paragraph 5. As a consequence thereof, substantial injury has been, and is done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the Federal Trade Commission Act, the Federal Trade Commission, on the 11th day of August 1937, issued and thereafter served its complaint in this proceeding upon the respondent, Fee & Stemwedel, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act, and the respondent filed its answer thereto. Thereafter, to wit, on February 23, 1938, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, and Joseph C. Fehr, attorneys for the Commission, before Arthur F. Thomas and John W. Addison, examiners of this Commission duly appointed for that purpose, and in opposition to the allegations of said complaint by Frank T. O'Brien, attorney for the respondent, 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 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, Fee & Stemwedel, Inc., is a corporation, organized in 1930 and existing under and by virtue of the laws of the State of Illinois. Respondent's office and principal place of business is located in Chicago, Ill. Said respondent is now, and at all times since its organization has been, engaged in the business of manufacturing and of assembling and in the sale and distribution of thermometers, hygrometers, barometers, and other weather-indicating instruments and combinations thereof. Respondent now causes, and at all times since its organization has caused, its said weather-indicating products and devices when sold, to be transported from its principal place of business in Chicago, State of Illinois, to purchasers thereof, some located in the State of Illinois, and others located in the various States of the United States, in the District of Columbia and to some foreign countries. There has been for many years last past, and still is, a constant current of trade and commerce in said weather-indicating instruments so manufactured, sold, and distributed by respondent between and among the various States of the United

States and in the District of Columbia. Respondent is now, and at all times since the date of its organization has been, in substantial competition with other corporations, persons, firms, and partnerships, likewise engaged in the manufacture and sale of thermometers, hygrometers, barometers, and combinations thereof and other weather-indicating devices, similar to those of 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 business, as herein described, the respondent, among the 14 weather-indicating instruments produced by it, has assembled 4 models of barometers, and 1 model of a combination of thermometer, hygrometer, and barometer. Respondent adds to the complete barometer mechanism a dial and indicator and places the same in a case, usually made of bakelite. In case of 3 of the barometer models, respondent has caused to be marked on the dial of the case in which have been placed said barometers the words: "Made in U. S. A. by Fee & Stemwedel, Inc., Chicago." On the combination instrument, respondent has caused a name plate to be riveted upon the instrument which reads: "Airguide Trio, Made in U. S. A. by Fee & Stemwedel, Inc., Chicago." When so assembled, respondent has sold said barometers and weather-indicating instruments, upon which appear the phrase, "Made in U. S. A." in commerce, as herein defined, to jobbers and dealers who in turn resell them to the public.

PAR. 3. There are among the public many who purchase and use weather-indicating instruments manufactured by manufacturers in the United States of America in preference to similar weather-indicating instruments manufactured in or imported from foreign countries, and there is a substantial part of the purchasing public of this country which has a preference for merchandise manufactured in this country especially when compared to goods manufactured in and imported from certain other countries into this country.

PAR. 4. The barometer movements used in respondent's instruments, as herein described, are imported from a foreign country and are marked "Made in Germany"; however, when assembled and encased in respondent's finished unit, this phrase is no longer visible. These marks made upon the instruments by respondent, to wit: "Made in U. S. A." have a capacity and tendency to deceive purchasers of respondent's weather-indicating instruments, as herein described, into the false and erroneous belief that the barometers are made in the United States of America, and are manufactured by the respondent, whereas the fact is that the barometers are not made

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in the United States of America and the respondent is not the manufacturer of said barometer movements.

PAR. 5. The aforesaid acts and practices of the respondent have the capacity and tendency to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such instruments were made by the respondent in the United States, and into the purchase of respondent's barometers and "Airguide Trio" because of such erroneous and mistaken belief. As a result thereof, trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who truthfully advertise and represent the place of manufacture and the manufacturer of their respective products. In consequence thereof, substantial injury is now 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, Fee & Stemwedel, Inc., as herein found, 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST¹

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

¹ Said order was modified, as follows, by Commission order dated July 6, 1939:

It is ordered, That the respondent, Fee & Stemwedel, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of barometers having movements or mechanisms of foreign origin, or manufacture whether sold as single instruments or as part of combination instruments, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, by use of the term "Made in U. S. A.," or any other term indicative of American manufacture, that such barometers are wholly of American manufacture.

2. Causing the brands or marks on imported barometer movements or other parts, or on other similar products, which indicate the foreign origin or manufacture thereof to be removed, erased or concealed so as to mislead or deceive ultimate purchasers with reference to the foreign origin or manufacture thereof, unless the removal or erasure or concealment of said brands or marks is necessary to the further manufacture or processing of said products.

3. Representing, by the use of the term "Made by," or any other term of similar import or meaning, or in any other manner, that it is the manufacturer of said barometers, or is other than the assembler thereof, until and unless it actually manufactures such barometers and the movements or mechanisms 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.

testimony and other evidence taken before Arthur F. Thomas and John W. Addison, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Joseph C. Fehr, counsel for the Commission, and by Frank T. O'Brien, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Fee & Stemwedel, Inc., its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of barometers, combination thermometers, hygrometers, and barometers, and other weather indicating instruments in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, by the use of the term "Made in U. S. A." or any other terms of similar import or meaning or in any other manner, that the said barometers, combination thermometers, hygrometers, and barometers or other weather indicating instruments are wholly of American manufacture, when such products, or the movements thereof, or a substantial portion of the parts thereof, are of foreign manufacture.

2. Causing the brands or marks on imported barometer movements or other parts, or on other similar products, which indicate the foreign origin or manufacture thereof to be removed, erased or concealed so as to mislead or deceive ultimate purchasers with reference to the foreign origin or manufacture thereof, unless the removal or erasure or concealment of said brands or marks is necessary to the further manufacture or processing of said products.

3. Representing that respondent manufactures barometers unless and until it owns and operates or directly and absolutely controls the plant or factory wherein said products are 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

NEW YORK PATTERN COMPANY, INC., FASHION
INSTITUTE, INC., AND JOHN HOWIE WRIGHT

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

Docket 3119. Complaint, Apr. 28, 1937—Decision, May 3, 1939

Where a corporation and an individual, who dominated and controlled the activities thereof, engaged in manufacture and sale of dress patterns under registered trade-mark "Hollywood"—

- (a) Distributed to trade throughout United States, counter display catalogs of its said "Hollywood" patterns, front cover page of which simulated, with respect both to color, varying from month to month, and design depicted thereon, consisting of five-pointed silver star superimposed on basic coloring, similar catalogs of Hollywood Pattern Company, through which, as its wholly owned subsidiary, publisher of style magazine "Vogue" had for a number of years sold, under its registered trade-mark "Hollywood," its cheaper patterns, samples of which had been distributed to chain and department stores throughout the United States and which, by end of February 1933, were on sale in practically every State of the United States; and
- (b) Informed retail dealers in paper dress patterns throughout the United States, through its agents, that patterns shown in its catalogs were the only "Hollywood" patterns on the market, and in some instances made representation that said corporation had purchased the business of said Hollywood Pattern Co. to said retail dealers, by whom aforesaid representations were communicated to the purchasing public;

With result that members of consuming public purchased "Hollywood" patterns of said representing corporation as and for the patterns of said Hollywood Pattern Co., and trade was thus diverted from latter to it:

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

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

Mr. Reuben J. Martin for the Commission.

Mr. Samuel Randel, 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 New York Pattern Co., Inc., Fashion Institute, Inc., corporations, and John Howie Wright, an individual, have been, and are, using unfair methods of competition in commerce, as "commerce" is defined in

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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 New York Pattern Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 119 West Nineteenth Street, in the city of New York, within the State of New York, and with its factory located in the city of South Bend, within the State of Indiana. Said respondent is now, and for more than 3 years last past has been, engaged in the manufacture and sale of paper dress patterns. Said respondent causes said paper dress patterns, when sold by it, to be transported from Indiana, the State of manufacture, to the purchasers thereof located in the State of Indiana and in various other States of the United States and in the District of Columbia. There is now, and for more than 3 years last past has been, a constant current of trade and commerce by said respondent in said paper dress patterns between and among the various States of the United States and in the District of Columbia.

PAR. 2. Said respondent Fashion Institute, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 119 West Nineteenth Street, in the city of New York, within the State of New York. Said respondent, Fashion Institute, Inc., is now, and for more than 3 years last past has been, engaged in the manufacture and sale of paper dress patterns, the publication of fashion magazines, and the dissemination of fashion news and information to dry goods retailers. Said respondent Fashion Institute, Inc., causes said paper dress patterns, magazines, fashion news and information, when sold by it, to be transported from the State of manufacture to the purchasers thereof located in the State of New York and in various other States of the United States and in the District of Columbia. There is now, and for more than 3 years last past has been, a constant current of trade and commerce by said respondent, Fashion Institute, Inc., in said paper dress patterns, fashion magazines, fashion news and fashion information between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said respondents New York Pattern Co., Inc., and Fashion Institute, Inc., in the course and conduct of their respective businesses are now, and for more than 3 years last past have been, in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with various individuals, firms, partnerships, and corporations engaged in the

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interstate sale of paper dress patterns, fashion magazines, fashion news, and fashion information.

PAR. 4. Said respondent John Howie Wright is an individual whose principal place of business is located at 119 West Nineteenth Street in the city of New York, within the State of New York. Said respondent is the dominating personality behind said respondents New York Pattern Co., Inc., and Fashion Institute, Inc., and in various other corporations engaged in a similar business, which are affiliated with the said respondents New York Pattern Co., Inc., and Fashion Institute, Inc. As the dominating personality in said corporate respondents, New York Pattern Co., Inc., and Fashion Institute, Inc., and in the various affiliated companies, said John Howie Wright directs and controls the business policies and practices of said corporate respondents.

PAR. 5. Conde Nast Publications, Inc., is a corporation existing under the laws of the State of New York, and for many years has been engaged in the publication and distribution in interstate commerce of fashion magazines, including Vogue, and fashion news, and fashion information. The magazine Vogue is recognized as one of the outstanding fashion magazines for women published in the United States, and the fashion news and information which is distributed by said Conde Nast Publications, Inc., is considered by women and by fashion experts to be among the most outstanding and authoritative in the country. Said Conde Nast Publications, Inc., has, through the medium of one of its divisions known as "Vogue Pattern Service," for many years been engaged in the manufacture and sale in interstate commerce of paper dress patterns. Said paper dress patterns have been sold, and now are sold, in the leading department and women's apparel and specialty stores throughout the country, under the trade name of "Vogue patterns," and are of outstanding quality as to fashion, workmanship, fit, and style. Said Vogue patterns are generally recognized as being among the leading patterns in the higher class pattern field, and retail at prices from 40 cents to \$2, each.

PAR. 6. In the year 1932, after due investigation, said Conde Nast Publications, Inc., decided to enter the low priced paper dress pattern field by manufacturing and distributing a paper dress pattern to retail at 15 cents. It was decided that the low priced paper dress patterns would not be manufactured by the makers of Vogue patterns, or sold in connection with Vogue patterns, but would be manufactured by a separate corporation and marketed under the brand name "Hollywood," as the city of Hollywood, Calif., has become recognized as a fashion center, and would be distributed through stores

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other than those handling "Vogue" patterns. Said Conde Nast Publications, Inc., on December 6, 1932, filed application in the U. S. Patent Office, to register the word "Hollywood" as a trade-mark for paper dress patterns, alleging it had used the word "Hollywood" in its business in interstate commerce since November 25, 1932. The application was refused under the Act of 1905, but, after amendment, registration of the word "Hollywood" as a trade-mark for paper dress patterns was granted to said Conde Nast Publications, Inc., on January 9, 1934, under the act of March 19, 1920. Thereafter, and in furtherance of its said plans, said Conde Nast Publications, Inc., caused to be organized under the laws of the State of Connecticut, a wholly-owned subsidiary corporation, under the name of Hollywood Pattern Co. Said Hollywood Pattern Co. has been, and now is, manufacturing and selling and distributing paper dress patterns in interstate commerce, under the name of "Hollywood patterns," to medium and cheaper priced stores, and said patterns retail for 15 cents, each.

PAR. 7. For a number of years prior to the time that the Hollywood Pattern Co. began to make low priced paper dress patterns, this field was dominated by two manufacturers of paper dress patterns, namely, the Simplicity Pattern Co., and the respondent New York Pattern Co., Inc. Patterns manufactured and distributed by the respondent New York Pattern Co., Inc., and Simplicity Pattern Co., were patterns offered for sale principally in the cheaper priced stores, and generally through the medium of chain stores. Said respondent New York Pattern Co., Inc., prior to February 1934, manufactured paper dress patterns under the brand name of "Modern patterns," which retailed for 15 cents, and the "New York patterns," which retailed for 10 cents.

PAR. 8. Said respondent New York Pattern Co., Inc., on December 30, 1932, after learning that Conde Nast Publications, Inc., was preparing to offer to the purchasing public paper dress patterns in the lower price field, filed application with the United States Patent Office for registration of the name "Hollywood" as a trade-mark for paper dress patterns, and alleged that said name had been used by said New York Pattern Co., Inc., in its business in interstate commerce, since about December 14, 1932. Said application was refused under the act of 1905, but after amendment, on February 6, 1934, said respondent New York Pattern Co., Inc., was granted a trade-mark in the name "Hollywood," for use on paper dress patterns, under the act of March 19, 1920. Thereafter, said respondent New York Pattern Co., Inc., has been manufacturing and distributing, and does now manufacture and distribute, in interstate commerce

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paper dress patterns under the brand name of "Hollywood patterns," which said patterns sell at retail for 10 cents.

PAR. 9. Said individual respondent, John Howie Wright, and said corporate respondents, the New York Pattern Co., Inc., and Fashion Institute, Inc., which said corporate respondents are affiliated, and are controlled, directed and dominated by, said individual respondent, John Howie Wright, have, since February 1934, hindered and suppressed, and are now hindering and suppressing, competition in the manufacture and interstate sale of paper dress patterns in the low price field by:

1. Causing to be circulated throughout the United States, to retail stores, generally, engaged in the sale of paper dress patterns, and including stores handling patterns manufactured, sold, and distributed by the said Hollywood Pattern Co., various false, deceptive, misleading and disparaging statements as to the character, style, quality, workmanship, and desirability of paper dress patterns manufactured and sold by the makers of Vogue patterns, which said statements were in the form of fictitious newspaper clippings.

2. Causing to be circulated throughout the United States, and to retail stores handling paper dress patterns generally, including stores handling patterns manufactured, sold, and distributed by the said Hollywood Pattern Co., false, deceptive, and misleading statements as to the financial standing and stability of said Conde Nast Publications, Inc., the manufacturer and distributor of Vogue patterns and the sole owner of the Hollywood Pattern Co.

3. Causing to be circulated throughout the United States, and in retail stores generally, engaged in the sale of paper dress patterns, including those stores which handle patterns manufactured, sold, and distributed by the said Hollywood Pattern Co., various false, deceptive, and misleading statements as to the salability of Hollywood patterns manufactured and sold by the Hollywood Pattern Co., and various false, deceptive, and misleading statements to the effect that the Hollywood Pattern Co. is rendering second rate service.

4. Causing to be circulated throughout the retail stores engaged in the sale of paper dress patterns generally, including those stores which handle Vogue patterns, various false and misleading statements tending to disparage Vogue patterns by alleging that said patterns are the same as the cheaper-priced Hollywood patterns manufactured by the said Hollywood Pattern Co.

5. Issuing and distributing to retail stores throughout the United States engaged in the sale of paper dress patterns generally, including those stores which handle patterns manufactured by the said Hollywood Pattern Co., counter display books similar in design and

color to the counter display books which are distributed by the said Hollywood Pattern Co., and which simulate and imitate the said counter display books of said Hollywood Pattern Co.

PAR. 10. Said respondent Fashion Institute, Inc., in the conduct of its business, has caused retail stores generally, throughout the country, and that portion of the public which buys paper dress patterns, to believe that it, the said respondent, Fashion Institute, Inc., is an impartial and reliable agency for the dissemination of fashion news and information, by deceptively and misleadingly using as a part of its corporate name the word "Institute."

PAR. 11. In truth and in fact, the paper dress patterns manufactured and sold by the said Conde Nast Publications, Inc., under the brand name of Vogue patterns are patterns of the highest quality as to style, fashion, design, workmanship, and fit; Conde Nast Publications, Inc., is of sound financial standing and stability; the paper dress patterns manufactured and sold by the said Hollywood Pattern Co. are not seconds, but of first quality workmanship designed and intended to be sold in the lower priced pattern field, and the service rendered by the said Hollywood Pattern Co. is first class service; Vogue patterns are not the same as Hollywood patterns, but are different as to style, fashion, and design, and intended to be, and are, sold for a different purpose to a different class of trade; the paper dress patterns manufactured by the said respondent New York Pattern Co. under the name Hollywood patterns are not the same as the Hollywood patterns manufactured and sold by the said Hollywood Pattern Co.; and in truth and in fact said respondent Fashion Institute, Inc., is not an impartial and reliable agency engaged in the dissemination of fashion news and information, but is a private organization engaged in the manufacture and sale of low priced paper dress patterns and fashion news and information for private gain.

PAR. 12. The aforesaid false, deceptive, misleading, and disparaging statements and representations so made by said respondents, as above alleged, have the tendency and capacity to mislead and deceive, and do mislead and deceive, the purchasing public into the false and erroneous beliefs (a) that said statements are true; (b) that the patterns manufactured by the makers of Vogue patterns are undesirable as to character, workmanship, style, design, fashion, and fit; (c) that said Conde Nast Publications, Inc., the manufacturer and distributor of Vogue patterns is a company of unsound and unreliable financial standing and of no stability; (d) that the patterns manufactured and service rendered by the said Hollywood Pattern Co. are second rate and of inferior quality; (e) that Vogue

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patterns which are sold in the high class stores at prices ranging from 40 cents to \$2 each are in truth and in fact exactly the same patterns and styles that are being sold under the name of Hollywood patterns through the lower priced, and chain, stores at 15 cents; (f) that in some instances the Hollywood patterns sold by the respondent New York Pattern Co. are manufactured and sold by the said Hollywood Pattern Co., and (g) that the respondent Fashion Institute is in truth and in fact a reliable agency for the dissemination of fashion news and information. The use by said respondent New York Pattern Co. of style books similar in color and design to the style books of the said Hollywood Pattern Co. is calculated to, tends to, and does, confuse the paper dress patterns manufactured by the two said companies in the minds of the purchasing public. Further, said false, deceptive, misleading, and disparaging statements have the tendency and capacity to, and do, divert trade to the said corporate respondents from their competitors, especially the said Hollywood Pattern Co., and to induce the public to purchase Hollywood patterns manufactured and sold by the said respondent New York Pattern Co. in preference to Hollywood patterns manufactured by the said Hollywood Pattern Co., 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 said respondents to substantial competitors in commerce among and between various States of the United States and in the District of Columbia.

PAR. 13. The above acts and things done by said respondents, New York Pattern Co., Inc., Fashion Institute, Inc., and John Howie Wright, are all to the injury and prejudice of the public and of the respondents' competitors in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 28, A. D. 1937, issued and served its complaint in this proceeding upon the respondents, New York Pattern Co., Inc., Fashion Institute, Inc., and John Howie Wright, 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 answers thereto by respondents New York Pattern Co., Inc., and John Howie Wright, testimony and other evidence in support of the allegations of the complaint were introduced by Reuben J. Martin, attorney for the

Commission, and in opposition to the allegations of the complaint by Samuel Randel, before Charles F. Diggs, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final consideration before the said Commission on the said complaint, the answers thereto, the testimony and other evidence, and brief in support of the complaint; 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 New York Pattern Co., Inc., was incorporated under the laws of the State of New York in 1928 or 1929, and its principal place of business is located at 119 West Nineteenth Street, in the city and State of New York.

PAR. 2. Respondent Fashion Institute, Inc., was incorporated under the laws of the State of New York, but has not functioned or engaged in any business since approximately 1934.

PAR. 3. The stockholders are the same in both of the respondent corporations.

PAR. 4. Respondent John Howie Wright now resides in Toronto, Canada, and since 1936 has not owned any stock in either of the respondent corporations, nor has he participated in the management of either; but from the time of its incorporation up to the year 1936 he dominated and controlled the activities of respondent New York Pattern Co., Inc., and he dominated and controlled the activities of respondent Fashion Institute, Inc., from the time of its incorporation until it ceased to do business.

PAR. 5. Respondent New York Pattern Co., Inc., since 1928 or 1929 has been engaged in the business of manufacturing paper dress patterns at its factory located in South Bend, Ind., and in the sale and distribution thereof to customers located throughout the United States.

PAR. 6. The respondent Fashion Institute, Inc., during the time it was functioning, was engaged in the business of manufacturing paper dress patterns, and in the sale and distribution thereof to customers located throughout the United States.

PAR. 7. Respondent New York Pattern Co., Inc., from the date of its incorporation to the present time, has been in substantial competition in commerce between and among the several States of the

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United States with corporations, individuals, firms, and partnerships engaged in the interstate sale of paper dress patterns, and respondent Fashion Institute, Inc., during the time it was functioning was similarly engaged.

PAR. 8. Conde-Nast Publications, Inc., for many years past has published a style magazine known as "Vogue," and has also manufactured and sold throughout the United States paper dress patterns known as "Vogue" patterns; these patterns are recognized by the trade and public as being among the best standards of fashion in the higher-priced class, and range in price from 30 cents to \$2 each. This corporation decided to manufacture paper dress patterns to be sold at retail for 15 cents, and to be known as "Hollywood" patterns, and in October 1932, it distributed samples of such patterns to chain and department stores throughout the United States and by the end of February 1933, these patterns were on sale in practically every State of the United States. This corporation, in order that the sale of its "Vogue" patterns should not be adversely affected, in December 1932, caused to be incorporated its wholly owned subsidiary, Hollywood Pattern Co., which company, since its incorporation, has manufactured the said "Hollywood" patterns. On December 6, 1932, Conde-Nast Publications, Inc., filed an application in the United States Patent Office to have the name "Hollywood" registered as a trade-mark, and on January 9, 1934, said application was granted. The Hollywood Pattern Co. used this trade-mark, but the same was not assigned to it until August 1936.

PAR. 9. Respondent New York Pattern Co., Inc., on December 30, 1932, filed its application in the United States Patent Office to have the name "Hollywood" registered as a trade-mark and said application was granted on February 6, 1934. Since December 1932, this respondent has manufactured and sold throughout the United States paper dress patterns which retail at 10 cents each, and which it designates "Hollywood" patterns.

PAR. 10. Respondent New York Pattern Co., Inc., distributes to the trade throughout the United States counter display catalogues of its "Hollywood" patterns, the front cover page of which simulates those distributed by the Hollywood Pattern Co., with respect both to the color which varies from month to month, and the design depicted thereon, which is a five-pointed silver star superimposed on the basic color. Said respondent, through its agents, informs retail dealers in paper dress patterns throughout the United States that the patterns shown in its catalogues are the only "Hollywood" patterns on the market, and in some instances said agents represented that said respondent corporation had purchased the business of the

Hollywood Pattern Co., and such representations were communicated to the purchasing public.

PAR. 11. As a result of the matters detailed in the foregoing paragraph, members of the consuming public have purchased the "Hollywood" patterns of respondent New York Pattern Co., Inc., in the belief that they were purchasing patterns of the Hollywood Pattern Co., and as a result, trade has been diverted from the Hollywood Pattern Co. to said respondent.

CONCLUSION

The acts, policies and practices of the respondents as set forth in the foregoing findings as to the facts are to the prejudice of the public and of one of respondents' competitors, and constitute unfair methods of competition in commerce, in violation of the Federal Trade Commission Act.

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 New York Pattern Co., Inc., and John Howie Wright, testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief in support of the complaint filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, John Howie Wright and New York Pattern Co., Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of paper dress patterns in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. From representing by means of counter display catalogs or in any other manner that the paper dress patterns sold by the New York Pattern Co., Inc., under the designation "Hollywood" patterns are the only Hollywood patterns on the market.

2. From representing that the New York Pattern Co., Inc., has purchased the business of the Hollywood Pattern Co.

3. From representing that the paper dress patterns sold by the New York Pattern Co., Inc. under the name Hollywood patterns are the

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same as the paper dress patterns sold by the Hollywood Pattern Co. under the name Hollywood patterns.

4. From distributing a counter display catalog of the Hollywood patterns of the New York Pattern Co., Inc. which simulates, with respect to color and design, the counter display catalog of the Hollywood patterns of the Hollywood Pattern Co.

It is further ordered, That the complaint herein as to the respondent, Fashion Institute, Inc., be and the same is hereby dismissed.

It is further ordered, That the respondents, New York Pattern Co., Inc., and John Howie Wright, 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
HARRY CUTLER, INDIVIDUALLY, AND TRADING AS
GENERAL 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 3568. Complaint, Aug. 31, 1938—Decision, May 3, 1939

Where an individual engaged in sale and distribution of electric razors, cameras, radios, kitchen appliances, pencils, and pen and pencil sets to purchasers in other States—

Furnished to his customers various devices which involved the operation of games of chance, gift enterprise, or lottery schemes through which his said merchandise was distributed to the ultimate consumers thereof wholly by lot or chance, and which included the furnishing of push cards, order blanks, and circulars explaining his plan of selling his said products and allotting his premiums or prizes to the patrons of such push cards, in accordance with which amount paid for chance, if any, by customer was dependent upon number pushed by chance, and certain number entitled purchaser securing same to pen and pencil set, and receipt or failure to receive electric razor or article being thus disposed of was dependent upon success or failure in selecting from list of feminine names displayed on card, name corresponding to that concealed under card's large master seal, and persons who did not push winning number or name as above set forth, received nothing for the money paid by them, except right to push card; and

Placed thereby in hands of others means of conducting lotteries in the sale of his said merchandise through use of such cards as above described, and varying therefrom in minor details only, by which various other articles were sold and distributed by him solely by lot or chance, contrary to an established public policy of the United States Government, and in violation of criminal law and in competition with many who refrain from disposing of their merchandise by a method involving lottery or game of chance as contrary to public policy;

With result that many persons were attracted by his said sales plan or method of distribution of his merchandise, by element of chance involved therein, and were thereby induced to buy and sell such merchandise in preference to that offered and sold by his competitors who do not use same or similar methods of distribution, and trade was unfairly diverted to him from competitors aforesaid who, as above set forth, refrain from use of such method:

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

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

Mr. D. C. Daniel and *Mr. P. C. Kolinski* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Harry Cutler, individually and trading as General Sales Co., hereinafter referred to as respondent, has violated the provisions of 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, Harry Cutler, is an individual doing business under the trade name of General Sales Co., with his principal office and place of business located at 231 South Wells Street, Chicago, Ill. Respondent is now, and has, for some time last past been, engaged in the sale and distribution of electric razors, cameras, radios, kitchen appliances, pencils, combination pen and pencil, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused his said products, when sold, to be shipped or transported from his principal place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing his merchandise in commerce, furnishes and has furnished various push cards and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The sales plan or method adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public in commerce certain literature and instructions including, among other things, push cards, order blanks, illustrations of said products, and circulars explaining respondent's said plan or method of selling

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said merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's said push cards bears 40 feminine names with ruled columns on the reverse side of said card for writing in the name of the customer opposite the feminine name selected. Said push card has 40 small partially perforated disks and on the face of each of said disks is printed the word "push." Immediately beneath each of said disks is printed one of the feminine names printed alphabetically on the reverse side of the card. Concealed within each disk is a number, which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

NAME UNDER SEAL RECEIVES A
GUARANTEED HAMILTON ELECTRIC DRY SHAVER
 NUMBERS Number 33 Receives
 22, 25, 26, 27 **PACKARD**
 ARE FREE Combination Pen and Pencil
NUMBERS 1 TO 29 PAY WHAT YOU DRAW
 Numbers Over 29 Pay Only 29¢—No Higher
 Write your name opposite name you select on reverse side.
PUSH OUT WITH PENCIL

Respondent furnishes and has furnished said representatives with additional instructions to be used in connection with the sale of his merchandise by means of said push card, some of which are as follows:

"How to Obtain Your Hamilton Electric Dry Shaver At No Cost
 SUGGESTIONS FOR USING SALES CARD

The push card contains 40 girls' names—beneath each is a concealed number. These numbers range from one upwards. The numbers from 9 to 16 ARE FREE. All numbers under 29 pay amount of number (one pays 1¢—19 pays 19¢, etc.). Any number over 29 only pays 29¢. NO HIGHER.

Your friends select any name they choose and push out the corresponding hole. You write down your friends' names opposite the names they select in the space provided on the back of this card. When all have been pushed out, you will find that you will have collected \$9.95. Then remove the large seal at the top. Under it is the fortunate name. The person who selected that name is entitled to a Hamilton Electric Shaver. Now you can destroy the card—there is no need to return it to us.

Fill out the order blank (see other side). Send the order blank to us together with a Money Order or Bank Draft for \$9.95. Payment of this amount entitles you to two Hamilton Shavers, one for you and one for the fortunate person who selected the name under the seal. The two Hamilton Shavers and other gifts will be shipped to you prepaid. Thus, you will receive your Hamilton Electric Dry Shaver at No Cost to You, and the fortunate person will receive his or her Dry Shaver At Hardly Any Cost. Isn't this an easy way to obtain valuable gifts?

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You will have a lot of fun getting folks to push out names on the card. Everyone you know and come in contact with is a prospect. Show it to your fellow employees, friends, relatives and acquaintances. Then there is the grocer, butcher, baker, beauty parlor operator, barber, lodge and club member—and all the different stores where you trade. Whenever there is a party or gathering at your home or your friends' homes bring out your card. Everyone will find it as thrilling as any other game or pastime. You will have your card pushed out in no time.

If you mail the order within 20 days, we will include a Surprise Present for you Free. It's worth getting."

Sales of respondent's products by means of said push card are made in accordance with the above described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions and other printed matter for use in the sale and distribution of all of his said merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same in principle as the one hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. 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 or method hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

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 an article of merchandise without charge or at a price much less than the normal retail price thereof. Many persons, firms and corporations who sell and distribute merchandise in competition with 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 there-

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from. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 sales plan or method by respondent, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 31st day of August 1938, issued and served its complaint in this proceeding upon the respondent, Harry Cutler, individually and trading as General Sales Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, no answer having been filed by the respondent, testimony and other evidence in support of the allegations of said complaint were introduced by D. C. Daniel and P. C. Kolinski, attorneys for the Commission, before Charles F. Diggs, 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 evidence were introduced by John A. Nash, attorney for the respondent. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, and brief of the attorneys for the Commission; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Harry Cutler, doing business under the trade name General Sales Company, has his principal place of business at 231 South Wells Street, Chicago, Ill. Respondent is now and for the past year has been engaged in the sale and distribution of electric razors, cameras, radios, kitchen appliances, pencils and pen-and-pencil sets, all of which are sold and shipped by him to purchasers in States other than the State in which respondent's place of business is located and from which said shipments are made. In the course and conduct of his business respondent has been and is in competition with individuals, partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise 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 said business, respondent furnishes and has furnished to his customers various devices which involve the operation of games of chance, gift enterprise, or lottery schemes, by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent is as follows:

Respondent furnishes his customers with push cards, order blanks and circulars explaining his plan of selling merchandise and allotting his premiums or prizes to the patrons of said push cards. On some of said push cards appear 40 partially perforated disks marked "Push," below each of which is printed one of the feminine names appearing on the reverse side of the push card. The push card also contains a large master seal, which conceals one of the feminine names. Respondent furnishes his representatives or customers with instructions for using said push card, the method outlined being as follows: The customer pushes the disk over the feminine name selected by him, thus disclosing a number which determines the amount to be paid by him in cents; but those pushing "29" or above are required to pay no more than 29 cents. The persons punching numbers 22, 25, 26, and 27 are not required to pay any amount. When all the disks have been punched, the master seal is broken and the person who has punched the disk over the same feminine name as that disclosed by the removal of the master seal receives an electric razor. The one who pushes the disk which discloses the number "33" receives a pen and pencil set. The person who does not push a winning name or number does not receive anything for the money paid by him except the right to push the card.

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PAR. 3. Various other articles of merchandise sold and distributed by said respondent are sold by means of push cards similar to that hereinabove described, varying only in minor details, and all of the respondent's products are sold and distributed solely by lot or chance.

PAR. 4. Respondent, by the methods hereinabove described, places in the hands of others the means of conducting lotteries in the sale of his said merchandise, and the said method of sale and distribution of his product is contrary to the established public policy of the Government of the United States, and is in violation of the criminal law.

Many persons are attracted by respondent's sales plan or method of distribution of his merchandise by the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by respondent's competitors who do not use the same or similar methods of distribution. Many of respondent's competitors refrain from disposing of their merchandise by a method involving lottery or game of chance because such method is contrary to public policy and as a result, trade is unfairly diverted from such competitors to the respondent.

CONCLUSION

The practices of the respondent as set forth in the aforesaid findings of facts are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce in violation of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (respondent having filed no answer thereto), testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no evidence), brief filed by counsel for the Commission (respondent having filed no brief 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Harry Cutler, individually and trading as General Sales Company, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of electric razors, cameras, radios, kitchen ap-

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pliances, pencils, and pen-and-pencil sets, or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping or transporting to agents or to distributors or members of the public push or pull cards, punchboards or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices.

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

IN THE MATTER OF

AL B. WOLF AND MAX SCHWARTZ, INDIVIDUALLY AND
DOING BUSINESS UNDER THE TRADE NAMES OF
PARAMOUNT PRODUCTS COMPANY, AND PARAMOUNT
GARMENT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3569. Complaint, Aug. 31, 1938—Decision, May 3, 1939*

- Where two partners engaged in the sale and distribution of rotary clocks, watches, fountain pen desk sets, pencils, wearing apparel, cameras, and a variety of other articles of merchandise to purchasers in other States—
- Furnishing to their customers various devices and plans of merchandising which involved operation of games of chance for distribution of said merchandise to ultimate consumers thereof wholly by lot or chance, and under which they furnished their customers with push cards, order blanks, and circulars explaining their plan of selling said merchandise and allotting premiums or prizes to the patrons of said push cards under a plan in accordance with which amount, if any, paid by patron was dependent upon number pushed by chance, and chance selection of three numbers entitled customers securing said particular numbers to Eversharp pencils, and receipt or failure to receive electric razor or article being thus disposed of was dependent on success or failure in selecting from list of feminine names appearing on the card, name corresponding to that concealed under card's master seal, and operator of card was likewise entitled to such article; and
- Placed thereby in the hands of others the means of conducting lotteries in the sale of their said merchandise under which the various articles were sold by means of push cards similar to those above described, and varying therefrom in minor detail only, and were sold and distributed solely by lot or chance; contrary to an established public policy of the United States Government and in violation of the criminal law, and in competition with many who refrain from disposing of their merchandise by a method involving a lottery or game of chance as contrary to public policy;
- With result that many persons were attracted by their sales plan or method of distribution of their merchandise by element of chance involved therein, and were thereby induced to buy and sell their merchandise in preference to that offered and sold by their competitors who do not use the same or similar methods of distribution, and trade was thus unfairly diverted to them from competitors aforesaid who do not, as above set forth, use such method;
- Held*, That such acts and practices, under the circumstances set forth, were to the prejudice of the public and of competitors and constituted unfair methods of competition.

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

Mr. D. C. Daniel and *Mr. P. C. Kolinski* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondents.

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Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Al B. Wolf and Max Schwartz, individually, and doing business under the trade names of Paramount Products Co. and Paramount Garment Co., hereinafter referred to as respondents, have violated the provisions of the 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, Al B. Wolf and Max Schwartz, are individuals doing business under the trade names of Paramount Products Co. and Paramount Garment Co., with their principal office and place of business located at 637 West Roosevelt Road, Chicago, Ill. Respondent, Max Schwartz, resides at 269 Canal Street, New York City, N. Y. Respondents are now and for some time last past have been engaged in the sale and distribution of rotary clocks, watches, fountain pen desk sets, pencils, razors, bedroom sets, wearing apparel, kitchen appliances, aluminum sets, cameras, traveling cases, dresser sets, rifles, tableware, table linens, cosmetics, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their principal place of business in Illinois to purchasers thereof in the various States of the United States other than Illinois and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are, and have been, in competition with other partnerships and individuals, and with corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents, in soliciting the sale of and in selling and distributing their merchandise in said commerce, furnish and have 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 sold and distributed to the ultimate consumers thereof, wholly by lot or chance. The sales plan

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or method adopted and used by respondents was, and is, substantially as follows: Respondents distribute and have distributed to the purchasing public in said commerce certain literature and instructions, including among other things, push cards, order blanks, illustrations of said products, and circulars explaining respondents' plan or method of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of the respondents' push cards bears 63 feminine names with ruled columns on the reverse side of said card for writing in the name of the customers opposite the feminine name selected. Said push card has 63 small, partially perforated disks, and on the face of each of said disks is printed the word "Push." Immediately beneath each of said disks is printed one of the feminine names, printed alphabetically on the reverse side of the card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

NAME UNDER SEAL RECEIVES

| | |
|----------------------------------------------------------|------------------|
| (Cut) | Esquire Electric |
| Numbers 31—41—51 | Dry Shaver |
| Each Receive a Guaranteed | The |
| EVERSHARP PENCIL | Winner |
| Nos. 1 to 25 Pay 1 to 25 | (Do Not Remove) |
| Nos. Over 25 Pay Only 25 | (Until All Sold) |
| Write Your Name Opposite Name You Select On Reverse Side | |

Numbers
9—10—11
12—13—14
15—16
ARE FREE

Respondents furnish said representatives with additional instructions to be used in connection with the sale of their merchandise by means of said push card, some of which are as follows:

HOW SALES CARDS CAN BE USED

There is a number under each girl's name. This number represents the amount the person selecting that name is to pay as shown on the face of the card.

To avoid error it is advisable to write the customer's name on the line opposite the name they have selected.

Persons selecting numbers that are designated as Free Numbers on the face of the card Pay Nothing, yet they have an equal opportunity with the others for winning the name shown under the seal.

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The numbers are so arranged as to total the amount shown on the back of the sales card. When all names have been taken and collections made the Large Seal is opened and the person who has selected the name corresponding to the name under the seal is declared the winner and is awarded their choice of any one of the awards.

The person selling the card also receives their choice of any one item.

If there are Extra Winners shown on the face of the card the person selecting the designated numbers are to be given those awards.

Prospects are to be found amongst co-workers in the office, store, or shop, friends, the grocer, butcher, beauty operator, barber, baker, fellow lodge or club members; uncles, aunts, cousins, nephews, nieces, neighbors. And many others.

Sales of respondents' products by means of said push card are made in accordance with the above described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondents furnish, and have furnished, various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all said merchandise by means of said push cards is the same in principle as the one hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondents furnish the said push cards use the same in purchasing, selling, and distributing respondents' merchandise 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 merchandise in accordance with the sales plan or method hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 an article of merchandise without charge or at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondents 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 said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein and are thereby induced to buy and sell respondents' merchandise in preference to 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, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondents from their said competitors who do not use the same or an equivalent method, and as a result thereof, substantial injury is being and has been done by respondents to competition in commerce between and among various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 31, 1938, issued and served its complaint in this proceeding upon the respondents, Al B. Wolf and Max Schwartz, individuals, doing business under the trade names of Paramount Products Co. and Paramount Garment 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, no answer being filed by the respondents, testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel and P. C. Kolinski, attorneys for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it. Respondent's attorney, John A. Nash, introduced no testimony or other evidence in opposition to the complaint. 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, testimony and other evidence, and brief in support of the complaint, no brief being filed in opposition thereto; and the Commission having duly considered the matter and being now fully advised in the premises, finds that

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Findings

this proceeding is in the interest 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, Al B. Wolf, and Max Schwartz, are copartners doing business under the trade names of Paramount Products Co. and Paramount Garment Co., having their principal place of business at No. 637 West Roosevelt Road, Chicago, Ill. The respondents are now, and for some time last past have been, engaged in the sale and distribution of rotary clocks, watches, fountain pen desk sets, pencils, razors, bedroom sets, wearing apparel, kitchen appliances, aluminum sets, cameras, traveling cases, dresser sets, rifles, tableware, linens, cosmetics, and other articles of merchandise, all of which are sold and shipped by them to purchasers in States other than the State in which respondents' place of business is located and from which said shipments are made. In the course and conduct of their business, respondents have been and are in competition with individuals, partnerships, and corporations also engaged in the sale and distribution of like or similar articles of merchandise in interstate commerce.

PAR. 2. In the course and conduct of their business, respondents furnish and have furnished to their customers various devices and plans of merchandising which involve the operation of games of chance, by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The method, or sales plan, adopted by respondents is as follows:

Respondents furnish their customers with push cards, order blanks, and circulars explaining their plan of selling merchandise and allotting premiums or prizes to the patrons of said push cards. On one of said push cards appear 63 partially perforated disks marked "Push," below each of which is printed one of the feminine names appearing on the reverse side of the push card. The push card also contains a large master seal which conceals one of the feminine names. Respondents furnish their representatives or customers with instructions for using said push cards, the method outlined being as follows:

The patron pushes the disk over the feminine name selected by him, thus disclosing a number which determines the amount to be paid by him in cents, but those punching "25," or above are required to pay no more than 25 cents. The persons punching numbers 9, 10, 11, 12, 13, 14, 15, or 16 are not required to make any payment. When all the disks have been punched the master seal is broken and the person who has punched the disk over the same feminine name as that disclosed

by the removal of the master seal receives an electric razor; the person who has punched the disk which disclosed number 31, 41, or 51 receives an Eversharp pencil. The person operating the push board, or selling the pushes, receives an electric razor.

PAR. 3. The various other articles of merchandise sold and distributed by respondents are sold by means of push cards similar to those hereinabove described, varying only in minor detail, and all of respondents' products are sold and distributed solely by lot or chance.

PAR. 4. Respondents, by the methods hereinabove described, place in the hands of others the means of conducting lotteries in the sale of their said merchandise, and the said method of sale and distribution of their products is contrary to the established public policy of the Government of the United States and is in violation of the criminal law.

PAR. 5. Many persons are attracted by respondents' sales plan or method of distribution of their merchandise by the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by respondents' competitors who do not use the same or similar methods of distribution. Many of the respondent's competitors refrain from disposing of their merchandise by a method involving a lottery or game of chance, because such method is contrary to public policy, and as a result, trade is unfairly diverted from such competitors to the respondents.

CONCLUSION

The practices of the respondents, as set forth in the aforesaid findings of facts, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce in violation of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (respondents having filed no answer thereto) testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondents having offered no evidence), brief by counsel for the Commission (counsel for respondents having filed no brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

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Order

It is ordered, That the respondents, Al B. Wolf and Max Schwartz, individually and doing business under the trade names of Paramount Products Co. and Paramount Garment Co. or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of rotary clocks, watches, fountain pen desk sets, pencils, razors, bedroom sets, wearing apparel, kitchen appliances and aluminum sets, cameras, traveling cases, dresser sets, rifles, tableware, linens, cosmetics, or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

2. Mailing, shipping or transporting to agents or to distributors or members of the public, push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards or other lottery devices.

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
ANYLITE ELECTRIC COMPANY

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

Docket 3704. Complaint, Feb. 10, 1939—Decision, May 8, 1939

Where a corporation engaged in manufacture, offer, and sale of an electric device consisting of a coil of wire, or solenoid, in container to be placed around patients, whereby, by means of alternating electric current, electro-magnetic field of claimed therapeutic value was created—

Represented, through statements appearing on carton in which said product was packed and shipped, and which set forth "Theronoid Therapeutic Solenoid The New Way to Health," that use of said device would restore to user thereof normal health, and that it had therapeutic value, facts being such representation and claim was grossly exaggerated, misleading, and untrue, and said "Theronoid" did not possess any therapeutic, remedial, or curative value and would not restore user to normal health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said device would, in fact, restore user to normal health, and that it had therapeutic, remedial, or curative value, and of causing substantial portion of such public, because of said erroneous and mistaken belief thus engendered, to purchase same; to the substantial injury of a substantial portion of purchasing public in the various States and in the District of Columbia:

Held, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John J. Keenan*, trial examiner.

Mr. James L. Fort for the Commission.

Mr. Arthur W. Parry, of Fort Wayne, Ind., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Anylite Electric Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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 Anylite Electric 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 200 Murray Street in the city of Fort Wayne, within the State of Indiana. Said respondent is now and for more than 2 years last past has been engaged

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in the manufacture, offering for sale, and sale of a device consisting of a coil of wire, or solenoid, in a container intended to be placed around patients, whereby, by means of alternating electric current, an electromagnetic field of the therapeutic value is said by respondent to be created. The said solenoid has been designated by respondent as a "Theronoid." Said respondent causes and for more than 2 years last past has caused said device, when sold by it, to be shipped from its place of business in Fort Wayne, Ind., to the purchasers thereof located in various States of the United States other than the State of origin of such shipments and in the District of Columbia. There is now and has been for more than 2 years last past a course of trade in said device, "Theronoid," sold and distributed 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 aforesaid business, and for the purpose of inducing the purchase of said device, the respondent has made, and does now make, false and misleading statements as to the therapeutic value and effect of said device. Said representations are made by means of a statement appearing on the carton in which said product is packed and shipped as follows:

Theronoid
Therapeutic Solenoid
The New way to Health

Through the use of the statement and representation hereinabove set forth, which purports to be descriptive of the remedial, curative, or therapeutic properties of respondent's device, respondent has represented and does now represent directly and indirectly that the use of respondent's device, "Theronoid" will restore to the user thereof normal health and that said device has a therapeutic value.

PAR. 3. The aforesaid representation and claim made by the respondent as hereinabove described is grossly exaggerated, misleading, and untrue in that respondent's device, Theronoid, does not possess any therapeutic, remedial, or curative value and will not restore normal health to the user thereof.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading representation as above set forth has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken beliefs that respondent's said device will in fact restore the user thereof to normal health and that it has a therapeutic, remedial, or curative value and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief so engendered, to purchase respondent's said device. As a result thereof

injury has been and is now being done by the respondent to a substantial portion of the purchasing public in the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 10, 1939, issued, and on February 13, 1939, served, its complaint in this proceeding upon the Anylite Electric Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Respondent filed its answer in which answer the respondent stipulated that the testimony taken in the Federal Trade Commission case, Theronoid, Incorporated, Docket No. 1865,¹ could be reviewed by the Commission in the consideration of the instant complaint with the same force and effect as though the testimony had been introduced directly in this proceeding. Respondent, in its answer, waived all intervening procedure and further hearing as to the said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, and the Commission, having duly considered said complaint, the answer thereto, and testimony introduced in the proceeding before the Commission known as Theronoid, Incorporated, Docket 1865; 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, Anylite Electric 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 200 Murray Street in the city of Fort Wayne within the State of Indiana. Said respondent has been engaged in the manufacture, offering for sale and sale of a device consisting of a coil of wire, or solenoid, in a container intended to be placed around patients, whereby, by means of alternating electric current, an electromagnetic field of therapeutic value is said by respondent to be created. The said solenoid has been

¹ See for findings and order to cease and desist in said case 17 F. T. C. 298.

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designated by respondent as "Theronoid." Said respondent has caused said device, when sold by it, to be shipped from its place of business in Fort Wayne, Ind., to the purchasers thereof located in various States of the United States other than the State of origin of such shipments and in the District of Columbia. There has been, for more than 2 years last past, a course of trade in said device, Theronoid, sold and distributed 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 aforesaid business, and for the purpose of inducing the purchase of said device, the respondent has made false and misleading statements as to the therapeutic value and effect of said device. Said representations are made by means of a statement appearing on the carton in which said product is packed and shipped as follows:

Theronoid
Therapeutic Solenoid
The New Way to Health

Through the use of the statement and representation hereinabove set forth, which purports to be descriptive of the remedial, curative, or therapeutic properties of respondent's device, respondent has represented, directly and indirectly, that the use of respondent's device, Theronoid, will restore to the user thereof normal health and that said device has a therapeutic value.

PAR. 3. The aforesaid representation and claim made by the respondent as hereinabove described is grossly exaggerated, misleading, and untrue in that respondent's device, Theronoid, does not possess any therapeutic, remedial, or curative value and will not restore normal health to the user thereof.

PAR. 4. The use by respondent of the foregoing false, deceptive, and misleading representation as above set forth has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's said device will in fact restore the user thereof to normal health and that it has therapeutic, remedial, or curative value, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief so engendered, to purchase respondent's said device. As a result thereof, injury has been and is now being done by the respondent to a substantial portion of the purchasing public in 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 as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and testimony introduced in the proceeding before the Commission known as Theronoid, Incorporated, Docket 1865, which the respondent stipulated in its answer may be considered as evidence in this proceeding with the same force and effect as though same had been introduced directly in this proceeding, and all intervening procedure and further hearing as to the facts having been waived, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Anylite Electric Co., Inc., and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a certain electrical device known as a Theronoid, or similar electrical devices, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said Theronoid has any therapeutic, remedial or curative value in the treatment of persons suffering from illness or disease.

2. Representing that the Theronoid will restore a person to normal health or produce other beneficial results to individuals not in normal health.

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
MEYER EDELSON, INDIVIDUALLY, AND TRADING AS
UNITED ADVERTISING SERVICE

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

Docket 3738. Complaint, Mar. 16, 1939—Decision, May 9, 1939

Where an individual engaged in selling and distributing clocks, desk lighters and other articles of merchandise in commerce among the various States and in the District of Columbia; in soliciting the sale of and in selling and distributing his merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprise, or lottery schemes through which said merchandise was sold and distributed to ultimate consumers wholly by lot or chance and in accordance with which he distributed to the purchasing public certain literature and instructions including, among other things, push cards, order blanks, illustrations of his merchandise and circulars explaining his plan of selling same and of allotting it as premiums or prizes to the operator of said cards for use in sale of his products under a plan and in accordance with cards' explanatory legend, pursuant to which amount paid, if any, for chance by customer was dependent upon number pushed by chance, and two numbers and last sale entitled purchaser securing numbers or making sale to "chrome desk lighter", and receipt or failure to receive "numerical clock" or article being thus disposed of, was dependent upon success or failure in selecting from list of feminine names on card, name corresponding to that concealed under card's master seal; and

Supplied thereby and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with aforesaid or similar sales plans under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid and which of aforesaid articles, if any, he was to receive was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure article of merchandise at a price much less than normal retail price thereof; contrary to an established public policy of the United States Government and in violation of the criminal laws, 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 something by chance or any other methods contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan involved in sale and distribution of his merchandise and element of chance involved therein and were thereby induced to buy and sell such merchandise in preference to that offered and sold by said competitors who do not use such or equivalent method, and with effect, through use of such method and because of such game of chance of diverting unfairly trade to himself from his competitors aforesaid who do not use such or equivalent method; to the substantial injury of competition in commerce:

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

Mr. L. P. Allen, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Meyer Edelsohn, individually and trading as United Advertising Service, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Meyer Edelsohn, is an individual trading as United Advertising Service with his principal office and place of business located at 5715 Florence Avenue, Philadelphia, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of clocks, desk lighters and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from the city of Philadelphia, Pa., to purchasers thereof in the various other States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent in soliciting the sale of and in selling and distributing his merchandise furnishes, and 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 sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other

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things, push cards, order blanks, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 48 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 48 small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

This 20th Century
NUMERICAL CLOCK

| | | |
|---|----------|---|
| E | | M |
| L | | O |
| E | (Picture | D |
| C | | E |
| T | of a | R |
| R | | N |
| I | Clock) | I |
| C | | S |
| | | T |
| | | I |
| | | O |

To the Person
 Selecting the Name Under the Seal
 Nos. 1 to 29—Pay 1¢ to 29¢
 Nos. over 29—Pay only 29¢

Nos. 31, 41, and Last Sale
 Each Receive
 A Beautiful Chrome
 Desk Lighter
 Write Your Name on Reverse Side
 Opposite Name You Select

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed

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matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push card is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 an article of merchandise at a price much less than the normal retail price thereof. 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 16, 1939, issued, and on March 17, 1939, served, its complaint in this proceeding upon respondent, Meyer Edelsohn, individually, and trading as United Advertising Service, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. On April 11, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, Meyer Edelsohn, is an individual trading as United Advertising Service with his principal office and place of business located at 5715 Florence Avenue, Philadelphia, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of clocks, desk lighters, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from the city of Philadelphia, Pa., to purchasers thereof in the various other States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent in soliciting the sale of and in selling and distributing his merchandise furnishes, and has furnished, various devices and plans of merchandising which involve the opera-

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tion of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public certain literature and instructions, including, among other things, push cards, order blanks, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 48 feminine names with ruled columns on the reverse side thereof for writing in the name of the customer opposite the feminine name selected. Said push card has 48 small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

This 20th Century

NUMERICAL CLOCK

| | | |
|---|----------|---|
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| L | | O |
| E | (Picture | D |
| C | | E |
| T | of a | R |
| R | | N |
| I | Clock) | I |
| C | | S |
| | | T |
| | | I |
| | | C |

To the Person

Selecting the Name Under the Seal

Nos. 1 to 29—Pay 1¢ to 29¢

Nos. over 29—Pay only 29¢

Nos. 31, 41, and Last Sale

Each Receive

A Beautiful Chrome

Desk Lighter

Write Your Name on Reverse Side

Opposite Name You Select

Sales of respondent's merchandise by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to the customers or purchasers in accordance with the above legends and instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push card is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

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 an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondent, as above 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 said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, 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 a tendency and capacity to, and does, unfairly divert trade to respondent from his

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said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, 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 aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Meyer Edelsohn, individually and trading as United Advertising Service, or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of clocks, desk lighters or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards or other lottery 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 his agents or to distributors or to the public push or pull cards, punchboards or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.
3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards or other lottery devices.

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

Syllabus

IN THE MATTER OF

MIDWEST STUDIOS, INC., IMPERIAL SALES COMPANY,
AND B. E. YOUMANSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3011. Complaint, Dec. 9, 1936—Decision, May 11, 1939*

Where a corporation engaged in offering and selling tinted or colored enlargements of photographs, and frames therefor, to members of the public through large number of solicitors and salesmen who worked together in crews under supervision of crew managers and traveled throughout the various States, and who were supplied by it, and carried and presented, credential cards certifying that they were duly accredited representatives of said corporation, authorized to show or demonstrate samples and to take orders, and with samples and with contract forms or order blanks directed and addressed to said corporation, and who acted as its agents and were accepted and dealt with as such by purchasing public;

In selling, through such various agents and representatives, and for the purpose of thus selling said products as aforesaid, and inducing purchasers thereof to sign contracts without understanding or being able to learn the nature, terms and conditions thereof or to obtain complete details regarding the transaction into which they were entering, and with the active cooperation of a second corporation, to which notes for balances due on products sold by former were, for a time, made payable, and stock of which was owned by the individual who was the president thereof, as of said former corporation, and large stockholder therein, and in control of the operation and management of both, and with other actively cooperated also in matters herein set forth through standardized sales talks furnished its said representatives, and with the knowledge, acquiescence and active cooperation of said corporations and said individual, and knowing false and misleading character thereof, and through its order blanks or contracts, and, as thus engaged in competition with those who sell colored enlargements of photographs and frames therefor in commerce among the various States and in the District of Columbia, and do not employ and maintain the practices below enumerated, but truthfully represent and honestly vend their products, and those engaged in painting and selling paintings in commerce as aforesaid, and who truthfully represent as paintings their said products—

- (a) Exhibited to prospective purchasers various samples of attractively colored specimens of work of aforesaid corporation, glass enclosed, and informed prospective customer that the company, in order to advertise their paintings, was anxious to select a few customers who would display them in a prominent place in their homes, and represented that such offer constituted a special or introductory one to a selected few members of the community, available only for a short period of time, and represented and referred, in such connection, to their pictures as "paintings," "fine paintings," "free hand-painted portrait valued at \$20," "oil painting worth \$20," etc., and, in the contract form referred to product as a "\$20 high grade painting, * * * future price \$20 and up," and informed customers that the com-

pleted painting furnished by the corporation would be the same as the sample exhibited, facts being sale was not limited in any way, its said products never sold for any such price and were not paintings, it did not produce any oil paintings of photographs loaned to it, and was conducting no special advertising campaign, but was simply carrying on its regular sales plan employed in case of all customers, and pictures supplied were not in accordance with samples shown or representations made relative thereto;

- (b) Made use, in aforesaid connection and in furtherance of sales plan in question, and to convince prospective purchaser that such enlargements were being obtained only by a selected few and for a nominal or incidental expense as a special offer or as a free picture given as an advertising offer, of so-called "draw," under which salesman purported to give prospect opportunity to draw lucky number entitling successful prospect to such supposed special consideration in connection with so-called special offer, and under which prospects were informed, after drawing, that they had secured the lucky number or had drawn "lucky," and were entitled to advantages of so-called special advertising offer, and to "a \$20 picture free," or a "High-grade painting worth \$20 for \$1.95," and informed prospective customer, following such lucky draw and borrowing of some treasured family photograph for use in connection with making of so-called "painting," that nominal item of expense, or \$1.95," was necessary to cover cost of "handling," "wrapping," or other item, and required payment of said amount, facts being so-called "painting" or picture was not free, but sum of \$1.95 charged, as aforesaid, was usual or customary price thereof and more than covered cost to corporation of picture in question, and did not represent, as above set forth, actual cost of wrapping, etc., and said alleged "draw" was a fraudulent scheme conceived to mislead prospects into belief that they would secure a picture free or at a greatly reduced price and receive same to exclusion of other people in the same locality;
- (c) Concealed carefully, in initial contact, from customer essential fact that customer was expected to and must eventually buy a frame for the painting from corporation in question, and did not intimate on such contact that real purpose and intent of entire proceeding was to sell customer frame, costing about \$1.50 each at the factory, at prices ranging from \$8.90 to \$17, and that company's profit was made on sale of such products and covered any loss otherwise sustained, but informed customer, through appearance of the follow-up employee or so-called "field artist," as referred to in order blank and sales talk, with picture in octagon shape and convex in surface, that owing to peculiar shape of frames it would be difficult or not possible for customer to obtain frame elsewhere, and that frame selected by customer would be unsatisfactory and unacceptable to the company, and that customer would not receive his picture unless frame therefor was purchased from corporation; and
- (d) Refused, further, to return photograph, which, in many instances, possessed great sentimental value and was unique, until the "transaction" was "completed," or customer had accepted picture and frame and paid therefor in full, and required customer, in cases in which transaction had not been thus completed, to sign note containing provision setting forth that such signature was voluntary "as evidence of balance due on portrait and frame"

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purchased from corporation, to be mailed to such signer "together with photo upon payment of this note in full," and made it its policy to retain customers' photographs until final payment had been made on frame in many cases where notes had been executed for balances due, and thus attempted to show balance due on picture which had already been paid for in full;

With result that members of the purchasing public were beguiled, through said alleged "draw," into believing that they were the exceptional few whom fortune had favored, and thus induced to sign contracts for completion and delivery of pictures in question, and, through use of sales plan above described and employed, and involving separate solicitation and calls by the original or contact salesman and second visit by such falsely designated "field artist," of misleading and forcing purchaser into buying something which he did not originally intend to buy, through special design of frame in which picture was delivered, and of thus placing in the hands of their sales representatives and so-called "field artists" means whereby they could and did sell picture frames for exorbitant amounts and force purchase of such products upon unsuspecting customers, and with effect that customers were thus compelled to buy such products from said corporation in order to receive their pictures or "paintings" and to obtain return of family photograph theretofore loaned to such corporation's agent by customer without information of any sort as to real nature of transaction in question; and

With further effect and result that purchasers were deceived, through such false and misleading representations, into buying aforesaid products of such corporation as and for those possessing the characteristics and qualities claimed for them, and of also placing thereby in the hands of said sales managers, sales agents and "field artists" means of deceiving their customers, and of unfairly diverting to them thereby trade of competitors engaged in selling, in commerce among the States and in the District of Columbia, products of the same kind and nature, truthfully advertised and represented by them:

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

Before *Mr. Henry M. White* and *Mr. Robert S. Hall*, trial examiners.

Mr. Marshall Morgan, *Mr. Reuben J. Martin* and *Mr. George Foulkes* for the Commission.

Mr. Dan J. Kenney and *Mr. B. E. Youmans*, of Portland, Oreg., and *Fry & Fry*, 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 Midwest Studios, Inc., a corporation, Imperial Sales Co., a corporation, and B. E. Youmans, an individual, each hereinafter referred to as re-

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spondent, have been and are using unfair methods in 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, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Midwest Studios, Inc., and Imperial Sales Co., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Oregon, each with its place of business located on the second floor of the Government Building at 408 Southwest Second Street, Portland, Oreg. While each of these respondents is a separate entity each has the same president.

Respondent B. E. Youmans is president of the Midwest Studios, Inc., and president and treasurer of Imperial Sales Co. Respondent Youmans owns a controlling interest in each of said companies and directs the activities and controls the affairs and policies of each, including the conduct of sales campaigns, character of sales representations made, and all business interviews and correspondence incident thereto.

Respondent, Midwest Studios, Inc., is now and for more than 2 years last past has been engaged in the business of offering for sale and the sale of tinted or colored photographic enlargements of family and other photographs, and of frames therefor. Respondent, Midwest Studios, Inc., sells its products through the medium of salesmen or sales representatives appointed by it as agents in its behalf, to customers located in States other than the State of Oregon. In consummating such sales and in distributing such products, respondent, Midwest Studios, Inc., causes the pictures and frames so sold by it to be transported and delivered from its place of business in Portland in the State of Oregon, through and into various other States of the United States to respective purchasers thereof at their respective points of location. In the course and conduct of its said business respondent Midwest Studios, Inc., has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale between and among the various States of the United States, of tinted or colored photographic enlargements of photographs and of frames therefor and, likewise with those corporations, partnerships, and individuals engaged in the sale among the various States of the United States of genuine original paintings, including oil paintings and water color paintings.

For many years prior to January 1, 1935, respondent Imperial Sales Co. was engaged in the sale of colored photographic enlarge-

ments at Portland, Oreg. Since said date said respondent has served as an agency and medium for respondent Midwest Studios, Inc., in collecting balances due from purchasers of pictures and frames sold by respondent, Midwest Studios, Inc., through its agents and representatives, to customers throughout the various States of the United States other than the State of Oregon, as will be more fully hereinafter shown.

PAR. 2. A crayon is a pencil-shaped piece of colored clay, chalk, or charcoal, used for drawing upon paper. A crayon drawing is the act or art of drawing with crayons.

A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil, or crayon.

A pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with a colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

Paint is defined as a substance used in painting composed of a dry coloring material intimately mixed with a liquid vehicle.

A painting is a likeness, image, or scene depicted with paints, without the aid of photography.

A water color is a painting with pigments for which water, and not oil, is used as a solvent.

A portrait, in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness particularly in oil.

An oil painting is a painting done by and with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 3. In the course and conduct of its said business, respondent, Midwest Studios, Inc., causes agents and representatives employed by it to visit the homes of prospective customers in cities, towns, and rural communities of the various States of the United States. Under said respondent's selling plan, it organizes its said agents and representatives into squads or teams, each designated by a certain name and working a particular territory. Among such squads or teams so organized by and under the supervision and authority of respondent, Midwest Studios, Inc., for the purpose of selling tinted photographic enlargements made by it, are, and were, squads, crews, or teams designated by such titles as: Aces, Chinooks, Rangers, Rustlers, Cyclones, Beavers, Travelers, Champions, Pioneers, Buckaroos, Tigers, Terriers, and Texas Steers. Teams or crews are and have been placed in immediate charge of crew managers or foremen, who keep in constant touch with the daily activities of the respective salesmen or representatives of respondent company. Respondent, Midwest Stu-

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dios, Inc., keeps and has kept close watch over the activities of its agents or representatives selling pictures and frames for it, and assists and promotes such work actively and continuously. Weekly bulletins, reviewing and discussing sales work, and containing high-powered sales talks, are prepared by the editorial department of respondent, Midwest Studios, Inc., and distributed by it among the salesmen, agents and representatives engaged in the sale of the products of respondent, Midwest Studios, Inc. In said bulletins are set forth lists of leading salesmen and leading teams or salesmen, covering weekly, quarterly or other periods. Leading salesmen are complimented in the bulletin for the records made by them, and others are encouraged to redouble their efforts. Sales talks containing approved methods of approach and salesmanship, and convincing arguments to be used in contacting prospective purchasers of pictures and frames, are likewise prepared and furnished by respondent, Midwest Studios, Inc., for distribution and use among its sales representatives and agents. Purchasers of respondent's products are given to understand that they are contracting or dealing with a duly constituted agent of the Midwest Studios, Inc., of Portland, Oreg. Each agent or salesman is furnished by said company with an identification card or card of credentials to be presented or exhibited by him when interviewing prospective purchasers.

Sales representatives and agents carry and exhibit alluring samples of free-hand paintings, some done in oil, some in water color, showing the color of the hair, eyes, complexion and clothing. A sales representative of respondent Midwest Studios, Inc. calls upon, or contacts a prospective customer and represents that a drawing contest will be held for the purpose of deciding who shall be one of the few lucky persons in a particular city or town to have respondent place free paintings in their homes in connection with a "special advertising offer." The agent or salesman, in connection with said drawing, produces a number of slips or envelopes. It is represented that most of said slips are blank but that a few are trade checks, or certificates, or coupons; that a customer is allowed two draws or trials; that if he draws a blank he does not win but if fortunate enough to draw a winning check, certificate or coupon, he will be entitled to receive a genuine \$20 oil or water color painting free, or to receive a substantial discount on the price of a fine painting. The prospective customer draws and finally and invariably draws a lucky coupon, reading: "This entitles holder to our special advertising offer. *Midwest Studios, Inc.*" The customer is thereupon congratulated by the agent upon his good luck. Believing the representations of the agent, to the effect that he has been lucky and has obtained a distinct ad-

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vantage and has put himself in the position of obtaining something of value "free," the customer thereupon proceeds to sign a contract whereby, upon the payment of the sum of \$1.95, respondent, Midwest Studios, Inc., agrees to make—"One of our \$20.00 High Grade Paintings in a most pleasing size in the newest Octagon Design same as painting shown." The agent explains that the item of \$1.95 represents merely postage charges or expenses of the agent. Said contract explains that—"This extraordinary offer" is made "for advertising purposes only to introduce paintings of a higher grade by a talented artist." Continuing the thought of the "advertising purpose only" the contract's next provision reads:

Therefore to assure us of a lasting advertisement this offer is conditional to the extent that the paintings be framed within a reasonable length of time.

Continuing further, the contract provides that before finishing the painting, a "Field Artist" will call upon the prospect with "a sketch of your photograph" and get "full particulars for finishing" and that at that time art craft frames of the newest design will be submitted for your selection." It is further provided that in the event a frame is not selected, the sketch will be left with the customer until a suitable frame is selected elsewhere, and then the painting will be finished at no additional cost.

PAR. 4. Respondent's sales agents and representatives, when calling upon prospective customers with a "proof" or "sketch" of a painting to be made for them, endeavor in each instance to sell to said customer a frame or frames for said paintings, and when such sales are made and the frame is not paid for in full, said sales agent or representative, after taking an order for the frame in the name of Midwest Studios, Inc., causes the customer to sign a note for any sum due on said frames, in favor of Imperial Sales Co., Government Building, Portland, said note carrying a provision for the payment of interest at 10 percent. Thereby, in case of controversy for any reason with the purchaser of a painting, where the purchaser has given a note to the Imperial Sales Co., for any unpaid balance due on a frame, respondent, Midwest Studios, Inc. is enabled to avoid further responsibility in connection with its contract for the painting by referring the purchaser of the frame to the Imperial Sales Co., which company had nothing to do with, and plays no part in the production and sale of the painting. This plan, scheme, or arrangement enables the Midwest Studios, Inc., original seller of the "painting," through another corporation owned by it, to remove itself from the situation.

In truth and in fact the Midwest Studios, Inc., and Imperial Sales Co., while technically separate corporate entities, are and have been, one and the same in fact, each being owned, organized, and operating out of the same address in Portland, Oreg., by B. E. Youmans, the moving spirit in the business of the Midwest Studios, Inc., and the purchaser of a picture frame, in cases where a note has been given for an unpaid balance thereon, has thus found himself cut off with dealing with the original company with which he had contracted for his "painting," and has been remitted instead to a controversy with a collection agency holding a note against him bearing 10 percent interest.

PAR. 5. The so-called "sketch" referred to in the aforesaid contract, and delivered to and left with the customer by respondent's so-called "Field Artist," is not in any sense a "sketch," but is merely, and so far, an untinted, uncolored, lightly printed photographic enlargement in black and white of the original family photograph that had been furnished to respondent's sales representative, and the contract for the "painting" is not, and has not been made with any customer for advertising purposes, but solely as a lead or step looking to the sale by respondent to the customer of a "suitable" frame for said "painting." In the event the customer should refuse to agree to buy one of respondent's frames, priced to him at exorbitant prices, the unfinished "painting," or "sketch" is left with the customer, the field artist departs, and the customer is remitted to his own resources to find a "suitable" frame for the "sketch," or "painting" to be. The customer learns to his astonishment that owing to the peculiar convex, octagonal shape of the "painting," a "suitable" frame for the same cannot be bought or located by him at any store or place known to or ascertainable by the customer in a reasonable or any other period of time, and that he must either buy a frame from respondent at respondent's price, or do without both a finished "painting" and frame therefor.

Respondent meanwhile retains the money paid in advance by the customer for the "\$20.00 High Grade Painting" and retains the customer's family photograph, often of a deceased member of the customer's family.

The customer, in this situation, has paid for a "High Grade Painting" but is unable to obtain delivery thereof unless and until a frame is approved as "suitable" by a representative of Midwest Studios, Inc.

PAR. 6. The pictures or photographs which are borrowed from prospective customers by the agents and representatives of respondent Midwest Studios, Inc. for the purpose of having "paintings"

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made therefrom, were, and are in most instances, pictures of members of the customer's family or near relatives, and many such pictures cannot possibly be duplicated. Such photographs so loaned and furnished to respondent by its customers possess and have possessed great sentimental value. In numerous instances the member of the family or near relative represented by the photograph, has been dead for many years. In making contracts with its customers, respondent inserts therein, a clause to the effect that no countermands are accepted. In case of a controversy involving alleged misrepresentations as to the character of the goods, or work done, or for other reasons, justified in the mind of the purchaser, the respondent, Midwest Studios, Inc., in the event any sum or balance is claimed to be due it from the purchaser, did and does insist upon holding the purchaser to the letter and terms of the contract, and as a means of enforcing compliance with the terms of the contract respondent did and does refuse to return the valued family photograph until the money claimed to be due it has been paid.

Respondent, in many instances, has retained original photographs and colored enlargements made therefrom, and has retained possession of enlargements fully paid for at the original contract price therefor, if subsequently frames for the same were not purchased by the customer from respondent Midwest Studios, Inc., for any reason. Under such type of duress, many customers who are and have been dissatisfied with the character or quality of the paintings made for them by respondent, and who assert, and have asserted, misrepresentations in connection therewith, have been forced to go through with the contract in order to obtain the return of a treasured family photograph.

PAR. 7. In truth and in fact, the various statements and representations made by respondent Midwest Studios, Inc. through its agents and representatives, in selling its products and in offering them for sale in cities, towns and communities of the respective states of the United States, were and are false, deceptive, and misleading in the following, among other particulars:

(a) The alleged oil paintings, water color paintings, and paintings, represented and sold by respondent Midwest Studios, Inc. as "\$20.00 High Grade Paintings" are not and never have been "oil paintings," "water color paintings," hand-painted paintings, or paintings at all, or any work of art produced through the art of drawing or drawn from life, but on the contrary, are and have been, merely cheap, photographic enlargements of photographs, thereafter tinted or colored by the use of pastel or crayon, water color or other powdered pigments sprayed upon the photographic enlargement, in solution, largely through the use of an air brush and compressed air.

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(b) The said "paintings" as represented and sold are not worth, and never have been worth, or had the value of \$20.00, or any other value approximating these amounts; nor have such products ever possessed or had the quality, characteristics or value of oil paintings, water colors, or other types of genuine paintings attributed to them by representatives of said respondent, but on the contrary comprise a cheap, inferior product, costing around \$1.25 each.

(c) The sales prices represented for said "paintings" by sales representatives were and are fictitious and greatly in excess of the prices at which such tinted or colored photographic enlargements were ever sold or were ever intended or contemplated to be sold.

(d) The sum of \$1.95 does not represent, and has never represented the cost of postage or the agent's expenses incurred in connection with the delivery of a "painting," but on the contrary represents the average price at which such type and quality of work is sold.

(e) Pictures or "paintings" made by respondent for customers are different from and greatly inferior in quality, workmanship and character to alleged samples thereof exhibited by agents endeavoring to obtain and obtaining contracts for such pictures or "paintings."

(f) Customers do not understand and have not agreed, in connection with contracts, that treasured family photographs are to be retained by respondent until payment of any sum alleged by respondent to be due him.

(g) Frames delivered in connection with the sale of said pictures of "paintings" are not the same as, but are inferior to, alleged samples of frames exhibited by agents while obtaining contracts therefor, and prices asked for said frames are exorbitant and far above the value thereof.

(h) Glasses for said picture frames are unbreakable in character, but on the contrary are and may be readily broken.

(i) So-called "lucky slips" drawn by customers from agents upon the representation that the customer is thus obtaining a ticket, coupon or certificate entitling him to obtain a \$20.00 High Grade Painting" free, falsely and deceptively induce the customer to believe that he has thereby obtained a distinct advantage, and influence him to enter into a contract for a "painting" and a frame therefor, when as a matter of fact all prospects found to have any available money were and are permitted to make a "lucky draw" and obtain such alleged "free painting" certificates and respondent, Midwest Studios, Inc., acting through its salesmen and representatives, further deceives the purchasing public by concealing the fact that the purchase of a suitable frame is made a condition in connection with the sale of respondent's "paintings" and that the customer will be forced in the end to buy a frame from respondent at respondent's own price.

PAR. 8. There are, among the competitors of respondent, Midwest Studios, Inc., as described in paragraph 1 hereof, corporations, partnerships, firms and persons who are not engaged in the sale of tinted or colored photographic enlargements of photographs and of frames therefor, who do not employ the methods and practices set forth in paragraphs 3 to 6 of this complaint, but who truthfully represent their products and honestly vend the same, and there are also, among the competitors of respondent, Midwest Studios, Inc., corporations, partnerships, firms, and persons engaged in the business of producing and selling genuine paintings, who truthfully represent the same as "paintings."

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PAR 9. The use by respondents, Midwest Studios, Inc., Imperial Sales Co., and B. E. Youmans, of said practices as set forth in paragraphs 3 to 6 inclusive of this complaint, unfairly diverts trade from competitors and thereby substantial injury has been done, and is being done, by respondents to substantial competition in interstate commerce. By the use of the within described false and misleading representations, said respondents have deceived, and are deceiving, the public concerning the quality and value of their products sold as hereinbefore described, and have thereby induced, and are inducing, the public to purchase such products under the erroneous belief that the same are, and were, high grade quality paintings, and picture frames of exceptional merit and value respectively.

PAR. 10. The above alleged acts and practices employed by said respondents as aforesaid are all to the prejudice of the public and the 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 the Federal Trade Commission Act, the Federal Trade Commission on December 9, 1936, issued and thereafter served its complaint in this proceeding upon respondents, Midwest Studios, Inc., and Imperial Sales Co., corporations, and B. E. Youmans, an individual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by Marshall Morgan, Reuben J. Martin and George Foulkes, attorneys for the Commission, and in opposition to the allegations of the complaint by Dan J. Kenny, B. E. Youmans and Albert H. Fry, attorneys for the respondents, before Henry M. White and Robert S. Hall, examiners for the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of 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 these its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Midwest Studios, Inc., and Imperial Sales Co., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Oregon, each with its place of business located in the Governor Building, 408 Southwest Avenue, in the city of Portland, Oreg.

Respondent Midwest Studios, Inc., is engaged in the business of producing and offering for sale and selling tinted or colored enlargements of photographs and frames therefor. Prior to March 1936, notes for balances due on products sold by Midwest Studios, Inc., were made payable to respondent Imperial Sales Co. Since March 1, 1936, notes have been made payable to Imperial Finance Co., a trade name owned by and registered in the name of Midwest Studios, Inc., the Imperial Finance Co. taking over the function formerly exercised by the respondent Imperial Sales Co., that of handling instalment notes for the Midwest Studios, Inc.

Respondent Youmans is president of each corporation, owns all the stock of Imperial Sales Co. and is a large stockholder in Midwest Studios, Inc. He is in charge of the latter company's office force and finances, has contact with the field forces, has authority to make concessions on contracts and to authorize refunds. Complaints are referred to him. He personally has control of the operation and the details of the management of the business of the two corporations. Balances due on pictures and frames sold by Midwest Studios, Inc. have been made payable to and have been collected by Imperial Sales Co., entirely owned by respondent Youmans. This installment business, in the year 1936, amounted to \$86,735.42.

PAR. 2. In the course and conduct of its business of offering for sale and selling tinted or colored enlargements of photographs and frames therefor, the respondent Midwest Studios, Inc., has caused such products, when sold, to be transported from its place of business in Portland, Oreg., to purchasers thereof located in various States of the United States other than the State of Oregon. In the course and conduct of such business, respondent Midwest Studios, Inc. is in competition with other corporations and with partnerships, firms, and individuals likewise engaged in offering for sale and selling in commerce among and between the various States of the United States and in the District of Columbia, colored, enlargements of photographs, pictures, and frames, and other similar products.

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PAR. 3. The pictures and frames of respondent Midwest Studios, Inc., also referred to herein as Midwest, are sold to members of the public by crews of solicitors and salesmen traveling throughout the various States of the United States, each crew working together under the supervision of a crew manager. There are from 125 to 150 salesmen. The sales people are divided into two general classes, "front men" with samples, who make the original contacts with customers, and follow-up men or "field artists," who call later to obtain color instructions for pictures and to sell frames therefor. Each salesman is supplied by Midwest with, and carries and presents, a card of certificates certifying him to be a duly accredited representative of Midwest Studios, Inc., Portland, Oreg., authorized to show or demonstrate samples and to take orders for future delivery. Samples of respondent's work are carried by its salesmen. Salesmen are also furnished by Midwest with contract forms or order blanks, each order being directed and addressed to Midwest Studios, Inc. Prior to February 1936, the contract form for orders as employed by Midwest Studios, Inc. contained the following language and provisions:

"Midwest Studios, Inc.,
408 S. W. Second Ave.,
Portland, Oregon.

----- 1935.

Authorized capital \$25,000.

By paying our representative \$1.95 we will make for the undersigned one of our \$20 HIGH GRADE PAINTINGS in the most pleasing size in the NEWEST OCTAGON DESIGN, same as painting shown.

This extraordinary offer is for advertising purposes only to introduce paintings of a higher grade, hand-finished by talented artists; therefore to assure us of a lasting advertisement this offer is conditional to the extent that the paintings be framed within a reasonable length of time.

Before finishing, our field artist will call on you with a sketch of your photograph and get full particulars for finishing; at that time art-craft frames of the newest design will be submitted for your selection. In the event a frame is not selected, the sketch will be left with you until a suitable frame is selected elsewhere; then the painting will be finished at no additional cost.

COUNTERMANDS NOT ACCEPTED. VERBAL AGREEMENTS NOT RECOGNIZED.

This offer cannot be extended, future price \$20 and up. All work strictly guaranteed

Customer -----
Address -----

Representative.

The language of the above form of contract was amended about February 1936, to the extent of changing the word "painting" to "portrait" wherever the former word had occurred.

Order blanks covering the sale of frames were, and are, also employed by respondent Midwest Studios, Inc., space being reserved at the bottom thereof for the signature of the customer in each instance, the sales representative taking the order for respondent company also signing opposite the customer or purchaser variously as "advertising manager," and "field artist."

These forms of contracts were employed by salesmen for Midwest Studios, Inc., in taking orders to be executed by it. Based upon the testimony of customers of Midwest Studios, Inc., and upon the general representations of said respondent made both directly and through agents, salesmen and representatives, and also by reason of the use of the credential cards, contracts and order blanks, above described or referred to, the Commission finds that the respondent, Midwest Studios, Inc., as well as its salesmen and other representatives soliciting orders for pictures and frames therefor, have customarily represented to such customers and have induced them to understand that they are dealing direct with the respondent, Midwest Studios, Inc., and are purchasing pictures and frames direct from Midwest Studios, Inc. The Commission finds that solicitors, salesmen, managers, "field artists" and other representatives selling Midwest colored enlargements of photographs and frames therefor to members of the purchasing public are agents for Midwest and are accepted as such and dealt with as such by the purchasing public.

PAR. 4. For the purpose of selling respondent Midwest's colored enlargements of photographs and frames therefor, and inducing purchasers thereof to sign contracts without understanding or being able to learn the nature, terms and conditions thereof or to obtain complete details regarding the transaction into which they are entering, salesmen and other representatives of respondent, Midwest Studios, Inc., with the active cooperation of the respondents Imperial Sales Company and B. E. Youmans, by the use of standardized sales talks furnished by respondents, made and have made, under circumstances and in situations hereinafter related, representations as follows:

(a) Salesmen and other representatives of the respondent Midwest Studios, Inc., while traveling in crews and visiting homes in cities and towns in various States of the United States, exhibit to prospective purchasers various samples of attractively colored specimens of the work of Midwest Studios, Inc., enclosed in glass. The prospective customer's attention is called to these specimens and the customer is informed that the company in order to advertise their paintings, is anxious to select a few customers who will display them in a prominent place in their homes. This proposition is represented as being

a special or introductory offer to a selected few members of the community, available only for a short period of time.

(b) Respondent's salesmen in showing samples call particular attention to the quality of Midwest Studios' work. Pictures are and have been represented and referred to by respondent Midwest Studios and by its various salesmen and representatives as "paintings," "fine paintings," "free hand-painted portrait valued at \$20," "oil painting worth \$20," and as various types of paintings selling at or worth from \$15 to \$25, and in respondent's contract the product agreed to be supplied is a \$20 high grade painting. * * * future price \$20 and up." Respondent's product has been continuously called a "painting" and a substantial portion of customers called upon interpret the product as an "oil painting." Customers are informed that the completed "painting" furnished by Midwest Studios, Inc. will be the same as the sample exhibited.

(c) In connection with and in furtherance of respondent's said sales plan, and for the purpose of convincing the prospective purchaser that said colored photographic enlargement is being obtained only by a selected few, and for only a nominal or incidental expense as a "special offer" or as a "free picture given as an advertising offer," the prospective customer is then introduced to the "draw." Midwest Studios salesmen, upon entering the home of the customer, represent that the company is anxious to select a few customers to advertise their paintings and is willing to give her the opportunity to draw a lucky number. Customers who "draw" and are informed that they have drawn "lucky" are presented by the sales agent with a coupon reading "Special. This entitles the holder to our special advertising offer: Midwest Studios, Inc." Customers are informed that by reason of having drawn the "lucky envelope," they are entitled to picture or painting variously described as follows: "A \$20 picture for nothing," "a \$20 picture free, absolutely free," "a free hand-painted portrait valued at \$20," "a \$20 picture painted by an eastern artist," "a high-grade painting worth \$20," a "High-grade painting worth \$20 for \$1.95," "a real oil painting," "A very beautiful painting worth \$20 to \$25 any way," and "a \$20 picture like the one in the agent's case."

(d) Having induced the prospective customer to "draw lucky" so as to obtain a "free picture" and to sign a contract or order to that effect, respondent's salesman then borrows from the customer a treasured family photograph to be used in making a "sketch," outline or foundation for the "free painting." Finally after a treasured family photograph belonging to the customer is in the possession of

respondent's sales representative, the customer is advised that there is a small or nominal item of expense involved, generally \$1.95 (formerly \$1.45) to cover the cost of "handling," "wrapping," parcel post or "the painter's time," which said sum the customer is required to pay at the outset on the "free painting."

The customer is finally informed by the first sales representative that in a few days a field artist will call with a "sketch" of the painting to obtain color instructions from the customer.

(e) The first sales representative to contact the customer speaks only of paintings or portraits. Salesmen carefully conceal from the customer the essential fact that he or she is expected to and must eventually buy a frame for the painting from the respondent Midwest Studios, Inc. There is no intimation from respondent's first contact salesman that the real purpose and intent of the entire proceeding is to sell the customer a frame; that the respondent company's profit is made on the sale of frames and covers any loss sustained by the company on the picture or painting. The matter of frames not being mentioned by the salesman obtaining the contract for the picture, the customer is not advised, and he has no way of knowing that owing to the peculiar shape of respondent company's frames they cannot be bought elsewhere.

(f) As a rule the photographs borrowed from customers by respondent's salesmen are photographs of members of the customer's family, or a near relative, and in some instances they cannot be duplicated. In many instances, the photograph in question is the only picture the family has of a particular person. These pictures in many instances possess great sentimental value.

(g) The second salesman, or so-called "field artist," introduces the customer to the matter of purchasing a frame. It is from the "field artist" that the customer begins to learn, and eventually does learn, what respondent's sales proposition really means. The second salesman or follow-up man, designated in respondent's order blank and in sales talks as "field artist," appears at the home of the customer with a preliminary sketch or unfinished photographic enlargement of the photograph theretofore loaned by the customer to respondent Midwest Studios' first or contact representative. This sketch is octagon shaped, convex in surface, 10 by 16 inches in size, and is done in sepia or brown tone. The "field artist," in addition to the sketch, brings along samples or pictures of frames. The dual job of the second salesman or "field artist" is to obtain coloring instructions for the "painting" and to sell the customer a frame for the "painting" that is to be made from the "sketch."

The average selling price of respondent Midwest Studios' frames is around \$7.50. Frames are sold respectively, however, for \$8.90, \$9.90, \$11, \$11.95, \$12, \$13.95, \$15, and \$17. Frames cost about \$1.50 each at the factory.

(h) The real situation as to the sale of frames by respondent, theretofore undisclosed by reason of the silence of respondent's salesmen on the subject of frames, is brought to light immediately upon the refusal of a customer to buy a frame or to carry the transaction through to a conclusion by paying any balance due on a frame and picture theretofore ordered. Upon refusing to purchase frames, customers are thereupon variously informed by respondent's "field artists" or follow-up salesmen that owing to the peculiar octagon shape of frames it will be difficult or it will not be possible for the customer to obtain a frame elsewhere; that frames selected by the customer will be unsatisfactory and unacceptable to the company, and that the customer will not receive his picture unless a frame therefor is purchased from Midwest.

(i) The first sales agent, in obtaining the loan of a treasured family photograph and explaining that it will be needed for making the "sketch" for the painting or portrait, does not disclose or even intimate that the customer will not be able, when the sketch is produced, to obtain then the return of the photograph that has been loaned the sales agent. The color instructions are obtained from the customer, not from the photograph, and customers understand that having paid all that was requested in the case of the painting or picture, the picture is their property.

It is established by the evidence that in various instances where customers refused to buy frames, respondent company would neither surrender to them the sketch or painting or the family photograph which had been loaned by the customer. Various customers have been informed that the photograph will not be returned until a frame is bought. The policy and practice of respondent company is and has been to retain the family photograph of the customer "until the transaction is completed" and the transaction is "not completed until the customer has either accepted the picture and frame and pays for it in accordance with the contract or the customer and the studio have entered into a satisfactory disposition of the case * * *." If the customer pays in full for the portrait and frame, the original photograph will be returned with these. If the customer fails or refuses to pay eventually, the photograph is returned when the time comes when the respondent company does not deem it advisable to press the matter further. In pursuance

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of the company's policy, customers' photographs are retained until final payment is made on the frame in cases where notes have been executed for balances due. In such cases the customer is required to sign a note containing the following provision:

I have voluntarily signed this note as evidence of balance due on portrait and frame purchased from Midwest Studios, Inc., which you are to mail to me, together with photo upon payment of this note in full as above specified.

By this means the respondent attempts and has attempted to show a balance due on a picture which has already been paid for in full.

PAR. 5. Based upon the testimony of customers of Midwest Studios, Inc., upon the testimony of the officers, salesmen and other representatives of said company, and upon the failure and refusal of said officers, salesmen, and representatives to disclose to customers essential facts and situations bearing upon and influencing the course of said customers' dealings and contractual relations with said Midwest Studios, Inc., the Commission finds that:

Midwest Studios, Inc., does not and never has limited the sale of said pictures to a few selected customers in any given territory.

The picture or similar work does not now and never has sold for the price of \$20 to \$25.

Respondent Midwest Studios' \$20 painting or picture offered as "free" for advertising purposes after the customer has drawn "lucky," is not free, but in fact the sum of \$1.95 charged therefor is the usual customary price for which respondent sells said so-called paintings or pictures. The actual cost to Midwest of the picture sold by it is possibly a dollar and the sum of \$1.95, collected from the customer at the beginning of each transaction is in fact an initial purchase price payment on a picture and is not and does not represent the actual cost of "wrapping," "handling" a picture, or "parcel post" or "the painter's time," as represented.

Respondent, Midwest Studios, Inc., is not and has not been engaged in any special advertising campaign. Pictures are not actually offered as, or in connection with, any special introductory offer, and the method by which respondent company, through its salesmen, undertakes to place and does place its pictures, portraits, or paintings in the homes of customers in various States of the United States was, and is, the regular sales plan employed by the company in the case of all customers.

Respondent, Midwest Studios, Inc., does not now and never has produced oil paintings of photographs loaned to it.

Based upon the testimony of photographers who enlarge and color photographs, artists who design and paint pictures, and curators

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who conduct exhibitions of art, the Commission finds that pictures sold and distributed by respondent, Midwest Studios, Inc., are not "paintings." Said pictures in no way conform to the established belief of the public as to what constitutes a painting nor do said pictures constitute paintings. The pictures sold and distributed by the respondent, Midwest Studios, Inc., are in fact colored photographs produced by making a photographic negative of a photograph loaned or furnished by the customer, an enlarged photograph then being made from the negative or specially prepared photographic paper, this being built up by the use of pastel and water color, principally applied by a mechanical device known as an air brush.

The Commission finds that a painting as understood by photographers who color photographs, artists who paint pictures, and the general public, is an original representation by the painter of a design, image, or object on a surface by means of paint, either pastel, water color or oil; a free-hand image by the artist painted directly on the surface without the intervention of any mechanical means such as a camera. This is the conception which the general public has of the term "painting" and is what they expect to get when a painting is purchased.

The alleged "draw" is a fraudulent scheme conceived for the sole purpose and with the result of inducing prospective purchasers to believe that if they draw "lucky" numbers they will have the advantage of securing pictures free, or at a greatly reduced price, and that they will further receive said pictures to the exclusion of certain other people in the same locality. In fact, however, every prospect is approached in the same way and all pay the same price. By means of this scheme, members of the purchasing public are beguiled into believing that they are the exceptional few whom fortune has favored.

The Commission finds that the said "draw" as employed by the Midwest Studios, Inc., does not give said purchaser a picture free or at a reduced price and does not give any customer any advantage or preference over any other customer. The Commission further finds that as a result of the representations of respondent's salesmen in relation to the "draw" customers considering that they have been lucky and have won or obtained a distinct advantage over other customers in the same locality are thereby induced to sign contracts for the completion and delivery of respondent's pictures.

The sales plan designed and employed by the respondents, which provides for the original or contact salesman selling or placing only the picture and a second or separate party known as a "field artist" delivering a "sketch" of the picture and selling the frame, is solely for the purpose, and has the effect of, misleading and forcing the

purchaser into buying something which he did not originally intend buying, namely, a frame. The special design of frame in which the picture is delivered cannot be duplicated successfully except by the Midwest Studios, Inc. As a result, the purchaser is forced to deal with the respondent, Midwest Studios, Inc., in the purchase of said frame. By this method of dealing in frames, the respondents have placed, and are placing, in the hands of their sales representatives and "field artists" a means whereby said representatives and "field artists" can, and do, sell said picture frames for exorbitant amounts, and can force the purchase of frames upon unsuspecting customers.

The alleged "field artist," mentioned in respondent Midwest's "painting" contract and in sales talks, who comes to get color instruction and to sell a frame, is not an artist but merely another salesman posing under that title. The expression "field artist" is merely a nickname applied to them. They do no actual art work.

PAR. 6. Based upon the testimony of customers of Midwest Studios, Inc., upon the testimony of the officers, salesmen and other representatives of said company, and upon documents employed by respondent company in connection with sales work, the Commission finds that if a customer accepts a "free painting," has paid \$1.95 thereon as an item of incidental expense after having drawn "lucky," has loaned Midwest's representative a treasured family photograph, and then refuses to buy a frame from respondent, his plight is as follows: Respondent company will refuse to complete the "painting"; the customer, assuming it might be delivered to him, has up to that moment only a brown-toned unfinished print or "sketch," not suitable for framing, the contract is not subject to cancellation and, in order to get the "free painting" which the customer thought he would get upon drawing "lucky" and paying \$1.95 as an item of expense, and the return of the valued family photograph, the customer finds he must buy a frame from respondent Midwest Studios, Inc. The Commission finds that the record does not disclose any instance where one of Midwest's salesmen informed any customer where he or she might purchase a frame other than through respondent Midwest Studios, Inc., and that the record does disclose that customers were compelled to buy frames from respondent company in order to receive their pictures or paintings and to obtain the return of the family photograph they had theretofore loaned to the company's sales agent.

PAR. 7. The Commission further finds that if the customer has agreed to accept a free painting, has drawn "lucky," has paid the expense item of \$1.95, has loaned Midwest's sales representative a

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valued family photograph and has bought a frame on the installment plan, but has not finished paying for the frame, the respondent company, Midwest Studios, Inc., retains the sketch, the finished "painting," the valued family photograph and the frame until all sums claimed to be due to the company are paid to it in full.

The Commission further finds in this relation that customers have not agreed, and have not been given to understand by respondent's sales agents, that in lending a family photograph to respondent's sales agents for use in making a preliminary sketch, respondent, Midwest Studios, Inc., thereby obtained in effect and could undertake to assert a lien upon such photograph entitling respondent company to retain custody and possession of said photograph until any and all sums due, or claimed to be due, by the customer to Midwest Studios, Inc., were paid.

PAR. 8. The Commission further finds, based upon the testimony of customers, that many were dissatisfied and deceived as a result of the representations of salesmen of Midwest Studios, Inc., were dissatisfied with the work done for them by the respondent company, and that pictures were not in accordance with samples previously shown or representations made relative thereto. This was the case with respect to pictures and frames alike. Customers who had been promised oil paintings did not receive oil paintings. Many customers complained about the quality and character of respondent's work. Many customers did not understand that the picture was to be in a peculiar octagonal shape and convex and some refused to accept the picture when the same was sent c. o. d. with no opportunity permitted to inspect the work before paying for it.

PAR. 9. The Commission further finds that all of the representations by the salesmen and representatives of the respondent, Midwest Studios, Inc., were made with the knowledge, acquiescence and active cooperation of the respondents and respondents' salesmen and representatives for the purpose and with the result of selling Midwest Studios, colored enlargements or photographs and frames therefor. The respondents and said salesmen and representatives knew these representations to be false and misleading. The respondents further aided and abetted in the furtherance of said fraudulent sales plan and representations by furnishing said salesmen and representatives with standardized sales talks containing the false and misleading representations hereinbefore set out for their guidance.

PAR. 10. There are among the competitors of respondent, Midwest Studios, Inc., and respondent, Imperial Sales Co., corporations, partnerships, firms, and persons who are engaged in the sale of colored enlargements of photographs and frames therefor in commerce be-

tween and among the various States of the United States and in the District of Columbia, who do not employ and maintain the practices hereinbefore enumerated and described, but who truthfully represent and honestly vend their products, and there are also among the competitors of said respondents, corporations, partnerships, firms, and persons engaged in the business of painting portraits and selling paintings in commerce between and among the various States of the United States and in the District of Columbia, who truthfully represent their products as being paintings.

PAR. 11. The use by respondents of the hereinabove enumerated false and misleading representations in connection with the offering for sale and sale of colored photographic enlargements and of frames therefor has had and now has the capacity and tendency to deceive, and has deceived, purchasers into buying respondent Midwest Studios, Inc.'s products as and for those possessing the characteristics and qualities claimed for them. Respondents, through such methods have placed, and are placing, in the hands of their sales managers, sales agents and "field artists," the means of deceiving customers.

The aforesaid acts and practices of the respondents have the capacity and tendency to, and do, divert unfairly to respondents the trade of competitors engaged in selling in commerce among and between the various States of the United States and in the District of Columbia products of the same kind and nature as those of respondents, which products are truthfully advertised and represented.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and of the respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 thereto, testimony and other evidence in support of the allegations of said complaint and in opposition thereto, taken before Henry M. White and Robert S. Hall, examiners of the Commission theretofore duly designated by it, briefs filed herein, and oral arguments by Marshall Morgan, counsel for the Commission, and by Albert H. Fry, 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 the Federal Trade Commission Act.

It is ordered, That the said respondent, Midwest Studios, Inc., a corporation, and Imperial Sales Co., a corporation, their officers, representatives, agents, and employees, and B. E. Youmans, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale and sale and distribution of colored or tinted photographs or colored enlargements thereof having a photographic base, and of frames therefor, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or in any manner, that colored or tinted pictures, photographs, or photographic enlargements are hand-painted or are paintings.

2. Using the terms "free hand painted portrait," "oil painting," or the word "painting," either alone or in conjunction with any other terms or words or in any way to designate, describe or refer to colored or tinted pictures, photographs or photographic enlargements or other pictures produced from a photographic base or impression.

3. Misrepresenting that any specified sum is the actual cost of "handling" a picture, "wrapping," or "parcel post," or the "painter's time," or otherwise misrepresenting the actual cost of either materials or delivery.

4. Representing that a picture similar to sample displayed will be delivered unless the picture so delivered is of the same kind, quality, design, and workmanship.

5. Representing that respondents are conducting any special or advertising campaign in any particular place or locality for the purpose of obtaining special exhibitors, or otherwise, unless such campaign or such special offer is in fact then being conducted or made in such locality for such purpose.

6. Representing that said pictures are being, or will be, sold only to a limited number of customers, or otherwise misrepresenting any material fact concerning the terms and conditions of sale, or the extent to which the sale of such pictures is limited.

7. Misrepresenting through the use of a "draw," or drawing contest, or through the use of "lucky" blanks, slips, coupons, or certificates, or through the use of any other device, plan or scheme, or through any introductory or advertising offer, or otherwise, that any customer thereby would obtain a financial advantage or would be entitled to receive any picture free or would receive a substantial discount or reduction in the price of any picture or pictures.

8. Concealing from or failing to disclose to customers upon initial contact that the finished picture when delivered will be so shaped and designed that it can only be used in a specially designed, odd style of frame which can be obtained from Midwest Studios only.

9. Representing to customers in any manner that suitable frames for pictures may be purchased elsewhere unless such odd design of frame can in fact be readily purchased in the customary marts of trade.

10. Representing as the customary or regular prices or values of frames prices and values which are in excess of the prices at which frames are regularly and customarily sold in the normal and usual course of business.

11. Obtaining promissory notes which recite that there is an outstanding "balance due on portrait," or otherwise misrepresenting that any sum or balance is due on a picture, when in fact the purchaser has previously paid the full prescribed contract price for said picture.

12. Retaining the original photograph loaned to respondent for use in making its picture, or retaining the pictures made by it therefrom, after full payment has been made therefor, unless all of the terms and conditions upon which said original photograph or said picture made by respondent is to be retained in connection with the purchase and payment for a frame, or for any other purpose, are fully and adequately revealed to the purchaser at the time the original photograph is obtained from such purchaser.

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

CORNELIUS P. VAN SCHAAACK, JR., TRADING AS THE
INK COMPANY OF AMERICA AND PIONEER ADVERTISING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3261. Complaint, Nov. 6, 1937—Decision, May 15, 1939*

Where an individual engaged in offer and sale of sales promotion cards and certificates, fountain pen and pencil sets, and ink and pencil leads, to retailers and other consumers in various States and in the District of Columbia, and, as thus engaged, in (1) entering into written contracts with retail merchants contacted by his agents, which provided for purchase by merchant, at 10 cents apiece, of pen and pencil certificates, to be distributed to merchant's customers upon purchase by customer of \$5 worth of merchant's goods, as registered upon purchase cards supplied by said individual to merchant, and entitling customer to have same redeemed for pen and pencil set, as therein described, upon forwarding same to said individual with 80 cents for ink and pencil leads, and in (2) furnishing such merchants with various display posters and advertisements to be employed by them in distribution and use of such cards—

(a) Represented, in the course and operation of his said business, and to induce said merchants to purchase his said pen and pencil certificates and use plan above set forth, that the Ink Co. of America was carrying on a national campaign designed to advertise its "Ticoa" ink and pencil leads, and that such campaign was being conducted by the Pioneer Advertising Co. as a separate organization, so as to permit retail merchants to give away nationally advertised pen and pencil sets free;

Facts being said individual was not engaged in carrying on such a campaign to advertise products of said first-named company, use of said names or trade names constituted a subterfuge by said individual to carry his plan into effect to lead merchants to believe that they were separate and distinct organizations, and he was not interested in sale of such "Ticoa" ink and "Ticoa" pencil leads for use in the fountain pen and pencil sets distributed by him, but was principally and primarily interested in sale of such promotional cards and certificates, to obtain the profits resulting therefrom, and he did not enable retail merchants to give away nationally advertised pen and pencil sets free, but cost thereof was included in price paid by merchants' customers for ink and pencil leads which they were required to purchase when redeeming certificates in question, and before receiving set involved;

(b) Represented that pen and pencil sets furnished to customers were nationally advertised products and had retail value and usual selling price of \$3.50, and set forth statements to such effect on certificates in question, and that such certificate entitled holder to a matched pen and pencil set absolutely free when sent, as hereinabove set forth, with 80 cents for the four bottles of "Ticoa" ink and four tubes of "Ticoa" leads;

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Facts being sets delivered to merchants' customers were not nationally advertised brand, but were a brand not nationally known or nationally advertised, did not have a retail value or price of \$3.50 each, but value and usual selling price substantially less than represented by individual, and cost of which to him was covered by sum of 80 cents which customers were required to send for redemption of their said certificates, as above set forth;

(c) Represented that retail merchant would receive free and without cost 3 pen and pencil sets, 12 tubes of lead, as many bottles of ink, and advertising material, upon entering into contract, and might designate therein nationally advertised brand of pen and pencil sets to be delivered to merchant's customers absolutely free in fulfillment of contract, and that adoption thereof by merchant would be without cost to him and would operate to his profit, in that said individual would refund amount paid for such certificates, together with additional amount for each certificate sent to him for redemption by merchant's customers;

Facts being adoption of such plan was not without cost to merchants, and did not operate to their profit, and said individual did not make cash refunds represented as above set forth, but offer thereof was a lure and snare devised and intended solely to secure execution of agreement by merchant in expectation of being able, through cooperation of said individual, to comply with terms of agreement and secure refunds from him for certificates sent in by his customers for redemption, as above set forth, and above statements and representations were otherwise false and misleading; and

(d) Represented, in advertisements in various newspapers and periodicals for agents to sell his merchandise, that \$25 a day was usual and customary commission that would be earned by such agents through such sale;

Facts being his said salesmen did not, in ordinary and usual course of business, earn said amount or any other sum of money closely approximating it, but usually and customarily made substantially less;

With effect of misleading substantial number of retail merchants and of purchasing public into erroneous and mistaken belief that such false and misleading representations were true, and of inducing thereby substantial number of such merchants to purchase his said certificates and execute contracts in connection therewith, and with effect that trade was thereby diverted unfairly to him from his competitors in commerce as aforesaid, and who truthfully represent their products:

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

Before *Mr. Arthur F. Thomas* and *Mr. Edward E. Reardon*, trial examiners.

Mr. George Foulkes for the Commission.

Hickey, Hall & Junge, 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,"

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the Federal Trade Commission, having reason to believe that Cornelius P. Van Schaack, Jr., trading as The Ink Co. of America and Pioneer Advertising Co., 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, Cornelius P. Van Schaack, Jr., is now, and has been for more than 1 year last past, an individual doing business under the trade names The Ink Co. of America, located at 6 North Michigan Avenue, Chicago, Ill., and Pioneer Advertising Agency, located at 549 West Randolph Street, Chicago, Ill. Respondent is now, and has been during the time above mentioned, engaged in the business of offering for sale and selling sales promotion cards and certificates, fountain pen and pencil sets, ink and pencil leads, to retailers and other consumers located in various States of the United States and in the District of Columbia.

PAR. 2. Said respondent being engaged in business as aforesaid causes said sales promotion cards, and certificates, together with the advertising literature used in connection therewith and the various items of merchandise also used in connection therewith, when sold, to be transported from his office and principal places of business located in Chicago, Ill., to the purchasers thereof located in various points in States of the United States other than the State of Illinois. The respondent has at all times mentioned herein maintained a constant current of trade and commerce in said sales promotion cards and certificates and the merchandise sold in connection therewith between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business the respondent is now and has been in substantial competition with other individuals, firms, partnerships, and corporations engaged in the business of selling and distributing promotional sales plans of various types, fountain pen and pencil sets, ink, pencil leads and similar commodities, 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 respondent advertises in various newspapers, magazines, and periodicals for agents to sell his merchandise, and represents to such prospective salesmen that \$25 a day is the usual and customary commission that will be earned

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by them through the sale of respondent's merchandise. Said advertising is as follows:

PREMIUM SALESMEN

\$25. commission daily.

Summer Special: Giving free pen and pencil sets through retailers. Ticoa, 6 North Michigan, Chicago.

In fact, respondent's salesmen do not, in the ordinary and usual course of business, earn \$25 per day or earn any other sum of money closely approximating \$25 per day. The usual and customary earnings of such salesmen, in due course of normal business, is substantially less than \$25 per day.

PAR. 4. Further, in the course of operation of his business and in order to sell his products respondent enters into a form of agreement or written contract with retail merchants who are contacted by respondent's selling agents.

The written form of contract provides for the purchase by a merchant of so-called "pen and pencil certificates," for which the merchant pays 10 cents a piece, and distribution of the same to the merchant's customers by the merchant upon the purchase by the customers of \$5 worth of the merchant's goods. Each customer is supplied by the merchant with a purchase card upon which the amount of purchases are registered.

The certificate which the customer receives from the merchant upon the purchase of the required amount of merchandise is as follows:

\$3.50 VALUE

(Picture of Pen
and Pencil Set.)

**NATIONALLY ADVERTISED PEN and PENCIL SET
CERTIFICATE**

This Certificate is Given With Our
Compliments and Entitles Holder to a
MATCHED PEN AND PENCIL SET
"ABSOLUTELY FREE"

When sent with trial order for 4 bottles of TICOA Ink at 10¢ each and 4 tubes of TICOA Leads at 10¢ each. Total cost 80¢. Same being the regular price of TICOA "Super Quality" Ink and Leads. Postage, Handling and Packing Charges Fully Prepaid.

CHECK COLOR OF MATCHED SET DESIRED

----- Red ----- Green ----- Blue ----- Black ----- Brown
PIONEER ADVERTISING AGENCY 549 Randolph St. Chicago, Ill.
Name -----
Address ----- City and State -----

When the customer has received his certificate he may redeem the same by forwarding it to respondent with 80 cents for ink and pencil leads.

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Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 5. In the course of the operation of his business and for the purpose of inducing retail merchants to purchase his pen and pencil certificates and to induce said retail merchants to use the plan above set forth, respondent makes the following representations:

1. That The Ink Co. of America is carrying on a national campaign designed to advertise its ink and pencil leads designated "Ticoa"; that the advertising campaign is carried on by the Pioneer Advertising Agency, a separate organization, so as to permit retail merchants to give away nationally advertised pen and pencil sets "free."

2. That the Ticoa ink and Ticoa pencil leads are of superior quality and have a regular retail price of 10¢ per package of leads and 10¢ per ounce of ink.

3. That the pen and pencil sets actually furnished to customers are nationally advertised products and have a retail value and usual selling price of \$3.50.

4. That the retail merchant will receive "free" and without cost 3 pen and pencil sets, 12 tubes of lead, 12 bottles of ink and advertising material upon entering into the contract.

5. That retail merchants may designate in said agreement a nationally advertised brand of pen and pencil set and that the same will be delivered by respondent to the merchant's customer absolutely free in fulfillment of the contract.

6. That the adoption of respondent's plan by retail merchants will be without cost to them and will operate to their profit in that respondent will refund the amount paid for the certificates together with an additional amount of money for each certificate sent to respondent for redemption by the merchant's customers.

7. That merchants will not be obliged to pay any postage, packing, or handling charges for the merchandise received by them from respondent.

PAR. 6. Respondent's representations as above set forth are grossly exaggerated, false, misleading, and untrue. In truth and in fact respondent has not been and is not engaged in carrying on a national campaign designed to advertise the products of The Ink Co. of America. The use of the trade names The Ink Co. of America and Pioneer Advertising Agency is a subterfuge by which respondent, in order to carry his plan into effect, leads the merchants to believe that the same are separate and distinct organizations. The respondent is in fact not interested in the sale of Ticoa ink and Ticoa pencil leads

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to be used in the fountain pen and pencil sets distributed by him but is interested principally and primarily in the sale of said promotional cards and certificates for the purpose of obtaining the profits resulting therefrom. Respondent does not enable retail merchants to give away nationally advertised pen and pencil sets free, but in fact the cost of said sets is included in the price paid by the merchant's customers for the ink and pencil leads they must purchase when redeeming the pen and pencil certificates and before receiving the pen and pencil set. Ticoa ink and Ticoa pencil leads are not of superior quality and they do not have a retail price of 10 cents per package of leads and 10 cents per ounce of ink. The pen and pencil sets which the respondent delivers to the merchant's customers are not a nationally advertised brand and respondent in the conduct of his business supplies said customers with a brand of pen and pencil set not nationally known or nationally advertised. Further, the said pen and pencil sets do not have a retail value or price of \$3.50 each. In fact the retail value and the usual selling price of the sets is substantially less than represented by respondent and the sum of 80 cents which the customers send to respondent for redemption of their pen and pencil certificates covers the cost to respondent of said pen and pencil sets, together with 4 bottles of ink and 4 pencil lead sets. In fact, the retail merchant does not receive free of charge 3 pen and pencil sets, 12 tubes of lead, 12 bottles of ink and advertising material, but the cost of the same is included in the amount of money paid by the retail merchant to the respondent for the pen and pencil certificates. Further, when retail merchants designate their choice of a particular brand of pen and pencil set, their selection is disregarded by respondent and he systematically pursues the policy of substituting a cheaper pen and pencil set of a brand not nationally known. The adoption of respondent's plan by retail merchants does not operate without cost to them and does not operate to their profit. In fact, respondent does not make the cash refunds represented to merchants entering into such contracts. The purported cash refund to the merchants by the respondent is a lure and a snare devised and intended for the sole purpose of securing the execution of said agreement by retail merchants in expectation of being able, through the cooperation of respondent, to comply with the terms of the agreement and secure refunds from respondent for the pen and pencil certificates sent in for redemption to respondent by the said retail merchants' customers.

PAR. 7. The effect of the foregoing false and misleading representations on the part of respondent is to mislead a substantial number of retail merchants, as well as a substantial portion of the consuming

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public, by inducing them to believe that the representations made by the respondent and his representatives are true and that upon purchase of respondent's sales promotion cards and certificates said retail merchant will receive the benefits to accrue therefrom, and that upon sending in the pen and pencil certificates for redemption their customers will receive the merchandise represented.

The foregoing false and misleading representations on the part of respondent serve as inducements for substantial numbers of retail merchants to purchase respondent's pen and pencil cards and certificates and execute the contracts in connection therewith. As a result thereof, trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the sale and distribution of sales promotional plans, fountain pen and pencil sets, ink, pencil leads, and similar commodities, and who truthfully represent their products. As a consequence thereof, substantial injury has been done and is now being done by respondent in competition in commerce among and between the various States of the United States and in the District of Columbia.

The above alleged acts and representations of respondent have been and are now all to the prejudice of the purchasing public and of respondent's competitors as aforesaid, and have been and are now unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of 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 the Federal Trade Commission Act, the Federal Trade Commission on November 6, 1937, issued and on November 8, 1937 served its complaint in this proceeding upon respondent, Cornelius P. Van Schaack, Jr., trading as The Ink Co. of America and Pioneer Advertising Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this procedure regularly came on for final hearing before the Commission on the said complaint and 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. The respondent, Cornelius P. Van Schaack, Jr., an individual, is now and for more than 1 year last past has been doing business under the trade names of The Ink Co. of America, located at 6 North Michigan Avenue, Chicago, Ill., and Pioneer Advertising Co., located at 549 West Randolph Street, Chicago, Ill.

Respondent is now, and has been during the time above mentioned, engaged in the business of offering for sale and selling sales promotion cards and certificates, fountain pen and pencil sets, ink and pencil leads, to retailers and other consumers located in various States of the United States and in the District of Columbia.

PAR. 2. The respondent being engaged in business as aforesaid causes said sales promotion cards, and certificates, together with the advertising literature used in connection therewith and the various items of merchandise also used in connection therewith, when sold, to be transported from his office and principal places of business located in Chicago, Ill., to the purchasers thereof located at various points in States of the United States other than the State of Illinois.

The respondent has at all times mentioned herein maintained a constant course of trade and commerce in said sales promotion cards and certificates and the merchandise sold in connection therewith between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his business the respondent is now and has been in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the business of selling and distributing promotional sales plans of various types, fountain pen and pencil sets, ink, pencil leads, and similar commodities, 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 respondent advertises in various newspapers, magazines, and periodicals for agents to sell his merchandise, and represents to such prospective salesmen that \$25 a day is the usual and customary commission that will be earned by them through the sales of respondent's merchandise. Said advertising is as follows:

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PREMIUM SALESMEN

\$25 commission daily. Summer Special: Giving free pen and pencil sets through retailers. Ticoa, 6 North Michigan, Chicago.

In fact, respondent's salesmen do not, in the ordinary and usual course of business, earn \$25 per day or earn any other sum of money closely approximating \$25 per day. The usual and customary earnings of such salesmen, in due course of normal business, is substantially less than \$25 per day.

PAR. 4. In the course of the operation of his business and in order to sell his products respondent enters into a form of agreement or written contract with retail merchants who are contacted by respondent's selling agents.

The written form of contract provides for the purchase by a merchant of so-called "pen and pencil certificates," for which the merchant pays 10 cents apiece, and distribution of the same to the merchant's customers by the merchant upon the purchase by the customers of \$5 worth of the merchant's goods. Each customer is supplied by the merchant with a purchase card upon which the amount of purchases are registered.

The certificate which the customer receives from the merchant upon the purchase of the required amount of merchandise is as follows:

\$3.50 VALUE

NATIONALLY ADVERTISED PEN and PENCIL SET CERTIFICATE

| |
|----------------------------------------|
| (Picture of Pen and Pencil Set.) |
|----------------------------------------|

This Certificate is Given With Our
Compliments and Entitles Holder to a
MATCHED PEN AND PENCIL SET
"ABSOLUTELY FREE"

When sent with trial order for 4 bottles of TICOA ink at 10c each and 4 tubes of TICOA Leads at 10c each. Total cost 80c. Same being the regular price of TICOA "Super Quality" Ink and Leads. Postage, Handling and Packing Charges Fully Prepaid.

CHECK COLOR OF MATCHED SET DESIRED

_____ Red _____ Green _____ Blue _____ Black _____ Brown

PIONEER ADVERTISING AGENCY

549 Randolph St. Chicago, Ill.

Name _____

Address _____ City and State _____

When the customer has received his certificate he may redeem the same by forwarding it to respondent with 80 cents for ink and pencil leads.

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Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 5. In the course of the operation of his business and for the purpose of inducing retail merchants to purchase his pen and pencil certificates and to induce said retail merchants to use the plan above set forth, respondent makes the following representations:

1. That The Ink Co. of America is carrying on a national campaign designed to advertise its ink and pencil leads designated "Ticoa"; that the advertising campaign is carried on by the Pioneer Advertising Co., a separate organization, so as to permit retail merchants to give away nationally advertised pen and pencil sets "free."

2. That the pen and pencil sets actually furnished to customers are nationally advertised products and have a retail value and usual selling price of \$3.50.

3. That the retail merchant will receive "free" and without cost 3 pen and pencil sets, 12 tubes of lead, 12 bottles of ink and advertising material upon entering into the contract.

4. That retail merchants may designate in said agreement a nationally advertised brand of pen and pencil set and that the same will be delivered by respondent to the merchant's customer absolutely free in fulfillment of the contract.

5. That the adoption of respondent's plan by retail merchants will be without cost to them and will operate to their profit in that respondent will refund the amount paid for the certificates together with an additional amount of money for each certificate sent to respondent for redemption by the merchant's customers.

PAR. 6. Respondent's representations as above set forth are grossly exaggerated, false, misleading, and untrue. In truth and in fact respondent has not been and is not engaged in carrying on a national campaign designed to advertise the products of The Ink Co. of America. The use of the trade names The Ink Co. of America and Pioneer Advertising Co. is a subterfuge by which respondent, in order to carry his plan into effect leads the merchants to believe that the same are separate and distinct organizations. The respondent is in fact not interested in the sale of Ticoa ink and Ticoa pencil leads to be used in the fountain pen and pencil sets distributed by him but is interested principally and primarily in the sale of said promotional cards and certificates for the purpose of obtaining the profits resulting therefrom. Respondent does not enable retail merchants to give away nationally advertised pen and pencil sets free, but in fact the cost of said sets is included in the price paid by the merchant's customers for the ink and pencil leads they must purchase when redeem-

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ing the pen and pencil certificates and before receiving the pen and pencil set.

The pen and pencil sets which the respondent delivers to the merchant's customers are not a nationally advertised brand and respondent in the conduct of his business supplies said customers with a brand of pen and pencil set not nationally known or nationally advertised. Further, the said pen and pencil sets do not have a retail value or price of \$3.50 each. In fact the retail value and the usual selling price of the sets is substantially less than represented by respondent and the sum of 80 cents which the customers send to respondent for redemption of their pen and pencil certificates covers the cost to respondent of said pen and pencil sets, together with 4 bottles of ink and 4 pencil lead sets. In fact, the retail merchant does not receive free of charge 3 pen and pencil sets, 12 tubes of lead, 12 bottles of ink and advertising material, but the cost of the same is included in the amount of money paid by the retail merchant to the respondent for pen and pencil certificates. Further, when retail merchants designate their choice of a particular brand of pen and pencil set, their selection is disregarded by respondent and he systematically pursues the policy of substituting a cheaper pen and pencil set of a brand not nationally known. The adoption of respondent's plan by retail merchants does not operate without cost to them and does not operate to their profit. In fact, respondent does not make the cash refunds represented to merchants entering into such contracts. The purported cash refund to the merchants by the respondent is a lure and a snare devised and intended for the sole purpose of securing the execution of said agreement by retail merchants in expectation of being able, through the cooperation of respondent, to comply with the terms of the agreement and secure refunds from respondent for the pen and pencil certificates sent in for redemption to respondent by the said retail merchants' customers.

PAR. 7. The use by the respondent of the foregoing false and misleading representations has had and now has the capacity and tendency to and does, mislead a substantial number of retail merchants as well as a substantial portion of the purchasing public, into the erroneous and mistaken belief that such false and misleading representations are true. The foregoing false and misleading representations on the part of respondent serve as inducements for a substantial number of retail merchants to purchase respondent's certificates and to execute the contracts in connection therewith.

As a result thereof, trade has been diverted unfairly to respondent from his competitors in commerce among and between the various States of the United States and in the District of Columbia, who truthfully represent their products.

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CONCLUSION

The aforesaid acts and practices of the respondent as herein found 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent in which answer respondent admits all of the material allegations of fact set forth in the complaint, and states that he waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Cornelius P. Van Schaack, Jr., individually and trading as The Ink Co. of America and Pioneer Advertising Co., or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sales promotion plans, including cards and certificates, fountain pen and pencil sets, ink and pencil leads, or other articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the Pioneer Advertising Co., or the respondent trading under his own name or under any other trade name or names, has been or is conducting a national advertising campaign designed to advertise the products of The Ink Co. of America or of any person, firm, or corporation.

2. Representing that the Pioneer Advertising Co., The Ink Co. of America or any other instrumentalities owned and controlled by respondent and used by him in connection with the sale and distribution of said sales promotional plans, are organizations having separate ownership and control.

3. Using the term "free" or any other term of similar import and meaning to describe or refer to goods, wares or merchandise regularly offered in connection with the purchase of specified quantities of other merchandise.

4. Representing that the pen and pencil sets have a retail value and usual selling price of \$3.50 or any other amount in excess of the price at which said pen and pencil sets are regularly and customarily

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sold in the ordinary course of business under normal conditions and circumstances.

5. Representing that the pen and pencil sets are nationally known or nationally advertised.

6. Representing that respondent refunds to his customers the purchase price for such certificates or makes additional payments to his customers in connection with the presentation of the certificates for redemption.

7. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any given period of time, which is not a true representation of the average net earnings or profits customarily made by respondent's active full-time agents, salesmen, representatives or distributors in the ordinary course of business under normal conditions and circumstances.

8. Representing that the participation by merchants in respondent's sales promotional plan is without cost to said merchants.

It is further ordered, That the respondent shall within 60 days from 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

CORNELIUS P. VAN SCHAACK, JR., TRADING AS MID-WEST SALES SYNDICATE AND MID-WEST PORTRAIT SERVICE

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

Docket 3630. Complaint, Oct. 12, 1938—Decision, May 15, 1939

Where an individual engaged, as case might be, under names "Mid-West Sales Syndicate" and "Mid-West Portrait Service," in offer and sale of sales promotion cards and certificates, and also, respectively, of lanterns, batteries, and bulbs, and tinted photographic enlargements, and, as thus engaged, in entering into written contracts with retail merchants contacted by his selling agents, under which said individual agreed, for a specified sum, to furnish merchants with certificates to be distributed to merchants' customers purchasing certain amount of his merchandise and to be redeemed by him as below set forth—

- (a) Represented, in advertising for agents to sell his merchandise in various newspapers and periodicals circulating among the various States and in the District of Columbia, that \$25 a day was the usual and customary commission earned by his salesmen "Giving Away Free Electric Lanterns Through All Retail Dealers";

Facts being his said salesmen did not, in ordinary and usual course of business, earn such amount or any other amount of money closely approximating such sum, but, as usual and customary earnings in due course of normal business, substantially less;

- (b) Represented, under name "Mid-West Sales Syndicate," to retail merchants solicited to enter into contracts for purchase of his "Red Guard Electric Lantern Certificates," to be distributed by merchant and redeemed by said individual for customers upon being sent in, as thereon set forth, with 80 cents to cover, at 10 cents each, six Chicago "Super Quality" batteries and two bulbs, that he was carrying on a national campaign to advertise such batteries and bulbs, and that such campaign was being carried on by aforesaid syndicate, and separate organization, so as to permit retail merchants to give away such lanterns free, and that adoption of such sales promotion plan by merchant would be without cost to him and would operate to merchant's profit, in that he would refund amount paid for certificates together with additional amount for each certificate sent to him for redemption by customers of merchant;

Facts being he was not engaged in any such campaign, and his said plan did not enable the merchant to give away such lantern free, but cost thereof was included in price paid by merchant's customers for batteries and bulbs which they were required to purchase when redeeming such lantern certificates and before receiving lantern, and plan did not operate without cost to merchant, nor to his profit, and he did not make such refunds, which were lure and snare devised and intended solely to secure execution of agreement by merchant.

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(c) Represented, as aforesaid, that number of certificates which he would permit retail merchant to purchase was determined by manufacturer of such batteries and bulbs, and not by himself, and that lanterns had a retail and usual selling price of \$1.50 and were given away "free" to merchant's customers, and set forth such purported value on said certificates and that they were "Absolutely Free" when certificates were sent in for such trial order with 80 cents, as above indicated;

Facts being there was no such limitation placed by manufacturers of aforesaid products upon amount of certificates which retail merchant might purchase, said batteries and bulbs were sold outright to said individual by such manufacturer and could be disposed of by him as his own property, and said lantern did not have any such retail value and usual selling price, but cost thereof was included in price paid by merchant's customers for batteries and bulbs as above set forth; and

(d) Represented that he would, at merchant's request, provide merchant with labels, circulars, and advertising matter to enable him properly to put plan into effect;

Notwithstanding fact he did not, in all cases, thus supply merchants; and

(e) Represented, under name "Mid-West Portrait Service," in entering into contracts with merchants and in soliciting such business of them, as hereinabove indicated, that the complete portrait and frame described in certificates furnished by him to merchant for distribution to merchant's customers upon the purchase of a certain amount of merchandise, and to be redeemed by said individual upon being sent to him with 99 cents, represented as amount to "defray handling costs," had a retail value and usual selling price of \$5.50, and that the portraits furnished were "hand-painted oil portraits," facts being said portraits were not "hand-painted oil portraits," but enlarged photographs, colored, and did not have such retail value and usual selling price;

With effect of misleading substantial number of retail merchants and substantial portion of purchasing public into erroneous and mistaken belief that such false and misleading representations were true, and of inducing thereby substantial number of merchants to purchase his said certificates and to execute the contracts in connection therewith, and with effect that trade was thereby diverted unfairly to him from his competitors in commerce among the various States and in said District, and who truthfully represent their products:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. George Foulkes for the Commission.

Hickey, Hall & Junge, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Cornelius P. Van Schaack, Jr., individually and trading as Mid-West Sales Syndicate and Mid-West Portrait Service, hereinafter referred to as respondent

has violated the provisions of 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, Cornelius P. Van Schaack, Jr., an individual, is now, and has been for some time last past, doing business under the trade names of Mid-West Sales Syndicate and Mid-West Portrait Service, with his offices located at 549 West Randolph Street, Chicago, Ill. Under the name of Mid-West Sales Syndicate, respondent is engaged in the business of offering for sale and selling sales promotion cards, certificates, lanterns, batteries, and bulbs. Under the name of Mid-West Portrait Service respondent also sells sales promotion cards and certificates and in connection with a so-called sales promotion plan sells and distributes certain tinted photographic enlargements.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said sales promotional plans, cards, and certificates, together with the advertising literature and various items of merchandise used in connection therewith, when sold, to be transported from his office and principal place of business located in Chicago, Ill., to the purchasers thereof located in various points in States of the United States other than the State of Illinois. Respondent has at all times mentioned herein maintained a course of trade and commerce in said sales promotion cards and certificates, and the merchandise sold in connection therewith, between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is now, and has been, in substantial competition with other individuals, and with firms, partnerships, and corporations engaged in the business of selling and distributing promotional sales plans of various types, lanterns, batteries, and bulbs, photographs and similar commodities, 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, respondent advertises in various newspapers, magazines, and periodicals having a circulation among and between the various States of the United States and in the District of Columbia, for agents to sell his merchandise, and represents to such prospective salesmen that \$25 a day is the usual and customary commission that will be earned by them through the sale of respondent's merchandise. Said advertising is as follows:

**PREMIUM SALESMEN SUMMER SPECIAL; \$25.00 DAILY COMMISSION
GIVING AWAY FREE ELECTRIC LANTERNS THROUGH ALL RETAIL DEALERS.
MID-WEST, 549 WEST RANDOLPH, CHICAGO.**

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In fact, respondent's salesmen do not, in the ordinary and usual course of business, earn \$25 per day or earn any other amount of money closely approximating \$25 per day. The usual and customary earnings of such salesmen, in due course of normal business, are substantially less than \$25 per day.

PAR. 4. In the course and operation of his business and in order to sell his products, respondent enters into a form of agreement or written contract with retail merchants who are contacted by respondent's selling agents.

Trading under the name of Mid-West Sales Syndicate, respondent enters into a form of contract with retail merchants in which he agrees for a specified amount of money, to furnish said retail merchants with certificates to be distributed to the merchants' customers upon said customers' purchasing a certain amount of merchandise, and respondent promises to redeem the certificates by distributing to said customers "one Red Guard electric lantern absolutely free." The written form of contract provides for the purchase by a merchant of so-called "Red Guard Electric Lantern Certificates" for which the merchant pays 10 cents a certificate, and distribution of the same to the merchant's customers by the merchant upon purchase by the customers of \$5 worth of the merchant's goods.

The certificate which the customer receives from the merchant upon purchase of the required amount of merchandise, is as follows:

**"RED GUARD" ELECTRIC LANTERN
CERTIFICATE**

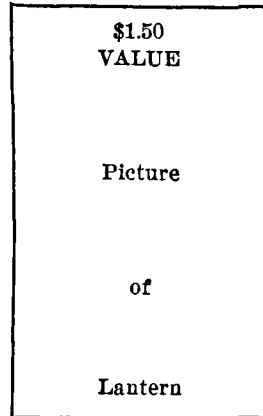
This Certificate is Given With Our Compliments and Entitles Holder to a

**"RED GUARD" ELECTRIC LANTERN
"ABSOLUTELY FREE"**

When sent with a trial order for six Chicago, "SUPER QUALITY" Batteries @ 10¢ each, and two bulbs @ 10¢ each. Total cost 80¢, same being the regular retail price of these batteries and bulbs. Postage, Handling & Packing Charges Fully Prepaid.

Designate Color Desired by Marking
"X" in Square

- Red Green Blue



MID-WEST SALES SYNDICATE
549 W. RANDOLPH ST.,
CHICAGO, ILL.

Name _____
Address _____
City and State _____

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When the customer has received his certificate he may redeem the same by forwarding it to respondent with 80 cents for batteries and battery bulbs.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 5. Trading under the name of Mid-West Sales Syndicate, respondent induces retail merchants to purchase his "Red Guard Electric Lantern Certificates" by making the following representations:

1. That respondent is carrying on a national campaign designed to advertise "Chicago Super Quality Batteries" and bulbs, and that the campaign is being carried on by the Mid-West Sales Syndicate, a separate organization, so as to permit retail merchants to give away "Red Guard Electric Lanterns" free.

2. That the adoption of respondent's plan of sales promotion by retail merchants will be without cost to them and will operate to their profit in that respondent will refund the amount paid for the certificates, together with an additional amount of money for each certificate sent to respondent for redemption by the merchant's customers.

3. That the number of certificates which respondent will permit a retail merchant to purchase is determined by the manufacturer of the batteries and bulbs and not by respondent.

4. That the lanterns have a retail value and usual selling price of \$1.50.

5. That the lanterns are given away "free" to the merchants' customers.

6. That respondent will, at the merchant's request, provide the merchant with labels, circulars, and advertising matter for the purpose of enabling the merchant to properly put the plan into effect.

PAR. 6. Respondent's representations as above set forth are grossly misleading, false, and untrue. In truth and in fact respondent has not been and is not engaged in carrying on a campaign designed to advertise Chicago Super Quality Batteries and Bulbs. Respondent's plan does not enable the merchant to give away to his customers "Red Guard Electric Lantern Free," but in fact the cost of said lanterns is included in the price paid by the merchants' customers for the batteries and bulbs they must purchase when redeeming the "Red Guard Electric Lantern Certificates" and before receiving the Red Guard Electric Lantern. Further, the said electric lantern does not have a retail value and usual selling price of \$1.50. The adoption of respondent's plan by retail merchants does not operate without

cost to them and does not operate to their profit. In fact, respondent does not make cash refunds to merchants entering into such contracts. The purported cash refunds to the merchants by the respondent are a lure and snare devised and intended for the sole purpose of securing execution of said agreements by retail merchants. In truth and in fact there is no limitation placed by the manufacturers of the batteries and bulbs upon the amount of certificates that a retail merchant can purchase. In fact the batteries and bulbs are sold outright to respondent by said manufacturers and respondent can dispose of the same as his own property. In truth and in fact respondent does not furnish the merchants with labels and circulars and advertising matter.

PAR. 7. Trading under the name of Mid-West Portrait Service, respondent, Cornelius P. Van Schaack, Jr., enters into a form of contract with retail merchants in which he agrees for a specified sum of money to furnish said merchants with certificates to be distributed to the merchant's customers upon said customers' purchasing a certain amount of merchandise and which respondent promises to redeem by distributing to said customers "Hand-Painted Oil Portraits, Complete with Frame." The written form of contract provides for the purchase by a merchant of so-called "Hand-Painted Oil Portrait Certificates" for which the merchant pays 10 cents a certificate and distribution of the same to the merchant's customers by the merchant upon purchase by the customers of \$5 worth of the merchant's goods. When the customer has received a certificate he may redeem the same by forwarding it to respondent with 99 cents, which amount is represented to "defray handling costs." Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using trade cards and certificates.

PAR. 8. Trading under the name of Mid-West Portrait Service, respondent induces retail merchants to purchase his "Hand-Painted Oil Portrait Certificates" by making the following representations:

That the complete portrait and frame furnished customers have a retail value and usual selling price of \$5.50; that the portraits furnished customers are "hand-painted oil portraits."

PAR. 9. The representations which respondent makes trading under the name of Mid-West Portrait Service are false, misleading, and untrue. In truth and in fact said portraits do not have a retail value and usual selling price of \$5.50. Said portraits are not "Hand-Painted Oil Portraits" but are enlarged photographs colored.

PAR. 10. The use by the respondent of the foregoing false and misleading representations has the capacity and tendency to, and does,

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mislead a substantial number of retail merchants as well as a substantial portion of the consuming public, by inducing them to believe that the aforesaid representations made by the respondent and his representatives are true. The foregoing false and misleading representations on the part of respondent serve as inducements for substantial numbers of retail merchants to purchase respondent's certificates and to execute the contracts in connection therewith. As a result thereof, trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the sale and disposition of sales promotion plans, lanterns, batteries, bulbs, and colored photographs, and similar commodities and who truthfully represent their products. As a consequence, 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. 11. The aforementioned acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 12, 1938, issued, and on October 14, 1938, served, its complaint in this proceeding upon respondent, Cornelius P. Van Schaack, Jr., individually, and trading as Mid-West Sales Syndicate and Mid-West Portrait Service, 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the 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, Cornelius P. Van Schaack, Jr., an individual, is now, and has been for some time last past, doing business under the trade names of Mid-West Sales Syndicate and Mid-West Portrait Service, with his offices located at 549 West Randolph Street, Chicago, Ill.

Under the name of Mid-West Sales Syndicate, respondent is engaged in the business of offering for sale and selling sales promotion cards, certificates, lanterns, batteries, and bulbs.

Under the name of Mid-West Portrait Service respondent also sells sales promotion cards and certificates and in connection with a so-called sales promotion plan sells and distributes tinted photographic enlargements.

PAR. 2. The respondent, being engaged in business as aforesaid, causes said sales promotional plans, cards, and certificates, together with the advertising literature and various items of merchandise used in connection therewith, when sold, to be transported from his office and principal place of business located in Chicago, Ill., to the purchasers thereof at respective points of location in States of the United States other than the State of Illinois.

Respondent has at all times mentioned herein maintained a course of trade and commerce in said sales promotion cards and certificates, and the merchandise sold in connection therewith, between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business, respondent is now, and has been, in substantial competition with other individuals, and with firms, partnerships, and corporations engaged in the business of selling and distributing promotional sales plans of various types, lanterns, batteries, and bulbs, photographs, and similar commodities. in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the conduct of his business, respondent advertises in various newspapers, magazines, and periodicals having a circulation among and between the various States of the United States and in the District of Columbia, for agents to sell his merchandise, and represents to such prospective salesmen that \$25 a day is the usual and customary commission that will be earned by them through the sale of respondent's merchandise. Said advertisement is as follows:

PREMIUM SALESMEN SUMMER SPECIAL; \$25.00 DAILY COMMISSION
GIVING AWAY FREE ELECTRIC LANTERNS THROUGH ALL RETAIL DEALERS.
MID-WEST, 549 WEST RANDOLPH, CHICAGO.

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In fact, respondent's salesmen do not, in the ordinary and usual course of business, earn \$25 per day or earn any other amount of money closely approximating \$25 per day. The usual and customary earnings of such salesmen, in due course of normal business, are substantially less than \$25 per day.

PAR. 4. In the operation of his business and in order to sell his products, respondent enters into a form of agreement or written contract with retail merchants who are contacted by respondent's selling agents.

Trading under the name of Mid-West Sales Syndicate, respondent enters into a form of contract with retail merchants in which he agrees for a specified amount of money, to furnish said retail merchants with certificates to be distributed to the merchants' customers upon said customers' purchasing a certain amount of merchandise, and respondent promises to redeem the certificates by distributing to said customers "one Red Guard electric lantern absolutely free." The written form of contract provides for the purchase by a merchant of so-called "Red Guard Electric Lantern Certificates" for which the merchant pays 10 cents a certificate, and distribution of the same to the merchant's customers by the merchant upon purchase by the customers of \$5 worth of the merchant's goods.

The certificate which the customer receives from the merchant upon purchase of the required amount of merchandise, is as follows:

**"RED GUARD" ELECTRIC LANTERN
CERTIFICATE**

This Certificate is Given With Our Compliments
and Entitles Holder to a

**"RED GUARD" ELECTRIC LANTERN
"ABSOLUTELY FREE"**

When sent with a trial order for six Chicago,
"SUPER QUALITY" Batteries @ 10¢ each, and two
bulbs @ 10¢ each. Total cost 80¢, same being the
regular retail price of these batteries and bulbs.
Postage, Handling & Packing Charges Fully
Prepaid.

Designate Color Desired by Marking
"X" in Square

Red Green Blue

MID-WEST SALES SYNDICATE
549 W. RANDOLPH ST.,
CHICAGO, ILL.

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

\$1.50
VALUE

Picture

of

Lantern

When the customer has received his certificate he may redeem the same by forwarding it to respondent with 80 cents for batteries and battery bulbs.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 5. Trading under the name of Mid-West Sales Syndicate, respondent induces retail merchants to purchase his "Red Guard Electric Lantern Certificates" by making the following representations:

1. That respondent is carrying on a national campaign designed to advertise "Chicago Super Quality Batteries" and bulbs, and that the campaign is being carried on by the Mid-West Sales Syndicate, a separate organization, so as to permit retail merchants to give away "Red Guard Electric Lanterns" free.

2. That the adoption of respondent's plan of sales promotion by retail merchants will be without cost to them and will operate to their profit in that respondent will refund the amount paid for the certificates, together with an additional amount of money for each certificate sent to respondent for redemption by the merchant's customers.

3. That the number of certificates which respondent will permit a retail merchant to purchase is determined by the manufacturer of the batteries and bulbs and not by respondent.

4. That the lanterns have a retail value and usual selling price of \$1.50.

5. That the lanterns are given away "free" to the merchants' customers.

6. That respondent will, at the merchant's request, provide the merchant with labels, circulars, and advertising matter for the purpose of enabling the merchant to properly put the plan into effect.

PAR. 6. Respondent's representations as above set forth are grossly misleading, false, and untrue.

In truth and in fact respondent has not been and is not engaged in carrying on a campaign designed to advertise Chicago Super Quality Batteries and Bulbs.

Respondent's plan does not enable a merchant to give away to his customers "Red Guard Electric Lantern Free," but in fact the cost of said lanterns is included in the price paid by the merchants' customers for the batteries and bulbs they must purchase when redeeming the "Red Guard Electric Lantern Certificates" and before receiving the Red Guard Electric Lantern. Further, the said electric lantern does not have a retail value and usual selling price of \$1.50. The adoption of respondent's plan by retail merchants does not

operate without cost to them and does not operate to their profit. In fact, respondent does not make cash refunds to merchants entering into such contracts.

The purported cash refunds to the merchants by the respondent are a lure and snare devised and intended for the sole purpose of securing execution of said agreements by retail merchants.

In truth and in fact there is no limitation placed by the manufacturers of the batteries and bulbs upon the amount of certificates that a retail merchant can purchase. In fact the batteries and bulbs are sold outright to respondent by said manufacturers and respondent can dispose of the same as his own property.

In truth and in fact respondent does not in all cases furnish the merchants with labels and circulars and advertising matter.

PAR. 7. Trading under the name of Mid-West Portrait Service, respondent, Cornelius P. Van Schaack, Jr., enters into a form of contract with retail merchants in which he agrees for a specified sum of money to furnish said merchants with certificates to be distributed to the merchant's customers upon said customers' purchasing a certain amount of merchandise and which respondent promises to redeem by distributing to said customers "Hand-Painted Oil Portraits, Complete with Frame." The written form of contract provides for the purchase by a merchant of so-called "Hand-Painted Oil Portrait Certificates" for which the merchant pays 10 cents a certificate and distribution of the same to the merchant's customers by the merchant upon purchase by the customers of \$5 worth of the merchant's goods. When the customer has received a certificate he may redeem the same by forwarding it to respondent with 99 cents, which amount is represented to "defray handling costs." Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using trade cards and certificates.

PAR. 8. Trading under the name of Mid-West Portrait Service, respondent induces retail merchants to purchase his "Hand-Painted Oil Portrait Certificates" by making the following representations:

That the complete portrait and frame furnished customers have a retail value and usual selling price of \$5.50; that the portraits furnished customers are "hand-painted oil portraits."

PAR. 9. The representations which respondent makes trading under the name of Mid-West Portrait Service are false, misleading, and untrue.

In truth and in fact said portraits do not have a retail value and usual selling price of \$5.50. Said portraits are not "Hand-Painted Oil Portraits" but are enlarged photographs colored.

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PAR. 10. The use by the respondent of the foregoing false and misleading representations has had, and now has, the capacity and tendency to, and does, mislead a substantial number of retail merchants as well as a substantial portion of the purchasing public, into the erroneous and mistaken belief that such false and misleading representations are true. The foregoing false and misleading representations on the part of respondent serve as inducements for substantial numbers of retail merchants to purchase respondent's certificates and to execute the contracts in connection therewith.

As a result thereof, trade has been diverted unfairly to respondent from his competitors in commerce among and between the various States of the United States and in the District of Columbia, who truthfully represent their products.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found, 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 the Federal Trade Commission Act.

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 fact set forth in the complaint, and states that he waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Cornelius P. Van Schaack, Jr., individually, and trading as Mid-West Sales Syndicate and Mid-West Portrait Service, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sales promotion plans, including cards and certificates, lanterns, batteries, bulbs, and colored and tinted photographs or pictures made from a photographic base or impression or other articles of merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the respondent has been or is conducting an advertising campaign designed to advertise said products.

2. Using the term "free" or any other term of similar import or meaning to describe or refer to goods, wares, or merchandise, regularly offered in connection with the purchase of specified quantities of other merchandise.

3. Representing that the participation by merchants in respondent's sales promotional plan is without cost to said merchants.

4. Representing that respondent refunds to his customers the purchase price for such certificates or makes additional payments to his customers in connection with the presentation of the certificates for redemption.

5. Representing that the number of certificates which merchants may purchase from the respondent is limited.

6. Representing that the lanterns have a retail value and usual selling price of \$1.50 or that colored or tinted photographs have a retail value and usual selling price of \$5.50, or any other amounts in excess of the prices at which said lanterns or photographs are regularly and customarily sold in the ordinary course of business under normal conditions and circumstances.

7. Representing that the respondent supplies to his customers labels, circulars, or other advertising matter relating to said sales promotional plan.

8. Using the terms "hand-painted," "hand-painted oil portraits," or "painted," either alone or in conjunction with other terms, or any other terms of similar import or meaning, in any way to designate, describe, or refer to colored or tinted pictures, photographs, or photographic enlargements or other pictures produced from a photographic base or impression.

9. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any given period of time, which is not a true representation of the average net earnings or profits consistently made by respondent's active full-time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

It is further ordered, That the respondent shall, within 60 days from 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

KASTAR SPECIALTY 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 3746. Complaint, Mar. 24, 1939—Decision, May 15, 1939

Where a corporation engaged in the sale and distribution at retail of automobile accessories, including gages, brake-rod supporters, gear-shift balls, and a variety of other articles, in commerce among the various States and in the District of Columbia—

Represented that it was the manufacturer of such products and owned and operated, or controlled, the plant or factory in which they were made, through use of word "Manufacturing" in its corporate name and words "Mfd. by" in statement "Mfd. by Kastar Specialty Manufacturing Company, Inc., New York, U. S. A.," on display cards, labels, individual cartons, letterheads, invoices, and other printed matter distributed throughout the United States and otherwise, facts being it did not own, operate, or control a plant or factory for the manufacture of such accessories and other similar products sold and distributed by it, but filled orders for such articles with products which were made in a plant which it neither owned, operated, nor controlled;

With tendency and capacity, through use of words "Manufacturing" and "Mfd. by," as above set forth, to mislead and deceive purchasers and prospective purchasers by causing them mistakenly and erroneously to believe that it was the manufacturer of such products, etc., as above set forth, and to purchase its articles, on account of such mistaken and erroneous beliefs, from it as manufacturer, for dealing direct with which there has long been preference on part of substantial portion of purchasing and consuming public and dealers, as affording more reliance with reference to carrying out of contracts and lower prices, elimination of middlemen's profits, superior products, and other advantages:

Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. B. G. Wilson for the Commission.

Lackenbach & Hirschman, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Kastar Specialty Manufacturing Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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PARAGRAPH 1. Respondent, Kastar Specialty Manufacturing 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 offices and principal place of business at 510-18 Sixth Avenue, New York, N. Y. Respondent is now and for some time last past has been engaged in the business of selling and distributing at retail automobile accessories, including gages, brake-rod supporters, universal clamp on pedal pads, gear-shift balls, leak proof vulcanizing patches, headlight lens removers, reflector jewels, license-plate bolts, ash receivers, cigarette pack holders, and other automobile specialties, in commerce between and among various States of the United States and the District of Columbia.

Respondent causes and has caused said articles when sold to be shipped from its aforesaid place of business in New York, State of New York, to purchasers thereof located in various other 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 in selling its products as above described, has caused display cards, labels, individual cartons, letterheads, invoices, and other printed matter to be distributed through the United States mail, and by other means, to customers and prospective customers located in States other than the State of New York, and in the District of Columbia. Certain of said printed matter includes the following statement:

Mfd. by Kastar Specialty Manufacturing Company, Inc.,
New York, U. S. A.

The use of the word "Manufacturing" in respondent's corporate name and the words "Mfd. by" preceding respondent's corporate name serves as a representation that respondent is the manufacturer of such products and that respondent owns and operates or controls the plant or factory wherein such products are made or manufactured.

PAR. 3. In truth and in fact respondent does not own and operate or control a plant or factory for the manufacture of the automobile accessories and other and similar products which it sells and distributes as hereinabove alleged, but respondent has filled and now fills orders for such articles of merchandise with products which are made or manufactured in a plant or factory which it neither owns, operates, nor controls.

PAR. 4. There has long been a preference on the part of a substantial portion of the purchasing and consuming public and of dealers to deal direct with a manufacturer, in the belief that more reliance can be placed on a manufacturer with reference to carrying out

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contracts, and that lower prices, elimination of middlemen's profits, superior products and other advantages can thereby be obtained.

PAR. 5. The use by the respondent of the word "Manufacturing" within its corporate name and the words "Mfd. by" preceding respondent's corporate name, as hereinabove alleged, has had, and now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondent is the manufacturer of such products and owns and operates or controls the plant or factory wherein such products are made and to purchase respondent's articles on account of such mistaken and erroneous beliefs.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 24, 1939, issued and thereafter served its complaint in this proceeding upon respondent Kastar Specialty Manufacturing Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 14, 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter the proceeding regularly came on 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. Respondent, Kastar Specialty Manufacturing 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 offices and principal place of business at 510-18 Sixth Avenue, New York, N. Y. Respondent is now and for some time last past has been engaged in the business of selling and distributing at retail automobile accessories, including gages, brake-rod supporters, universal clamp on pedal pads, gear-shift balls, leak-proof vulcanizing patches, headlight lens removers, reflector jewels, license-plate bolts, ash

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receivers, cigarette pack holders, and other automobile specialties, in commerce between and among various States of the United States and the District of Columbia.

Respondent causes and has caused said articles when sold to be shipped from its aforesaid place of business in New York, State of New York, to purchasers thereof located in various other 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 in selling its products as above described, has caused display cards, labels, individual cartons, letterheads, invoices and other printed matter to be distributed through the United States mail, and by other means, to customers and prospective customers located in States other than the State of New York, and in the District of Columbia. Certain of said printed matter includes the following statement:

Mfd. by Kastar Specialty Manufacturing Company, Inc., New York, U. S. A.

The use of the word "Manufacturing" in respondent's corporate name and the words "Mfd. by" preceding respondent's corporate name serves as a representation that respondent is the manufacturer of such products and that respondent owns and operates or controls the plant or factory wherein such products are made or manufactured.

PAR. 3. In truth and in fact respondent does not own and operate or control a plant or factory for the manufacture of the automobile accessories and other and similar products which it sells and distributes as hereinabove alleged, but respondent has filled and now fills orders for such articles of merchandise with products which are made or manufactured in a plant or factory which it neither owns, operates, nor controls.

PAR. 4. There has long been a preference on the part of a substantial portion of the purchasing and consuming public and of dealers to deal direct with a manufacturer, in the belief that more reliance can be placed on a manufacturer with reference to carrying out contracts, and that lower prices, elimination of middlemen's profits, superior products, and other advantages can thereby be obtained.

PAR. 5. The use by the respondent of the word "Manufacturing" within its corporate name and the words "Mfd. by" preceding respondent's corporate name, as hereinabove alleged, has had, and now has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them to mistakenly and erroneously believe that the respondent is the manufacturer of such products and owns and operates or controls the plant or factory wherein such products are made and to purchase respondent's articles on account of such mistaken and erroneous beliefs.

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CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Kastar Specialty Manufacturing Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of automobile accessories and similar products in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, through the use of the word "manufacturing" or any other word of similar import or meaning in its corporate name, or through any other means or device, or in any manner, that the products sold and distributed by respondent are made or manufactured by it, unless and until such respondent actually owns and operates or directly and absolutely controls a manufacturing plant or factory wherein said products are 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.

IN THE MATTER OF

J. C. ROBERTSON, INDIVIDUALLY, AND TRADING AS
NOVELTY DISTRIBUTING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3178. Complaint, July 21, 1937—Decision, May 20, 1939*

Where an individual engaged in sale and distribution of clocks in commerce between the various States; in soliciting sale of and in selling and distributing his said product—

Furnished his customers and prospective customers with push card involving sale and delivery to purchasing public of his said merchandise by means of a lottery scheme or gift enterprise through use of method or plan in accordance with which amount paid by purchaser for chance was dependent upon number secured from card by chance, and receipt or failure to receive clock was dependent upon success or failure in selecting from list of girl's names on card, name corresponding to that concealed under card's master seal, and persons not thus selecting received nothing other than privilege of making selection for money paid, and operator of card was compensated by receipt of clock; and

Supplied thereby and placed in hands of others means of conducting lotteries in the sale of his merchandise in accordance with such sales plan under which said clocks were distributed to purchasing public wholly by lot or chance and amount which customer paid for chance was similarly determined, and involving game of chance or sale of a chance to procure a clock at a price much less than normal retail price thereof; contrary to the public policy as long recognized in the common law and criminal statutes and to an established policy of the United States Government, 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 something by chance or any other method contrary to public policy and refrain therefrom;

With result that purchasing public was thus induced and persuaded into buying punches from said cards in hope of securing prize winning name and thus obtain clock for price of 29¢ or less, and many persons were attracted by his said method and by element of chance involved in sale thereof as 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 method, and result that, through use of such method and because of said game of chance, trade and custom were diverted to him from competitors aforesaid who do not use such methods:

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

Before *Mr. William C. Reeves* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Henry C. Lank, *Mr. P. C. Kolinski*, and *Mr. D. C. Daniel* 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 J. C. Robertson, individually and trading as Novelty Distributing Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style of Novelty Distributing Co., with his principal office and place of business located at 117 West Harrison Street, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of clocks in commerce between and among 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 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 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 clocks, has furnished his customers and prospective customers with a device commonly called a "push card," the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent involves the distribution of such merchandise to the purchasing public by means of a lottery scheme or gift enterprise. The method or sales plan suggested by respondent was and is substantially as follows:

The said push card has a number of partially perforated disks, and under each disk is a number; above each disk is a girl's name. The said push card also has two partially perforated master seals under each of which appears a girl's name corresponding to one of

the names above the partially perforated disks. Purchasers select one of the disks 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 disks and names. The push card bears a legend informing purchasers and prospective purchasers of the plan or method by which said push card is operated and by which the clocks described thereon are to be distributed. When all of the names have been purchased and the master seals removed, the persons who selected the names corresponding to the names under the master seals receive one of the clocks heretofore referred to without further charge, and the person, salesman, agent, or representative soliciting purchases of chances, as above described, also receives one of said clocks 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 disk removed. The names under the master seals are concealed from purchasers and prospective purchasers until all the disks have been selected or purchased. Thus, customers selecting names which do not correspond with the names under the master seals receive nothing but the privilege of making the selection for the money they pay. Persons selecting the names corresponding to the names under the seals receive one of the clocks for a price not exceeding 29¢, which is less than the normal retail price of such clocks. The purchasing public is thus induced and persuaded into purchasing pushes from said card in the hope of selecting a prize-winning name and thus obtaining a clock for a price of 29¢ or less. The said clocks are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes the said push cards 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.

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Findings

PAR. 4. The sale of clocks to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a clock at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute such merchandise in competition with 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 his 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 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 the Federal Trade Commission Act, the Federal Trade Commission on July 21, 1937, issued and served its complaint in this proceeding upon respondent, J. C. Robertson, individually, and trading as Novelty Distributing Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On May 3, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, J. C. Robertson, is an individual doing business under the trade name and style of Novelty Distributing Co., with his principal office and place of business located at 117 West Harrison Street, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of clocks in commerce between and among 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 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 in commerce by said respondent in such merchandise 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 clocks, has furnished his customers and prospective customers with a device commonly called a "push card," the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent to said customers involves the distribution of such merchandise to the purchasing public by means of a lottery scheme or gift enterprise. The method or sales plan suggested by respondent was and is substantially as follows:

The said push card has a number of partially perforated disks and under each disk is a number; above each disk is a girl's name. The said push card also has two partially perforated master seals under each of which appears a girl's name corresponding to one of the names above the partially perforated disks. Purchasers select one of the disks 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 disks and names. The push card bears a legend informing purchasers and prospective purchasers of the plan or method by which said push card is operated and by which the clocks described thereon are to be distributed. When all of the names have been purchased and the master seals removed, the persons who selected the names

corresponding to the names under the master seals receive one of the clocks heretofore referred to without further charge, and the person, salesman, agent, or representative soliciting purchases of chances, as above described, also receives one of said clocks 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 disk removed. The names under the master seals are concealed from purchasers and prospective purchasers until all the disks have been selected or purchased. Thus, customer selecting names which do not correspond with the names under the master seals receive nothing but the privilege of making the selection for the money they pay. Persons selecting the names corresponding to the names under the seals receive one of the clocks for a price not exceeding 29¢, which is less than the normal retail price of such clocks. The purchasing public is thus induced and persuaded into purchasing pushes from said card in the hope of selecting a prize-winning name and thus obtaining a clock for a price of 29¢ or less. The said clocks are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes the said push cards 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 clocks to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a clock at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute such merchandise in competition with respondent, as above 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 com-

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petitors 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 his said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found 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 the Federal Trade Commission Act.

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 fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, J. C. Robertson, individually, and trading as Novelty Distributing Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of clocks or any other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of, others push or pull cards, punchboards or other lottery devices, for the purpose of enabling such persons to dispose of, or sell, any merchandise by the use thereof.

2. Mailing, shipping, or transporting to his agents or to distributors or to members of the public push or pull cards, punchboards

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or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

3. Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards or other lottery devices.

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

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IN THE MATTER OF

ABRAHAM TABACHNICK, TRADING AS UNEEDA UNDERWEAR COMPANY

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

Docket 3686. Complaint, Jan. 10, 1939—Decision, May 20, 1939

Where an individual engaged in manufacture, sale, and distribution of ladies' knitted undergarments, to wholesale and retail dealers and other customers in various other States and in the District of Columbia—

- (a) Represented that certain of his said garments were composed of a mixture of silk and wool, through labels, tags, and markers attached thereto which described same, as case might be, as containing "33 $\frac{1}{8}$ % silk and wool" and "15% silk and wool," facts being neither garment thus referred to was composed of silk mixed with wool, but said products were composed, respectively, of 92 percent cotton and 8 percent rayon, and 90 percent cotton and 10 percent rayon, and contained no silk, product of cocoon of silkworm, as long understood by purchasing and consuming public generally from said word, and held in high esteem in products made thereof for their preeminent qualities; and
- (b) Represented certain of said garments as "30% wool and rayon," through use of statements in which word "wool" was accentuated by use of large type and word "rayon" was printed in much smaller type, on labels, tags, and markers, notwithstanding fact that they were not composed of admixture of wool and rayon in proportion represented, but were composed of 78 percent cotton, 9 percent rayon and 13 percent wool;

With capacity and tendency to mislead and deceive trade, including wholesale and retail dealers and substantial portion of purchasing public, into erroneous belief that such representations were true, and that said garments were composed of silk and wool, products of which have established reputation as possessing superior cold resistant qualities over those made from cotton or other material, and for which there is decided preference on part of purchasers and prospective purchasers of undergarments over other, and of causing such trade and public to purchase said products as result of such erroneous belief thus engendered:

Held, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. James L. Fort for the Commission.

Mr. Bernard Austin, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Abraham Tabach-

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nick, an individual trading as Uneeda Underwear Co., hereinafter referred to as respondent, has violated the provisions of the 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 Abraham Tabachnick is an individual trading as Uneeda Underwear Co., with his office and principal place of business located at 335 Van Sicken Avenue, Brooklyn, N. Y. This respondent is now and for more than two years last past has been engaged in the manufacture, sale and distribution of ladies' knitted undergarments. He sells and has sold and distributed such undergarments to wholesale and retail dealers and other customers located in various States of the United States and causes said products, when sold by him to be transported from his place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said 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 his business, and in soliciting the sale of and selling his said products, the respondent has represented and is now representing that certain ladies' knitted undergarments manufactured, sold and distributed by him are composed of a mixture of silk and wool, by means of labels, tags, and markers attached to said garments which designate and describe said products as follows:

This garment contains 33 $\frac{1}{3}$ % silk and wool.
15% silk and wool.

In truth and in fact, the knitted undergarments designated as containing 33 $\frac{1}{3}$ percent and wool are not, in fact, composed of silk, the product of the cocoon of the silkworm, admixed with wool, but instead, the said undergarments so designated are, in fact, composed of 92 percent cotton and 8 percent rayon. The undergarments designated as being composed of 15 percent silk and wool are not, in fact, composed of silk, the product of the cocoon of the silkworm, admixed with wool, but instead, contain 90 percent cotton and 10 percent rayon.

PAR. 3. In addition to the above described undergarments, the respondent also manufactures, sells, and distributes certain ladies' knitted undergarments which are designated by means of labels, tags, and markers as being composed of "30% wool and rayon." On these labels, tags, and markers the respondent accentuates the term "wool"

by use of large type while the term "rayon" is printed in much smaller type. In truth and in fact, said garments are not composed of an admixture of wool and rayon in the proportion represented by the respondent, but instead, said garments are composed of 78 percent cotton, 9 percent rayon, and 13 percent wool.

PAR. 4. The word "silk" has had for many years last past and still has in the minds of the purchasing 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. Fabrics made of all wool or wool and silk have established a reputation as possessing superior cold resistance qualities over fabrics made from cotton or other materials. Purchasers and prospective purchasers of undergarments on account of such reputation have a decided preference for all wool or silk and wool fabrics over fabrics composed in part of cotton.

PAR. 5. The use by the respondent of the representations set forth herein has had and now has the capacity and tendency to mislead and deceive the trade, including wholesale and retail dealers, and 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.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 10th day of January 1939, issued its complaint in this proceeding and caused the complaint to be served upon the respondent, Abraham Tabachnick, an individual trading as Uneeda Underwear Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of the complaint, respondent filed his answer, admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the facts. The answer was duly filed in the office of the Commission on the 2d day of April 1939.

Thereafter this proceeding regularly came on for final hearing before the Commission on the complaint and answer, and the Com-

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Findings

mission 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 Abraham Tabachnick, is an individual trading as Uneeda Underwear Co., with his office and principal place of business located at 335 Van Siclen Avenue, Brooklyn, N. Y. This respondent is now, and for more than 2 years last past has been, engaged in the manufacture, sale, and distribution of ladies' knitted undergarments. He sells, and has sold and distributed, such undergarments to wholesale and retail dealers and other customers located in various States of the United States, and causes said products, when sold by him, to be transported from his place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said 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 his business, and in soliciting the sale of and selling his said products, the respondent has represented, and is now representing, that certain ladies' knitted undergarments manufactured, sold, and distributed by him are composed of a mixture of silk and wool, by means of labels, tags, and markers attached to said garments, which designate and describe said products as follows:

This garment contains 33 $\frac{1}{8}$ % silk and wool.
15% silk and wool.

In truth and in fact, the knitted undergarments designated as containing 33 $\frac{1}{3}$ percent silk and wool are not, in fact, composed of silk, the product of the cocoon of the silkworm, admixed with wool, but instead, the said undergarments so designated are, in fact, composed of 92 percent cotton and 8 percent rayon. The undergarments designated as being composed of 15 percent silk and wool are not, in fact, composed of silk, the product of the cocoon of the silkworm, admixed with wool, but instead, contained 90 percent cotton and 10 percent rayon.

PAR. 3. In addition to the above-described undergarments, the respondent also manufactures, sells, and distributes certain ladies' knitted undergarments which are designated by means of labels, tags,

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and markers, as being composed of "30 percent wool and rayon." On these labels, tags, and markers the respondent accentuates the term "wool" by use of large type while the term "rayon" is printed in much smaller type. In truth and in fact, said garments are not composed of an admixture of wool and rayon in the proportion represented by the respondent, but instead, said garments are composed of 78 percent cotton, 9 percent rayon and 13 percent wool.

PAR. 4. The word "silk" has had for many years last past, and still has, in the minds of the purchasing 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. Fabrics made of all wool or wool and silk have established a reputation as possessing superior cold resistance qualities over fabrics made from cotton or other material. Purchasers and prospective purchasers of undergarments, on account of such reputation, have a decided preference for all wool or silk and wool fabrics over fabrics composed in part of cotton.

PAR. 5. The use by the respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive the trade, including wholesale and retail dealers, and 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.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and states that he waives all intervening procedure and future hearings as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Abraham Tabachnick, individually and trading as Uneda Underwear Co., or under any other name

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or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of ladies' knitted undergarments and other similar apparel in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "silk" or any other word or words of similar import or meaning to designate or describe any fabric or other product which is not composed wholly of silk, the product of the cocoon of the silkworm; or from using the word "wool" or any other word or words of similar import or meaning to designate or describe any fabric or other product which is not composed wholly of wool; or from using the words "silk and wool" or any other words of similar import or meaning to designate or describe any fabric or other product which is not composed wholly of silk, the product of the cocoon of the silkworm, combined solely with wool; except that in the case of a fabric or product composed in part of silk or in part of wool, or in part of silk and in part of wool, and in part of a material or materials other than silk and wool, such words may be used as descriptive of the respective silk and wool content if there is used in immediate connection therewith in letters of equal size and conspicuousness a word or words accurately describing and designating each constituent fiber or material thereof in the order of its predominance by weight beginning with the largest single constituent.

2. Representing that any fabric or other product has a stated percentage of silk and wool or silk or wool unless in fact such fabric or product does contain silk and wool or silk or wool in the proportions stated.

3. Advertising, offering for sale, or selling, fabrics or any other products composed in whole or in part of rayon, without clearly disclosing the fact that such fabrics or products are composed of rayon and when such fabrics or products are composed in part of rayon and in part of other fibers and materials, such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

This order shall not be construed as permitting the use of the unqualified word "silk" to designate, describe or refer to weighted silk.

This order shall not be construed as permitting the use of the unqualified word "wool" to designate, describe or refer to any wool which is not virgin or unused wool.

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
RICHARD ROSEBURY ORGANIZATION, INC., AND
RICHARD W. ROSEBURY

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

Docket 3710. Complaint, Feb. 14, 1939—Decision, May 20, 1939

Where a corporation engaged in soliciting orders for, and in selling, various magazines through solicitors who called upon purchasing public—

- (a) Represented, as aforesaid, to prospective subscribers, that they would receive two or more designated magazines at the price and for the period stated by the solicitor, and exhibited to prospective subscriber, and delivered to him if he subscribed, printed receipt form furnished by said corporation, which acknowledged receipt of amount paid and which, and, while ostensibly naming two or more magazines which subscriber was to receive, through arrangement and prominence given to certain words, and thus appearing to corroborate solicitor's representation, as matter of fact named but one;
- (b) Told subscribers receiving such receipts for "Current Events," and upon which were also displayed, as above indicated, words "International News" and "Good Stories" and statement "Good Stories feature of Current Events and International News adds to its educational value," that such subscribers would receive "Good Stories," "Current Events," and "International News," and thus, or otherwise, led them to believe they would receive such three magazines, facts being magazine "Good Stories" only was ordered from publisher by said corporation and received by subscriber; and
- (c) Failed to forward, in some instances, to publisher of any magazines, subscriptions secured by its representatives from subscribers, who received no periodical whatsoever;

With effect of causing purchasers to buy magazine subscriptions from it and its representatives in erroneous and mistaken belief that in so purchasing they would receive subscriptions to a greater number of magazines than was the case, and of thereby diverting unfairly trade to it from those of its competitors who, in soliciting subscriptions to magazines, truthfully represent identity and number to be received by the subscribers thereto; to the injury of competition in commerce:

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

Mr. B. G. Wilson for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Richard Rosebury Organization, Inc., and Richard W. Rosebury, an individual, herein-

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after referred to as the respondents, have violated the provisions of 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, setting forth its charges in that respect as follows:

PARAGRAPH 1. Respondent Richard Rosebury Organization, Inc., is a corporation created by and existing under the laws of the State of New York with its principal office and place of business located at 522 Fifth Avenue, city of New York, State of New York.

Respondent Richard W. Rosebury is an individual and is the directing head and dominating personality of the Richard Rosebury corporation and has his principal office and place of business at 522 Fifth Avenue, city of New York, State of New York. He is now and has been at all times mentioned herein responsible for the development of the policies and direction of the affairs of Richard Rosebury Organization, Inc.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the business of soliciting orders for and selling various magazines, and cause said magazines, when sold, to be transported from the places of business of the respective publishers thereof, to and into various other States of the United States and the District of Columbia.

Respondents maintain, and at all times mentioned herein have caused to be maintained, a course of trade in said magazines 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 respondents are in active and substantial competition with other corporations and with partnerships and individuals engaged in the solicitation of subscriptions for, sale and distribution of, magazines in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondents' method of doing business is to send solicitors throughout the country, who call upon the public. When a subscription to a magazine is secured, it is to be forwarded to the publisher thereof, usually pursuant to previous arrangement made by respondents with the publisher.

PAR. 5. In seeking subscriptions from the public, as aforesaid, respondents' solicitors represent to prospective subscribers that they will receive two or more designated magazines at the price and for the period stated by the solicitor; and the solicitor exhibits to the prospective subscriber, and delivers to him if he subscribes, a printed receipt form furnished to the solicitor by respondents, acknowledging receipt of the amount paid by the subscriber and, in fact, naming but

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one magazine which the subscriber is to receive. However, the receipt is in such form, as to prominence given some words on the face thereof, as to make it appear, except upon careful reading, to corroborate the solicitor's representation that the subscriber is to receive two or more magazines. The descriptive words so given prominence actually relate to features of the magazine subscribed for, but appear to be the names of the additional magazines the solicitor has represented the subscriber will receive. Typical and representative of such receipt form is the following:

READER'S RECEIPT

| | |
|----------------|--------------------|
| No. GM65234 | Date ----- 193-- |
| | International News |
| CURRENT EVENTS | ----- |
| | Good Stories |
| PAY ONLY 50¢ | ----- |
| | 26 Fine Issues |

Good Stories feature of Current Events and International News adds to its educational value.

FICTION AND FUN—ILLUSTRATIONS
SONG AND VERSE—ROMANCE

For the 50 cents you have paid me and for which this is your receipt, you will receive 26 monthly issues of GOOD STORIES. Your name and address has been entered on my order stub.

Signed ----- Repr.

NOTE.—If you write about this order, USE a POST CARD, mention date, amount paid, order number, and serial letters and representative's name. We make no refunds.

THE RICHARD ROSEBURY ORGANIZATION
Incorporated

469 — 5th Avenue

New York City

The subscribers receiving receipts such as above set out have been and are told by respondents' representatives, or otherwise led to believe, that they will receive three magazines, to wit, Good Stories, Current Events, and International News, while in truth and in fact the respondents order from the publisher and the subscribers receive the magazine Good Stories only. In some instances, subscriptions secured by respondents' representatives are not forwarded to the publisher of any magazine and the subscribers receive no magazine whatsoever.

PAR. 6. There are among respondents' competitors many who do not misrepresent the number or identity of the magazines which subscribers are to receive for the subscription price paid.

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PAR. 7. The use of the above-described false and misleading representations and methods on the part of respondents has the capacity and tendency to cause, and does cause, purchasers to buy magazine subscriptions from respondents and their representatives in the erroneous and mistaken belief that in so purchasing they will receive subscriptions to a greater number of magazines than they actually will receive. As a result trade has been diverted unfairly to respondents from those of their competitors who, in soliciting subscriptions to magazines, truthfully represent the identity and number of magazines to be received by the subscribers thereto. In consequence thereof, injury has been, and is being, done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 14, 1939, issued and on February 15, 1939, served its complaint in this proceeding upon respondents Richard Rosebury Organization, Inc., and Richard W. Rosebury, an individual, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent Richard Rosebury Organization'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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to the said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer and the Commission having duly considered the 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 Richard Rosebury Organization, Inc. is a corporation organized under and by virtue of the laws of the State of New York, with its principal office and place of business located at 522 Fifth Avenue, city of New York, State of New York.

PAR. 2. Respondent Richard Rosebury Organization, Inc. is now, and for more than 1 year last past has been, engaged in the business of soliciting orders for and selling various magazines. It causes said magazines, when sold, to be transported from the places of business of the respective publishers of said magazines to and into various States of the United States other than the State of origin of such shipments and the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained, a course of trade in such magazines 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, respondent is now and has been in active and substantial competition with other corporations and with partnerships and individuals engaged in the solicitation of subscriptions for, and in the sale and distribution of, magazines in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in the conduct of its business, sends solicitors throughout the country, who call upon the purchasing public soliciting subscriptions for the various magazines offered by the respondent. When a subscription to a magazine is secured, it is to be forwarded to the publisher thereof, usually pursuant to previous arrangement made by respondent with the publisher.

PAR. 5. In seeking subscriptions from the public, as aforesaid, respondent's solicitors represent to prospective subscribers that they will receive two or more designated magazines at the price and for the period stated by the solicitor; and the solicitor exhibits to the prospective subscriber, and delivers to him if he subscribes, a printed receipt form furnished to the solicitor by respondent, acknowledging receipt of the amount paid by the subscriber and which ostensibly names the two or more magazines which the subscriber is to receive, but which as a matter of fact names but one magazine which the subscriber is to receive. The receipt is in such form, as to prominence given some words on the face thereof, as to make it appear, except upon careful reading, to corroborate the solicitor's representation that the subscriber is to receive two or more magazines. The descriptive words so given prominence actually

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relate to features of the magazine subscribed for, but appear to be the names of the additional magazines the solicitor has represented the subscriber will receive. Typical and representative of such receipt form is the following:

READER'S RECEIPT

Date ----- 193--

No. GM65234

International News

CURRENT EVENTS

Good Stories

PAY ONLY 50c

26 Fine Issues

Good Stories feature of Current Events and International News adds to its educational value

~~FICTION AND FUN—ILLUSTRATIONS—SONG AND VERSE—ROMANCE~~

For the 50 cents you have paid me and for which this is your receipt, you will receive 26 monthly issues of GOOD STORIES. Your name and address has been entered on my order stub.

Signed ----- Repr.

NOTE.—If you write about this order, USE A POST CARD, mention date, amount paid, order number, and serial letters and representative's name. We make no refunds.

THE RICHARD ROSEBURY ORGANIZATION

Incorporated

409—5th Avenue

New York City

The subscribers receiving receipts such as above set out have been and are told by respondent's representatives, or otherwise led to believe, that they will receive three magazines, to wit, Good Stories, Current Events, and International News, while in truth and in fact the respondent orders from the publisher and the subscribers receive the magazine Good Stories only. In some instances, subscriptions secured by respondent's representatives are not forwarded to the publisher of any magazine and the subscribers receive no magazine whatsoever.

PAR. 6. There are among respondent's competitors many who do not misrepresent the number or identity of the magazines which subscribers are to receive for the subscription price paid, and who do not solicit and accept subscriptions for magazines which are not delivered to such subscribers.

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PAR. 7. The use of the above-described false and misleading representations and methods on the part of respondent has the capacity and tendency to cause, and does cause, purchasers to buy magazine subscriptions from respondent and its representatives in the erroneous and mistaken belief that in so purchasing they will receive subscriptions to a greater number of magazines than they actually will receive. As a result trade has been diverted unfairly to respondent from those of its competitors who, in soliciting subscriptions to magazines, truthfully represent the identity and number of magazines to be received by the subscribers thereto. 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 and in the District of Columbia.

PAR. 8. The respondent Richard W. Rosebury, an individual, died during the pendency of this proceeding.

CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 Richard Rosebury Organization, Inc., in which answer said respondent admits all of the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent Richard Rosebury Organization, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of magazines, or subscriptions for magazines, in interstate commerce, do forthwith cease and desist:

(a) From representing, through statements made by its solicitors or statements appearing on receipts or other printed matter exhibited to prospective subscribers for such magazines, that a subscriber is to receive a greater number of magazines than those which are actually

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delivered, or a magazine or magazines other than the magazine or magazines which are actually delivered to said subscriber.

(b) From accepting subscriptions from subscribers for magazines where the magazine or magazines covered by such subscriptions are not thereafter actually delivered to such subscribers.

(c) From misrepresenting in any manner, directly or indirectly, the identity or number of magazines to be received by a subscriber for the subscription price paid or agreed upon.

It is further ordered, That this proceeding be closed as to the respondent Richard W. Rosebury.

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
ADOLPH FRIEDMAN, TRADING AS SUPERYARN
COMPANY

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

Docket 3753. Complaint, Apr. 1, 1939—Decision, May 20, 1939

Where an individual engaged in sale and distribution of various grades and types of textile fabrics and knitting yarn; in describing his products in catalogs, price lists, and in advertisements in periodicals, newspapers, and other publications distributed among prospective purchasers of said products in various States and in the District of Columbia—

- (a) Represented that certain product was composed entirely of unweighted silk, through use of words "Silk Boucle" in descriptive matter referring thereto, and other similar statements in various advertising material, price lists, catalogs, and on labels, notwithstanding fact product thus referred to was composed entirely of rayon and was not composed entirely of unweighted silk, product of cocoon of silkworm, as long definitely and specifically understood by purchasing and consuming public generally from said word, and as meaning unweighted product not subjected to process of metallic bath, and products of which have been long held in great public esteem and confidence for their preeminent qualities;
- (b) Made use of such nondisclosing designations as "Special Boucle" on labels and in catalogs, to designate or describe rayon products and yarn which had appearance and feel of silk and were, by purchasing and consuming public, indistinguishable therefrom;
- (c) Represented that certain of his products were of a finer grade and higher quality, or of a different fiber, than was actually the fact, through use of words or phrases indicative to purchasing public of certain fiber, grade, or quality, such as "Cashmere," on labels and in advertising and catalogs, to designate and describe products which did not contain hair of cashmere goat, as long understood from word as applied to such products made therefrom, and well and favorably known to purchasing public and associated by members thereof with word, as thus applied, but were composed of other wool and not hair aforesaid;
- (d) Made use of words, associated in mind of purchasing and consuming public as descriptive of wool exclusively, to designate and describe certain yarn products composed in part thereof only, and in part of other material, through use of such terms as "Zephyr Tweed" and "Tweed Velnette" on labels, advertising material, and in catalogs, to designate yarn product composed in part of wool and in part of rayon, and described latter as composed of "wool mixture and silk nub," notwithstanding fact composition thereof was of wool and rayon entirely, as aforesaid, and said products were not that certain kind of fabric made entirely of wool, as long well and favorably known to substantial portion of purchasing and consuming public from word "tweed"; and

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(e) Represented, through use of words "Manufacturer of Superyarn" and "Importer" on his billheads, business cards and advertising material, that he was manufacturer and importer of yarn or yarn fiber and material, notwithstanding fact he was not such manufacturer or importer, for dealing directly with which there has long been preference on part of substantial portion of purchasing and consuming public as affording, in its belief, lower prices, superior products and other advantages;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that all said representations were true, and that said individual had truthfully represented constituent fiber or material of his various products, and that they were actually made or imported by him, and with result, as consequence of such belief, that number of consuming public purchased substantial volume of his said products and trade was diverted unfairly to him from competitors likewise engaged in sale and distribution in commerce and in District of Columbia of various grades and types of knitting yarn:

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

Mr. James L. Fort for the Commission.

Woods & Wertlieb, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Adolph Friedman, an individual, trading as Superyarn Co., has violated the provisions of 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, Adolph Friedman, is an individual trading as Superyarn Co., with his principal place of business located at 353 Grand Street, in the city of New York, State of New York.

PAR. 2. Respondent is now and for a year or more last past has been engaged in the business of selling and distributing various grades and types of textile fabrics and knitting yarn. Respondent sells his products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said products when sold by him to be transported from his place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce among

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

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia, with other individuals and with corporations, firms and partnerships engaged in the business of selling and distributing various grades and types of knitting yarn 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 his said business the respondent has engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by him are made, by means of false representations on labels attached to his products and in various advertising matter and by a failure to disclose the rayon content of certain of his products. In furtherance of this practice and for the purpose of inducing the purchase of his said products, respondent has caused false statements and representations purporting to be descriptive of such products and their respective constituent fiber or material to be inserted in catalogs, price lists, and in advertisements appearing in magazines, newspapers and in other publications distributed among prospective purchasers of said products situated in various States of the United States and in the District of Columbia.

PAR. 5. Among and typical of the acts and practices above described, the respondent represents certain of his products as being composed entirely of silk, the product of the cocoon of the silkworm, when in fact said products are composed entirely of rayon. As an example of this practice the respondent causes certain advertisements to be inserted in various publications, of which the following is an example:

Silk Boucle 88¢

SUPERYARNS

Lowest prices. New textures and shadings. 1001 rich, bright, lasting colors. Satisfaction guaranteed. SUPERYARN CO., DEPT. D 353 Grand Street, New York, New York. Free Samples.

By means of the above statement, together with other and similar statements appearing in various advertising material, price lists, catalogs, and on labels, distributed as aforesaid, the respondent represents that said product is composed entirely of unweighted silk, the product of the cocoon of the silkworm, when in truth and in fact said product is composed entirely of rayon.

PAR. 6. Another and typical act and practice engaged in by the respondent in falsely representing his products, is the use on labels and in catalogs, distributed as aforesaid, of designations or descrip-

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tions applied to rayon products which have the appearance and feel of silk, and are by the purchasing and consuming public indistinguishable from silk, and which designations do not disclose that said products are composed of rayon. As a typical example of this practice the respondent uses the term "Special Boucle" in the manner and form above described to designate and describe a product composed entirely of rayon, and fails to disclose the fact that said yarn is composed of rayon.

PAR. 7. Typical also of said acts and practices, the respondent represents certain of his products as being of a finer grade, higher quality or of a different fiber than is actually the fact by the use of words or phrases indicative to the purchasing public of a certain fiber, grade or quality. An example of this practice is the respondent's use of the word "cashmere" on labels, in advertising material, and in catalogs distributed as aforesaid, to designate and describe products which do not contain the hair of the cashmere goat but instead are composed of other wool.

PAR. 8. A further typical act and practice on the part of the respondent is the use of words which are associated in the minds of the purchasing and consuming public as being descriptive of wool exclusively, to designate and describe certain yarn products, as aforesaid, which are composed in part of wool and in part of other materials. As an example of this practice the respondent uses the terms "Zephyr Tweed" and "Tweed Velnette" on labels, in advertising material, and in catalogs, distributed as aforesaid, to designate a yarn product composed in part of wool and in part of rayon. In connection with the use of "Tweed Velnette," respondent describes said product as being composed of a "wool mixture and silk nub" when in fact said product is composed entirely of wool and rayon.

PAR. 9. The word "silk" for many years last past has had and still has, in the minds of the purchasing 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. The unqualified word "silk" has, in the minds of the purchasing and consuming public, the definite and specific meaning of unweighted silk or silk which has not been subjected to the process of a metallic bath.

The word "cashmere" has long been applied to a particular type of wool fiber that is made from the hair of the cashmere goat, and which product has for a long time been known well and favorably to the purchasing public. The word "cashmere" when used in connection with the designation and description of yarns or other products hav-

ing the general appearance of wool fibers, is considered by members of the purchasing public as being a descriptive designation of a cashmere wool product composed entirely of the hair of the cashmere goat.

The word "tweed" is a word long and favorably known to a substantial portion of the purchasing and consuming public as a certain kind of fabric composed entirely of wool.

The word "rayon" is the name of a chemical fiber or fabric which simulates silk in that it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk.

PAR. 10. In addition to the acts and practices above described, the respondent by use of the words "Manufacturer of Superyarn" and "Importer" on billheads, business cards, and advertising material, represents that he is a manufacturer and importer of yarns or yarn fiber and material. In truth and in fact respondent is not a manufacturer of yarn and is not an importer of yarns or yarn fiber or material.

There has long been a preference on the part of a substantial portion of the purchasing and consuming public for dealing directly with the manufacturer or importer in the belief that lower prices, superior products and other advantages can thereby be obtained, and the claims of respondent that he is a manufacturer and importer would have a tendency to cause such persons to purchase respondents' products.

PAR. 11. The use by the respondent of the aforesaid acts and practices has had and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that the respondent has truthfully represented the constituent fiber or material of his various products and that said products are manufactured or imported by the respondent. On account of this erroneous and mistaken belief a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to the respondent from his competitors who are also 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 various grades and types of knitting yarn. As a consequence thereof 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. 12. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of re-

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spondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 1, 1939, issued, and on April 3, 1939 served, its complaint in this proceeding upon respondent, Adolph Friedman, trading as Superyarn Co., charging him with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 27, 1939, respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, Adolph Friedman, is an individual trading as Superyarn Co., with his principal place of business located at 353 Grand Street in the city of New York, State of New York.

PAR. 2. Respondent is now, and for a year or more last past has been, engaged in the business of selling and distributing various grades and types of textile fabrics and knitting yarn. Respondent sells his products to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes said products when sold by him to be transported from his place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia, with other individuals and with corpora-

tions, firms, and partnerships engaged in the business of selling and distributing various grades and types of knitting yarn 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 his said business, the respondent has engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by him are made, by means of false representations on labels attached to his products and in various advertising matter, and by failure to disclose the rayon content of certain of his products. In furtherance of this practice and for the purpose of inducing the purchase of his said products, respondent has caused false statements and representations purporting to be descriptive of such products and their respective constituent fiber or material to be inserted in catalogs, price lists, and in advertisements appearing in magazines, newspapers and in other publications distributed among prospective purchasers of said products situated in various States of the United States and in the District of Columbia.

PAR. 5. Among and typical of the acts and practices above described, the respondent represents certain of his products as being composed entirely of silk, the product of the cocoon of the silk worm, when, in fact, said products are composed entirely of rayon. As an example of this practice, the respondent causes certain advertisements to be inserted in various publications such as the following:

Silk Boucle 88¢ SUPERYARNS
 Lowest prices. New textures and shadings. 1001 rich, bright, lasting
 colors. Satisfaction guaranteed.
 SUPERYARN CO. DEPT. D.
 353 Grand Street, New York, New York. Free Samples.

By means of the above statement, together with other and similar statements appearing in various advertising material, price lists, catalogs, and on labels, distributed as aforesaid, the respondent represents that said product is composed entirely of unweighted silk, the product of the cocoon of the silk worm, when, in truth and in fact, said product is composed entirely of rayon.

PAR. 6. Another and typical act and practice engaged in by the respondent in falsely representing his products is the use on labels and in catalogs, distributed as aforesaid, of designations or descriptions applied to rayon products which have the appearance and feel of silk, and are by the purchasing and consuming public indistinguishable from silk, and which designations did not disclose that said products are composed of rayon. As a typical example of this practice the respondent uses the term "Special Boucle," in the manner

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and form above described, to designate and describe a product composed entirely of rayon, and fails to disclose the fact that said yarn is composed of rayon.

PAR. 7. Typical also of said acts and practices, the respondent represents certain of his products as being of a finer grade and a higher quality or of a different fiber than is actually the fact, by the use of words or phrases indicative to the purchasing public of a certain fiber, grade or quality. An example of this practice is the respondent's use of the word "cashmere" on labels, in advertising material, and in catalogs, distributed as aforesaid, to designate and describe products which do not contain the hair of the Cashmere goat but instead are composed of other wool.

PAR. 8. A further and typical act and practice on the part of the respondent is the use of words which are associated in the minds of the purchasing and consuming public as being descriptive of wool exclusively, to designate and describe certain yarn products, as aforesaid, which are composed in part of wool and in part of other material. As an example of this practice, the respondent uses the terms "Zephyr Tweed" and "Tweed Velnette" on labels, advertising material, and in catalogs, distributed as aforesaid, to designate a yarn product composed in part of wool and in part of rayon. In connection with the use of "Tweed Velnette," respondent describes said product as being composed of a "wool mixture and silk nub," when in fact said product is composed entirely of wool and rayon.

PAR. 9. The word "silk" for many years last past has had, and still has, in the minds of the purchasing and consuming public generally, 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. The unqualified word "silk" has, in the minds of the purchasing and consuming public, the definite and specific meaning of unweighted silk or silk which has not been subjected to the process of a metallic bath.

The word "cashmere" has long been applied to a particular type of wool fiber that is made from the hair of the Cashmere goat, and which product has for a long time been known well and favorably to the purchasing public. The word "cashmere," when used in connection with the designation and description of yarns or other products having the general appearance of wool fibers, is considered by members of the purchasing public as being a descriptive designation of a cashmere wool product composed entirely of the hair of the Cashmere goat.

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The word "tweed" is a word long and favorably known to a substantial portion of the purchasing and consuming public as a certain kind of fabric composed entirely of wool.

The word "rayon" is the name of a chemical fiber or fabric which simulates silk in that it has the appearance and feel of silk and is, by the purchasing public, practically indistinguishable from silk.

PAR. 10. In addition to the acts and practices above described, the respondent, by use of the words "Manufacturer of Superyarn" and "Importer", on bill heads, business cards and advertising material, represents that he is a manufacturer and importer of yarn or yarn fiber and material. In truth and in fact, respondent is not a manufacturer of yarn and is not an importer of yarn or yarn fiber or material.

There has long been a preference on the part of a substantial portion of the purchasing and consuming public for dealing directly with a manufacturer or importer in the belief that lower prices, superior products and other advantages can thereby be obtained.

PAR. 11. The use by the respondent of the aforesaid acts and practices has had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that the respondent has truthfully represented the constituent fiber or material of his various products and that said products are actually manufactured or imported by the respondent. On account of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to the respondent from his competitors who are also 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 various grades and types of knitting yarn.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material

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allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Adolph Friedman, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of various grades and types of textile fabrics and knitting yarn and other like articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's products are composed of fibers or materials other than those of which they are actually composed.

2. Using the words "Tweed" or "Wool" or any other words or terms of similar import and meaning, to describe or designate any fabric or product which is not composed entirely of wool.

3. Representing that the quality, grade or character of respondent's products are superior to or different from their true quality, grade or character.

4. Using the word "Cashmere" or any other word or words of similar import or meaning to describe or designate any fabric or product which is not composed wholly of the hair of the Cashmere goat.

5. Using the unqualified word "silk" or any other word or words of similar import or meaning, to designate or describe fabrics which are not composed wholly of unweighted silk, the product of the cocoon, of the silkworm, except that in the case of a fabric or product composed in part of unweighted silk and in part of materials other than unweighted silk, such words may be used as descriptive of the silk content if there is used in immediate connection or conjunction therewith, in letters of equal size and conspicuousness, a word or words accurately describing and designating each constituent fiber or material thereof in the order of its predominance by weight, beginning with the largest single constituent.

6. Advertising, offering for sale or selling fabrics or any other products composed in whole or in part of rayon without clearly disclosing the fact that such fabrics or products are composed of rayon, and when such fabrics or products are composed in part of rayon and in part of other fibers or materials, such fibers or materials, including rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

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7. Representing that the respondent is a manufacturer, unless and until he actually owns and operates or directly and absolutely controls a manufacturing plant wherein said products are actually manufactured.

8. Representing that respondent is an importer, unless he directly imports from a foreign country a substantial portion of the products offered for sale and sold by him.

This order shall not be construed as approving the use of the term "wool" to designate, describe or refer to any wool which is not virgin or unused wool.

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

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IN THE MATTER OF
GEORGE HENRY BRINKLERCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2639. Complaint, Nov. 21, 1935—Decision, May 23, 1939*

Where an individual engaged in sale and distribution of correspondence courses in diet and health, in which diets recommended contained no water, as such, and no table salt, but consisted of fresh red meats, fruit and vegetable juices, and such other foods as said individual deemed suitable to eliminate waste and produce vitality in the student or patient, in view of his condition and surroundings, and to rid him of diseases and to keep him well for the rest of his life, and in advertising his said courses through testimonial letters and circulars sent by mail into the other States, and in periodicals circulating among the several States, and in competition with others engaged in sale of correspondence courses in home study in the field of diet to men and women living in the several States, and in securing their students through national advertising conforming, as a rule, to recognized canons of truth, and also with those engaged in making and selling in commerce medicinal preparations and apparatus used and useful for the treatment of specific diseases or ailments of the body—

- (a) Represented that congestion or waste matter in the blood was the cause of all diseases, and that starvation of the affected part or parts was the only one disease, and that every disease known or yet to be discovered and named was necessarily a result of poor circulation of the blood or starvation of affected tissues; and
- (b) Represented that his courses were competent and adequate treatment for cure and elimination of all diseases of human beings whatsoever, and specifically for named diseases, including appendicitis, heart trouble, asthma, arthritis, and others, and that through following his courses memory and eyesight would be improved, circulation restored to normal, and various other beneficial results accomplished, including increase in income and wealth and promotion of the health and efficiency of one's children, etc.;

Facts being congestion or waste matter in blood is not cause of all diseases, nor is every disease necessarily result of poor circulation of blood or starvation of affected part or parts, and his said courses did not constitute competent or adequate treatment for all diseases, with possible exception of restricted number caused by diet deficiency, many patients receiving only such treatment would, in opinion of outstanding authorities in medical profession, be neglected, substitution of fruit and vegetable juices for water is positively dangerous to patients suffering from some ailments, and method of treatment or diet outlined do not constitute adequate or competent treatment for various diseases specified, and has no therapeutic or medical value, with possible exception aforesaid in so-called deficiency diseases;

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With capacity and tendency to mislead and deceive substantial portion of public into erroneous and mistaken belief that such representations were true, and to induce many members of purchasing public to buy his said courses as consequence of erroneous and mistaken belief thus engendered, with result that trade was diverted unfairly to him from others engaged in sale and distribution of medicinal preparations and apparatus for treatment of specific diseases and ailments; to the substantial injury of competitors in commerce:

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

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

Mr. Alden S. Bradley and *Mr. Merle P. Lyon* for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that George Henry Brinkler, 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 issued its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual maintaining his office and principal place of business at 458 Ocean Drive, Miami Beach, in the State of Florida.

PAR. 2. Respondent for more than 5 years last past has operated under various trade names, such as, "Brinkler School of Eating," "Brinkler School of Food Science," "Brinkler School of Nutrition," and now operates under the trade name, "Brinkler Institute," and during the course and conduct of this business, respondent has been and now is engaged in the business of selling and transporting to purchasers in States of the United States and in the District of Columbia, other than the State of Florida, a correspondence course in diet and health; and in the course and conduct of his business, as aforesaid, has maintained a constant current of trade and commerce in interstate commerce of such commodity, and sells and transports said correspondence course from his place of business in the State of Florida to the purchasers thereof at their respective locations in States other than the State of Florida and in the District of Columbia.

PAR. 3. Persons, firms, copartnerships, and corporations other than the respondent are likewise engaged in the business of selling cor-

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respondence courses in diet and health in commerce among the several States of the United States and in the District of Columbia in competition with the respondent.

PAR. 4. In the course and conduct of such business, respondent has represented by statements, by advertisements published in various periodicals, by advertising literature, and otherwise:

(a) That respondent's correspondence course in diet and health is a competent treatment for all diseases.

(b) And that the method of diet as contained in the course of instruction offered by the respondent is an adequate treatment for:

- | | |
|------------------------|----------------------------------------|
| 1. Indigestion | 20. Goitre |
| 2. Tumors | 21. Liver trouble |
| 3. Boils | 22. Eczema |
| 4. Blood clots | 23. Leucorrhœa |
| 5. Pyorrhœa | 24. Hay fever |
| 6. Pimples | 25. Hemorrhages of the womb |
| 7. Catarrh of the eyes | 26. Vaginal blood tumors |
| 8. Catarrh of the nose | 27. Prurigo |
| 9. Deafness | 28. Hemorrhoids |
| 10. Bronchitis | 29. Sciatica |
| 11. Asthma | 30. Hardening of the arteries |
| 12. Tuberculosis | 31. Congestion of the brain |
| 13. Gastritis | 32. Dandruff |
| 14. Appendicitis | 33. Headaches |
| 15. Gall stones | 34. Arthritis |
| 16. Heart trouble | 35. Gonorrhœa or any sexual disease |
| 17. Paralysis | 36. Cataract. |
| 18. Kidney trouble | |
| 19. Fevers | |

(c) That by following said course one's memory or eyesight will be improved.

(d) That the following of said course will enable one to increase his income.

(e) That by following said course one will either gain or reduce any number of pounds within any certain period of time.

(f) That by following said course circulation or health will be restored.

(g) That by following said course the feet will be restored to normal.

(h) That by following said course the heart will be returned to normal, or the legs will be freed from oedema.

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- (i) That the observance of said course will—
- (1) Double brain or muscle power.
 - (2) Give dependable health and activity in old age.
 - (3) Improve or increase creative talent, originality, affection, or energy.
- (j) That every disease is due to congestion.
- (k) That the observance of said course will promote a normal functioning of all organs and tissues.
- (l) That the observance of said course will bring wealth.
- (m) That the observance of said course will have any beneficial effect upon marital relations.
- (n) That the children of those who observe said course will be healthy or efficient.
- (o) That the observance of said course of instruction will produce—
- 1 The cleansing of the system; or
 - 2 The reconstruction or building of the system;
 - 3 The normal functioning of the system.

PAR. 5. In truth and in fact respondent's correspondence course is not a competent treatment for all diseases; is not an adequate treatment for any of the diseases listed, 1 to 36 inclusive, in subparagraph (b) of paragraph 4 of this complaint. The correspondence course of treatment so sold and offered for sale by the respondent as above related has no therapeutic or medical value; does not improve the memory or the eye-sight; will not enable the user to increase his income; has no variable capacity to cause the gain or loss of avoirdupois; will not of itself restore health or circulation; will not reduce the swelling or return to normal condition the feet, heart, or legs; has no capacity to double the brain or muscular power of the user or to insure health and activity in old age; and improve or increase creative talents, originality, affection, or energy. It is not true that every disease is due to congestion. The observance of the course as offered by the respondent will not of itself promote a normal functioning of all organs and tissues; has no capacity to bring wealth; and has no inherent capacity to cause a beneficial effect upon marital relations; and further; that the use of such course as indicated by the respondent will not increase the health or efficiency of children of the user; has no inherent capacity for reconstruction or rebuilding of the system and cannot materially and beneficially effect the normal function of the system.

Customers and potential customers throughout the various States of the United States have been deceived and misled into the false belief that the statements of the respondent were and are as represented by the respondent, and that the same had and have a definite

and valuable therapeutic effect in the treatment of the maladies and diseases of the human body as represented by him. The said statements and representations also had and have a tendency and capacity to cause members of the consuming public, in reliance upon the erroneous belief as above set forth, to purchase and use the course of treatment of the respondent instead of purchasing and using the remedies and products of competitors of the respondent for the treatment of the maladies and diseases and pathological conditions of the human body, including those set forth in the statements of the respondent and others represented by the respondent as being conditions in which the use of one or more of respondent's products have a curative value.

PAR. 6. There are among the competitors of the respondent persons, firms, copartnerships, and corporations in substantial competition with the respondent, but who do not falsely represent the curative or therapeutic values of the commodity vended by them.

PAR. 7. The acts, practices, and representations of the respondent serve as added inducements to purchasers and prospective purchasers, to purchase substantial quantities of the product sold by the respondent, and have a tendency and a capacity to, and do, divert a substantial volume of trade from the competitors of the respondent to the respondent, with a result that substantial injury was done by the respondent to substantial competition in commerce as hereinabove set out.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 21, 1935, issued and on November 25, 1935, served its complaint in this proceeding upon George Henry Brinkler, an individual, charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act, and said respondent entered his appearance and filed his answer herein. Thereafter, hearings were held and testimony and other evidence was introduced by Alden S. Bradley and Merle P. Lyon, attorneys for the Commission, in support of

the allegations of the complaint, and by W. E. Walsh, attorney for respondent, in opposition to the allegations of the complaint, before John W. Addison, an examiner of the Commission theretofore duly appointed by it. Thereupon this proceeding regularly came on for final hearing before the Commission on 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 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, George Henry Brinkler, is an individual trading as Brinkler Institute, with his place of business located at 458 Ocean Drive, Miami Beach, Fla. He formerly traded as Brinkler School of Eating and as Brinkler School of Food Science. Respondent is engaged in the sale and distribution of a correspondence course in diet and health. A 4-week course sells for \$20. The diets recommended by respondent in said correspondence course in diet and health contain no water as such and no table salt, but consist of fresh red meats, fruit and vegetable juices and such other foods as respondent deems suitable to eliminate waste and produce vitality in the student or patient in view of his condition and surroundings and to rid him of diseases and keep him well for the rest of his life. The Brinkler Institute is listed as a correspondence school by National Home Study Council.

PAR. 2. Respondent Brinkler advertises his courses in diet and health by means of testimonial letters and circulars sent by mail from Florida into other States and in magazines circulating among the several States and causes the courses, when sold, to be transported from Florida into other States and there delivered to the buyers.

PAR. 3. There are other individuals, partnerships, and corporations in the United States engaged in the business of selling correspondence courses in home study in the field of diet in competition in commerce with respondent to men and women living in the several States and of causing the courses so sold to be transported from the State in which the seller is located into other States and there delivered to the buyers. They secure their students through national advertising conforming as a rule to the recognized canons of truth. There are also individuals, partnerships, and corporations engaged in making and selling in commerce among the several States medicinal preparations and apparatus used and useful for the treatment of specific diseases or ailments of the human body.

PAR. 4. Respondent, to promote the sale of his correspondence courses in commerce, among the several States and in the District of Columbia, represents that congestion or waste matter in the blood is the cause of all diseases and that his courses are competent and adequate treatment for the cure and elimination of all diseases of human beings whatsoever. He makes the representation both generally for all diseases and specifically for named diseases including among many others appendicitis, congestion of the brain, goiter, tuberculosis, heart trouble, asthma, blood clots, deafness, cataract, arthritis, and gall stones. Respondent also represents that, by following his courses of instruction, the memory and eyesight will be improved, circulation will be restored to normal, the feet will be restored to normal, the legs will be freed from oedema, brain or muscle power will be doubled, dependable health and activity in old age will be assured, creative talent, originality, affection, and energy will be improved or increased, normal functioning of all organs and tissues will be promoted, weight can be controlled or regulated at will, income or wealth will be increased, marital relations will be beneficially affected, the health and efficiency of one's children will be promoted, and the system will be cleansed, rebuilt, reconstructed, and restored to normal functioning. Respondent further represents that there is only one disease, starvation of the affected part or parts, and that every disease now known and every disease yet to be discovered and named is necessarily a result of poor circulation of the blood or starvation of affected tissues.

PAR. 5. Congestion or waste matter in the blood is not the cause of all diseases and the method of treatment or the diet outlined in respondent's correspondence courses are not a competent or adequate treatment for all diseases, with the possible exception of the restricted number of diseases such as scurvy, beri-beri, and rickets, caused by diet deficiency and it is false, misleading, and deceptive to represent them as such. Many patients receiving only such treatment would, in the opinion of outstanding authorities in the medical profession, be neglected, and the substitution of fruit and vegetable juices for water is positively dangerous to patients suffering from some ailments. The method of treatment or the diet outlined in respondent's courses of instruction are not an adequate or competent treatment for appendicitis, congestion of the brain, cancer, goiter, tuberculosis, heart trouble, diabetes, asthma, blood clots, deafness, cataract, indigestion, arthritis, osteomyelitis, paresis, typhoid fever, gall stones, septicemia and the other diseases, ailments and conditions mentioned in respondent's advertising literature and courses of instruction. The method of treatment of the diet outlined in the cor-

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respondence courses sold by respondent have no therapeutic or medical value except possibly in the treatment of the so-called deficiency diseases. It is not true that there is only one disease, starvation of the effected part or parts, and that every disease now known and every disease yet to be discovered and named is necessarily a result of poor circulation of the blood or affected tissues.

PAR. 6. Each and all of the false and misleading statements so made by respondent, as set forth above, have had and now have the capacity and tendency to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that such representations are true; and to induce many members of the purchasing public to buy respondent's said courses as a result of the erroneous and mistaken belief engendered by such representations, with the result that trade is diverted unfairly to respondent from other individuals and from partnerships and correspondence courses in diet and health who truthfully advertise and represent their said courses, and from other individuals, and from partnerships and corporations engaged in the sale and distribution of medicinal preparations and apparatus for the treatment of specific human diseases and ailments. Substantial injury has been and is being done by respondent George Henry Brinkler to his competitors in commerce among and between the several States of the United States and to the public.

CONCLUSION

The aforesaid acts and representations of respondent George Henry Brinkler have been and are 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, 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 the Federal Trade Commission Act.

It is ordered, That the respondent, George Henry Brinkler, his representatives, agents, and employees, individually or under any

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trade name or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce as commerce is defined in the Federal Trade Commission Act, of correspondence courses in diet and health, do forthwith cease and desist from:

1. Representing that congestion or waste matter in the blood is the cause of all diseases.

2. Representing that the diet or method of treatment outlined in said courses of instruction offered for sale and sold by him is a competent or adequate treatment for the cure and elimination of all diseases, or for any diseases except the restricted number of diseases caused by diet deficiency.

3. Representing that the diet or method of treatment outlined in said courses of instruction is a competent or adequate treatment of appendicitis, congestion of the brain, cancer, goiter, tuberculosis, heart trouble, diabetes, asthma, blood clot, deafness, cataract, indigestion, arthritis, osteomyelitis, paresis, typhoid fever, gall stones, or septicemia.

4. Representing that there is only one disease, starvation of the affected part or parts, and that every disease yet to be discovered and named is necessarily a result of poor circulation of the blood or starvation of affected tissues.

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

STEVEN V. GIMINO AND ANTHONY V. GIMINO, TRADING
AND DOING BUSINESS AS ELITE PUBLISHING COM-
PANY¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3521. Complaint, July 30, 1938—Decision, May 25, 1939*

Where two individuals engaged in publication and sale of book variously known as "Collection of Successful Business Plans" and "The Elite Collection of Successful Business Plans," to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in publication, sale, and distribution, or in sale and distribution, of similar books and articles in commerce as aforesaid, and including many who do not in any way misrepresent the content of their said books or the earnings which may be derived from the operation of the plans described therein—

- (a) Represented, in advertisements in periodicals of general circulation in various States, that their "free booklet" described "107 plans for making \$20.00-\$100.00 weekly in home or office," and referred in such advertising to "107 plans for operating a successful business of your own," with earnings: from \$20 to \$100 a week, starting in spare time at home;

Facts being booklet in question, which was in fact sent free to inquirers, did not describe plans themselves in any practical detail, but was merely suggestive of general nature of each and some of its salient features, and they had no knowledge or information to the effect that the average net earnings or profits consistently made by purchasers of their said books, in following one or more of the said plans in the ordinary and usual course of business, and under ordinary and usual conditions and circumstances, amounted to from \$20 to \$100 as above set forth, and had no reasonable grounds for belief that earnings or profits therefrom amounted to such sums;

- (b) Made such statements, in their said advertising and in letters and circulars sent to prospective purchasers, as "No peddling or house-to-house selling" and "107 plans for starting a business * * * No risk; start the plans which require no investment," and "Statistics prove that the man or woman who starts an independent business, however small, has sixteen times the chance to become a marked success as the man who accepts a position on a salary";

Facts being that all their said plans involved sale of articles or services, many were adapted essentially to peddling or house-to-house sales, and, while methods of sale by mail or through agents or salesmen were suggested in lieu of house-to-house or office-to-office selling by operators of plan and personal direct selling by operator might be avoided by following their proposals, such selling was necessary in many cases, there is no plan for engaging in any independent business which does not involve risk through

¹ Earlier findings, conclusion, and order to cease and desist in this cause, made as of March 15, 1939, were vacated by March 31 order, which also rescinded stipulation approved November 2, 1938.

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possibility of loss of either time or money, and they had no knowledge of reliable and authentic statistics to the effect above stated with respect to prospects of persons starting an independent business as compared with person employed on a salary; and

- (c) Made such statements, as aforesaid, as "These plans are different * * * We could point out hundreds of examples of men and women who have started with nothing but a dollar or two and the right plan who are now independently wealthy," and, in connection with "Plan One," set forth that "\$5,000 in one year is the earnings reported by one operator of this unique idea," and set forth that "If you are a hard worker you should find it just as easy to make big money with these plans as to 'hold down' a \$25 a week job for somebody else," and in referring to financial rewards in said free booklet to be gained from operation of a number of their different plans, made such statements, among others, as "Although men and women everywhere are earning literally thousands of dollars a year in this plan, the field is not one-tenth covered," and "If the profits are reinvested the operator can soon be making thousands of dollars yearly," "a sizable business can be built from a 'shoe-string' start," etc., and referred to their plans as "Approved plans for securing additional incomes," and "* * * proved winners. All you have to do is 'follow instructions,'" and "Guaranteed to be practical and legitimate";

Facts being they were without knowledge or information or reasonable grounds for belief that any purchasers of said books had attained independent wealth or earnings of \$5,000 or \$10,000 by following one or more of their plans in ordinary course of business and under normal conditions and circumstances, and were without knowledge or information to effect that average net earnings or profits consistently made, as above set forth, by purchasers in following such various plans as set forth in said "free booklet," amounted to the varying sums represented, and had no reasonable grounds for believing that they did amount thereto, and their said plans were not "approved" by any reliable or independent person or agency or organization qualified to pass judgment on such matters, and, while plans in question outlined in greater or less detail, were projects which might result in profits to some degree, dependent upon industry and capacity of operator, locality and other usual facts involved in such matters, in no case was financial success in particular enterprise assured simply by following directions given, and certain of plans involved were not legitimate in accepted sense of word, nor legal if carried on in interstate commerce in manner proposed;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that said representations and implications were true, and to cause substantial portion of such public, because of such erroneous belief, to buy their said books, and thus divert trade to them from competitors who have not made use of similar representations concerning their said products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. R. W. Branch for the Commission.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Steven V. Gimino and Anthony V. Gimino, individuals, trading and doing business under the name and style of Elite Publishing Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The said respondents, Steven V. Gimino and Anthony V. Gimino, are individuals trading and doing business under the name and style of Elite Publishing Co., with their office and principal place of business at 214 Grand Street, New York City, State of New York.

PAR. 2. Respondents are now, and for more than 2 years last past have been, engaged in the business of publishing and selling a certain book, variously known as "Collection of Successful Business Plans" and "The Elite Collection of Successful Business Plans."

Respondents cause the copies of this book, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been for more than 2 years last past, in substantial competition with other firms and partnerships and with individuals and corporations engaged in the publication, sale, and distribution, or in the sale and distribution, of similar books or articles 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 their said business, and for the purpose of inducing the purchase of the said books, the respondents have advertised in magazines of interstate circulation. Typical of the advertisements so issued are the following:

Free booklet describes 107 plans for making \$20.00-\$100.00 weekly in home or office, business of your own.

Free booklet describes 87 plans for making \$20.00-\$100.00 weekly in home or office, business of your own.

107 plans for making \$20.00-\$100.00 weekly in home or office business of your own. Descriptive booklet free.

Need Money—Write for free booklet describing 107 plans for operating a successful business of your own. Make from \$20.00-\$100.00 a week starting

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in spare time at home. No peddling or house-to-house selling. Booklet sent free and without obligation. Write for your copy today.

FREE
BOOK

Write for booklet describing "107 plans for operating a successful business of your own."

PAR. 5. In the course and conduct of their said business, and for the purpose of inducing the purchase of the said books, respondents have caused to be sent by means of the United States mails and otherwise to prospective purchasers, letters and circulars containing statements relative to the said books and plans, of which the following are typical:

107 plans for starting a business * * * No risk; start the plans which require no investment.

Statistics prove that the man or woman who starts an independent business, however small, has sixteen times the chance to become a marked success as the man who accepts a position on a salary.

These plans are different * * * We could point out hundreds of examples of men and women who have started with nothing but dollar or two and the right plan who are now independently wealthy.

Plan One * * * \$5,000 in one year is the earnings reported by one operator of this unique idea.

Q. I want to run a big business; I want the opportunity to make \$10,000 a year or more; can I do it with you plans?

A. Earnings in any business are usually in proportion to the effort given and there are many of our plans which are earning more than the amount you mention for the operators. If you are a hard worker you should find it just as easy to make big money with these plans as to "hold down" a \$25 a week job for somebody else.

The plans are bound together in a handsome leatherette covered book.

Approved plans for securing additional incomes.

Our plans are proved winners. All you have to do is "follow instructions."

The plans are guaranteed to be practical and legitimate.

By the said statements and others of like import and effect in their advertising literature, respondents directly and by inference represent that the "free booklet" describes 87 or 107 plans for making money in the home or office; that no risk is involved in the operation of the said plans; that by following any of the said plans earnings of \$20 to \$100 weekly might be attained; that the chance of one starting an independent business achieving a marked success is sixteen times greater than that of a person on a salary; that independent wealth has been attained by many people by the use of respondents' plans; that earnings of \$5,000 or \$10,000 per year have been made by persons using respondents' plans; that in the execution of the said plans no peddling or house-to-house selling is necessary; that the binding of the book is composed of leather; that the plans have been

“approved” by a reputable or independent person or agency or organization qualified to pass judgment on such matters; that the use of the plans is certain to result in financial gain; and that the plans are legitimate in the accepted sense of the word.

PAR. 6. The representations made by the respondents directly or by inference with respect to the said free booklet, to their book variously designated “Collection of Successful Business Plans” and “The Elite Collection of Successful Business Plans,” and to the said plans and the results which may reasonably be anticipated to be attained by their use are false, misleading, and untrue. In truth and in fact respondents’ “free booklet” does not describe the said 87 or 107 plans, but is merely descriptive of the book which describes the plans, which said book is not in fact free, but is sold for \$3 per copy. It is extremely improbable that the persons by whom respondents’ advertisements are read or to whom their books are sold, will in fact realize earnings of \$20 to \$100 per week by carrying out any of the said plans. The chance of one starting an independent business achieving a marked success is not sixteen times greater than that of a person on a salary. Independent wealth has not been attained by many people by the use of respondents’ plans. Earnings of \$5,000 or \$10,000 per year have not been realized by a utilization of many of the said plans, and as to the plans pursuant to which such earnings might conceivably be reached, they would be possible only after a substantial investment of time, effort, and money. Many of the plans involve selling or peddling or house-to-house canvassing. The binding of the said book is not composed of leather. The plans have not been “approved” by an independent person or agency or organization of repute qualified to pass judgment on such matters. The plans are not “proved winners.” The plans do involve a certain risk of financial loss and are not free from risk. Certain of the plans are neither legitimate in the accepted sense of the word nor legal if carried on in interstate commerce in the manner proposed.

PAR. 7. There are among respondents’ competitors many who are engaged in the business of publishing and selling books or articles of a like character, who do not in any way misrepresent the quality and content of their said books or the earnings which may be derived from the operation of the plans described therein.

PAR. 8. Each and all of the false and misleading statements and representations made by respondents as hereinabove set out were and are calculated to, and have 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

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true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased substantial numbers of respondents' work with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of publishing and selling similar books or articles, and who truthfully advertise the same. As a consequence 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. 9. The aforesaid acts and practices of respondents as herein alleged 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 30, 1938, issued its complaint in the above-entitled proceeding and caused same to be served on the respondents, Steven V. Gimino and Anthony V. Gimino, carrying on business under the name and style of Elite Publishing Co., charging them with violation of the provisions of said act. After the issuance of said complaint and the filing of the answer thereto by respondents, a stipulation as to the facts was made and entered into by and between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and the respondents, which stipulation provided that the facts set out therein may be made a part of the record herein and may be taken as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint herein or in opposition thereto, and that said Commission may proceed upon said facts (and from inferences it may draw therefrom) 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 arguments or the filing of briefs, and said stipulation has been accepted and approved by the Commission. Thereafter the matter came on for final hearing before the Commission on the said complaint, the answer thereto, and the said stipulation as to the facts and the Commission having duly considered the matter and being now fully advised in the premises finds that said proceeding is in the interest 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 respondents, Steven V. Gimino and Anthony V. Gimino, individuals trading and doing business under the name and style of Elite Publishing Co., have their office and principal place of business at 214 Grand Street, New York City, State of New York. They are now and for more than 2 years last past have been engaged in the business of publishing and selling a certain book variously known as "Collection of Successful Business Plans" and "The Elite Collection of Successful Business Plans," and have caused copies of this book, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York and in the District of Columbia. In the course and conduct of their said business, respondents are now and have been for more than 2 years last past, in substantial competition with various persons and corporations and other partnerships engaged in the publication, sale, and distribution or in the sale and distribution of similar books and articles of commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as set out in paragraph 1 hereof, and for the purpose of inducing members of the public to purchase the books offered for sale by them, respondents have caused advertisements to be published in magazines and other periodicals of general circulation in various States of the United States. The following are typical excerpts from such advertisements:

Free booklet describes 107 plans for making \$20.00-\$100.00 weekly in home or office, business of your own.

Free booklet describes 87 plans for making \$20.00-\$100.00 weekly in home or office, business of your own.

107 plans for making \$20.00-\$100.00 weekly in home or office business of your own. Descriptive booklet free.

NEED MONEY—Write for free booklet describing "107 plans for operating a successful business of your own." Make from \$20.00-\$100.00 a week starting in spare time at home. No peddling or house-to-house selling. Booklet sent free and without obligation. Write for your copy today.

FREE BOOK

Write for booklet describing "107 plans for operating a successful business of your own."

Advertising in these identical or substantially similar forms was continued until the service of the complaint.

The "free booklet" to which these advertisements refer was, in fact, sent to inquirers entirely free of any charge, either in money, services, or otherwise. This booklet, however, did not describe the

plans themselves in any practical detail, but was merely suggestive of the general nature of each plan and some of its salient features.

Respondents did, in fact, publish the collection of plans referred to above, which did, in fact, contain at different times the number of plans claimed in the foregoing advertisements.

At the time the said representations with respect to possible weekly earnings of "\$20-\$100" were made, respondents had no knowledge or information to the effect that the average net earnings or profits consistently made by purchasers of said books in following one or more of the said plans in the ordinary and usual course of business and under ordinary and usual conditions and circumstances amounted to from \$20 to \$100, and had no reasonable grounds for belief that such earnings or profits amounted to such sums.

All of the plans involve the sale of articles or services. Many of them are adapted essentially to peddling or house-to-house sales. As to these, respondents in substantially all cases suggest methods of sale by mail or through agents or salesmen, in lieu of house-to-house or office-to-office selling by the operator of the plan. Although, by following respondents' proposals, personal direct selling by the operator of the plan may be avoided, in many cases such selling is necessary.

PAR. 3. In the course and conduct of their said business, and for the purpose of inducing the purchase of the said books, respondents have caused to be sent, by means of the United States mails and otherwise, to prospective purchasers, letters and circulars containing statements relative to the said books and plans, of which the following, indicated by quotation marks, are typical:

107 plans for starting a business * * * No risk; start the plans which require no investment.

There is no plan for engaging in any independent business which does not involve risk through the possibility of loss of either time or money.

Statistics prove that the man or woman who starts an independent business, however small, has sixteen times the chance to become a marked success as the man who accepts a position on a salary.

At the time the said representation was made, respondents had no knowledge of reliable and authentic statistics to the effect stated.

These plans are different * * * We could point out hundreds of examples of men and women who have started with nothing but a dollar or two and the right plan who are now independently wealthy.

Plan One * * * \$5,000 in one year is the earnings reported by one operator of this unique idea.

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Q. I want to run a big business; I want the opportunity to make \$10,000 a year or more; can I do it with your plans?

A. Earnings in any business are usually in proportion to the effort given, and there are many of our plans which are earning more than the amount you mention for the operators. If you are a hard worker you should find it just as easy to make big money with these plans as to "hold down" a \$25 a week job for somebody else.

At the time said representations with respect to the possible attainment of independent wealth or earnings of \$5,000 or \$10,000 were made, respondents were without knowledge or information or reasonable grounds for belief that any purchasers of the said books had attained such wealth or earnings by following one or more of the said plans in the ordinary course of business and under normal conditions and circumstances.

The plans are bound together in a handsome leatherette covered book.

The binding of the book is not composed of leather. This statement was deleted from the "free booklet" shortly after April 28, 1936.

Approved plans for securing additional incomes.

The plans have not been approved by any reliable or independent person or agency, or organization, qualified to pass judgment on such matters.

Our plans are proved winners. All you have to do is "follow instructions." The plans outlined in greater or less detail are projects which may result in profits to some degree, dependent upon the industry and capability of the operator, the locality and other usual facts that enter into the success of any business enterprise. However, in no case is financial success in the particular enterprise assured simply by following the directions given.

The plans are guaranteed to be practical and legitimate.

Certain of the plans are not legitimate in the accepted sense of the word, nor legal if carried on in interstate commerce in the manner proposed.

PAR. 4. In the "free booklet," respondents include as to the financial rewards to be gained from the operation of a number of their different plans, statements of which the following are typical:

It is an ideal mail order item and several people we know of are making handsome incomes selling it through the mails.

An ambitious worker can secure independence and an income equal to his fondest hopes.

If full time and earnest attention is given to it, the earnings may be made as high as \$3.00 or more per hour.

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If you handle it the way we tell you, a sizable business can be built from a "shoe-string" start.

People we know of who are today working this plan are making incomes ranging from \$100.00 to \$200.00 a month.

A plan good for \$10.00 to \$15.00 a day in any fair sized town or city.

Nevertheless, it can be made to pay \$6,000.00 or more in local operation, and the risk involved is trifling.

* * * paying no less than \$20.00 a week for easy work.

This pays from \$150.00 to \$300.00 per month, or possibly a little more.

A permanent business, paying up to \$200.00 a month or more, can be developed.

If the profits are reinvested the operator can soon be making thousands of dollars yearly.

Although men and women everywhere are earning literally thousands of dollars a year in this plan, the field is not one-tenth covered.

At the time said representations were made respondents had no knowledge or information to the effect that the average net earnings or profits consistently made in the ordinary and usual course of business and under normal conditions and circumstances by purchasers of said books in following the said various plans to which the foregoing statements apply, amounted to the varying sums represented, and had no reasonable grounds for belief that such earnings and profits amounted to such sums.

PAR. 5. There are, among respondents' competitors, many who do not in any way misrepresent the content of their said books or the earnings which may be derived from the operation of the plans described therein.

PAR. 6. The above and foregoing representations and implications, and others of like character, so made by the respondents in connection with the offering for sale and sale of their books, are misleading and deceptive, and have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations and implications are true, and to cause a substantial portion of the purchasing public, because of said erroneous belief, to purchase respondents' books; and as a result, trade has been diverted to respondents from competitors who have not made use of similar representations concerning books sold by them.

CONCLUSION

The acts and practices of the respondents herein, as set out in the foregoing findings, are all to the prejudice and injury of the public and of competitors of respondent, and constitute unfair methods of competition in commerce within the intent and meaning of the provisions of the Federal Trade Commission Act.

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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 respondents, and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that the Commission may proceed upon the facts stipulated 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 presentation of argument or the filing of briefs, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Steven V. Gimino and Anthony V. Gimino, their agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of certain books describing plans or methods of setting up businesses now known as "Collection of Successful Business Plans," and "The Elite Collection of Successful Business Plans," whether sold under those names or under any other names, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing any specified sum of money as possible earnings or profits which might accrue to purchasers of respondents' books or publications by following one or more of the plans suggested therein, which is not a true representation of the average net earnings or profits consistently made by purchasers by said means in the ordinary course of business and under normal conditions and circumstances.

2. Representing any specified sum of money as earnings or profits which have accrued to any purchaser of said books or publications, who has followed one or more of the plans suggested therein, which is not a true representation of the consistent net earnings by such purchasers by said means in the ordinary course of business and under normal conditions and circumstances.

3. Representing or holding out by the use of such expressions as "Independent Wealth," "Sizable Business," "Thousands of Dollars a Year," and words of like or similar import, that purchasers of said books will, by following one or more of respondents' plans, attain considerable financial worth unless such success has usually or customarily been attained by such purchasers under normal business conditions and in the due course of business.

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4. Representing that any booklet, folder, circular, or the like, describes plans for independent business ventures, unless and until it does in fact describe such plans.

5. Representing that the chance of a person starting an independent business achieving success is greater than that of one who works for a salary, unless and until such fact is established by authentic and reliable statistics.

6. Representing that no peddling or house-to-house canvassing is necessary, if in fact either is normally involved in the conduct of respondents' plans.

7. Representing that the said plans are legitimate, unless all of them are legitimate in the generally accepted sense of the word.

8. Representing that the plans have been "approved," unless and until (a) they have been approved by a reputable independent person or agency or organization qualified to pass judgment on such matters, or (b) the name of the person by whom they have been "approved" is disclosed.

9. Representing that the use of the plans or any of them is certain to result in financial gain or may be undertaken without risk of loss.

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
W. K. HONBAUM, DOING BUSINESS AS MONARCH STOVE
TOP COMPANY

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

Docket 3383. Complaint, Apr. 20, 1938—Decision, May 31, 1939

Where an individual engaged in transportation, sale and distribution of his "Monarch Stove Top" for use on open top gas ranges or stoves, through agents or salesmen who contacted the general public by house-to-house canvass, and whom he equipped with circulars and printed advertisements containing matter purporting to be descriptive of his said product and efficacy thereof—

- (a) Represented thereby that his said appliances were properly ventilated to insure proper combustion, and that use thereof was safe and harmless, and that through such use consumption of gas would be reduced and cooking capacity of stove or range increased, facts being his said products would not lessen consumption of gas in any respect, enable user to cook from two to four articles with one burner, or increase stove's cooking capacity to any extent, and were not ventilated sufficiently to insure proper combustion, but were so constructed that there was grave danger of carbon monoxide gas, rendering use thereof unhealthy and dangerous; and
- (b) Represented that the soiling of walls, windows, or curtains by open top gas stoves or ranges would be prevented by use of such appliances, facts being their use did not tend to lessen or prevent escape of steam and grease from food when cooking, and would not, therefore, prevent walls, windows, and curtains from soiling, and did not, as represented, through failure to prevent grease and food particles from depositing on stove or range, constitute perfect sanitary systems for such product;

With capacity and tendency to mislead and deceive purchasing public and with effect of leading substantial portion thereof into a false and erroneous belief that said appliance would reduce amount of gas consumed to substantial extent, similarly increase cooking capacity, and prevent soiling of walls, etc., and was properly ventilated, as set forth, and entirely safe, and with result, as direct consequence of such beliefs, thus induced, that substantial number of said public purchased substantial number of its said tops, and trade was thus diverted unfairly to it from competitors engaged in selling and distributing closed top gas stoves and competitors engaged in selling appliances for same purpose and use, and who in no way misrepresent the quality or efficacy of their respective products; to the injury of competition in commerce:

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

Before *Mr. Robert S. Hall* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Floyd O. Collins and *Mr. Joseph C. Fehr* for the Commission.
Mr. T. Emmett McKenzie, of Washington, D. C., for respondent.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that W. K. Honbaum, an individual, doing business as Monarch Stove Top Co., hereinafter referred to as respondent, has violated the provisions of the 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. W. K. Honbaum is an individual doing business under the trade name of Monarch Stove Top Co., and his principal place of business is located in Hamburg, Mich., and his business address is Box 77, Hamburg, Mich.

PAR. 2. Respondent is now, and has been for a number of years last past, engaged in the manufacture, transportation, sale, and distribution between and among the various States of the United States, of an appliance to be used on open top gas ranges, or open top gas stoves, and designated "Monarch Stove Tops." Respondent causes said appliances, when sold, to be shipped and transported in commerce from respondent's place of business, in Hamburg, Mich., to purchasers thereof located at various points in States of the United States other than the State of Michigan and in the District of Columbia. Respondent maintains, and has maintained, a course of trade in the sale and distribution of said appliances in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of his said business, is now, and at all times herein referred to has been, in substantial competition with other individuals and with firms, corporations, and partnerships likewise engaged in the sale and distribution of tops for open top gas ranges and open top gas stoves, and other appliances to be used for the same and similar purpose as the appliance which respondent sells in commerce among and between the various States of the United States and in the District of Columbia. These competitors do not in any way misrepresent the quality or efficacy of their products, or resort to unfair methods of competition in offering for sale and selling their respective products in such commerce.

PAR. 4. Respondent, W. K. Honbaum, in the course and conduct of his business in selling and offering for sale said stove tops, has employed agents or salesmen, to sell said product, and these agents or salesmen contact the general public by house-to-house canvass. Respondent equips said agents or salesmen with circulars and printed

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advertisements, on which is printed matter purporting to be descriptive of respondent's product and the efficacy of said product. In describing the quality and efficacy of his product on said circulars and printed matter the respondent represents; among other things:

A perfect sanitary system for the gas range, warranted not to warp or crack.
Reduce your gas bill.

Increases cooking capacity.

Eliminates unsanitary grates.

Prevents soiling of walls, windows, and curtains.

The ventilated section at the rear is elevated so that the heated air will escape, after it has traveled the full length of the top, thus giving abundant circulation of air, and complete combustion.

In addition to such representations in his pamphlets, circulars, and other advertising literature, respondent's salesmen, in the course of their employment, and in the scope of their employment, represent to the prospective purchaser that said stove tops will reduce the users' gas bills, and will increase the cooking capacity of a stove or range to a considerable extent.

PAR. 5. All of said representations, as above set out, and many other similar representations not specifically mentioned herein, made directly by respondent and his authorized agents, are highly exaggerated, false and misleading, and had, and now have, the capacity and tendency to mislead and deceive the purchasing public and did, and do now, lead a substantial portion of the purchasing public into the false and erroneous belief that when said appliance is used on an open top gas range or stove; (1) It will reduce the amount of gas consumed to a substantial extent; (2) It will increase the cooking capacity of a stove or range to a substantial extent; (3) It will prevent soiling of walls, windows and curtains; (4) It is properly ventilated to insure proper combustion; (5) It is entirely safe to use.

PAR. 6. In truth and in fact, the said appliance, when used, will not lessen the consumption of gas in any respect. It will not increase the cooking capacity of an open top gas stove or range to any appreciable degree. It will not prevent the walls, windows, and curtains of kitchens from becoming soiled from steam, grease, and other matters. Said appliance is not ventilated sufficiently to insure proper combustion, but is so constructed that there is a grave danger of escape of carbon monoxide gas, which renders the use of said appliance highly hazardous.

PAR. 7. In addition to the false and misleading representations and unfair acts and practices above set out on the part of respondent, respondent's salesmen in soliciting orders and securing contracts for said stove tops, for the purpose of securing the initial payment, make representation that said stove tops will be delivered to the pur-

chaser, and be delivered on a specified date. The truth is the stove tops are not delivered on the date promised, and in many cases are never delivered, and in such cases, the respondent refuses to refund the amount deposited.

PAR. 8. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations hereinabove set out, a substantial number of the purchasing public has purchased a substantial number of respondent's stove tops, with the result that trade has been diverted unfairly to the respondent from competitors who are engaged in selling and distributing closed top gas stoves, and from competitors who are engaged in selling appliances for the same purpose and use for which the respondent's product is manufactured, distributed and sold, and who in no way misrepresent the quality or efficacy of their respective products. As a result of the unfair acts and false and misleading representations of the respondent, injury has been, and is now being, done to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice of the public, and of respondent's competitors and constitute unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 20th day of April 1938, issued and thereafter served its complaint in this proceeding upon respondent, W. K. Honbaum, an individual doing business under the trade name Monarch Stove Top Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Floyd O. Collins and Joseph C. Fehr, attorneys for the Commission, and in opposition to the allegations of the complaint by W. K. Honbaum, respondent, before Robert S. Hall and M. J. Furnas, 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 brief in support of complaint (respondent not having filed brief nor requested oral argument), and the Com-

mission, having duly considered the matter, 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. W. K. Honbaum is an individual doing business under the trade name of Monarch Stove Top Co., with his principal place of business located in Hamburg, Mich. His business address is Box 77, Hamburg, Mich.

Respondent is now, and has been for a number of years last past, engaged in transportation, sale, and distribution between and among the various States of the United States, of an appliance to be used on open top gas ranges, or open top gas stoves, and designated "Monarch Stove Top." Respondent causes said appliances, when sold, to be shipped and transported in commerce from respondent's place of business; in Hamburg, Mich., to purchasers thereof located at various points in States of the United States other than the State of Michigan and in the District of Columbia. Respondent maintains, and has maintained, a course of trade in the sale and distribution of said appliances in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. The respondent, in the course and conduct of his said business, is now, and at all times herein referred to has been, in substantial competition, in commerce among and between the various States of the United States, with other individuals and with firms, corporations, and partnerships also engaged in the sale and distribution of tops for open top gas ranges and open top gas stoves, and other appliances to be used for the same and similar purpose as the appliance which respondent sells in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. To induce the purchase of his commodity by the purchasing public, respondent, W. K. Honbaum, in the course and conduct of his business in selling and offering for sale said stove tops, has employed agents or salesmen, to sell said product, and these agents or salesmen contact the general public by house-to-house canvass. Respondent equips said agents or salesmen with circulars and printed advertisements, on which is printed matter purporting to be descriptive of respondent's product and the efficacy of said product. In describing the quality and efficacy of his product on said circulars and printed matter the respondent represents; among other things:

A perfect sanitary system for the gas range, warranted not to warp or crack.
Reduce your gas bill.

Increase your cooking capacity.

Eliminates unsanitary grates.

Prevents soiling of walls, windows, and curtains.

Reduces Gas Bills.

Will cook from two to four articles with one burner.

Will keep a whole meal hot until ready to serve, with one burner turned low.

Prevents the unsanitary grates and over-laps (does not set in) the place they occupy, thus eliminating all places for grease and dirt to accumulate.

The ventilated section at the rear is elevated so that the heated air will escape, after it has traveled the full length of the top, thus giving abundant circulation of air, and complete combustion.

PAR. 4. The National Bureau of Standards tested one of respondent's stove tops for the purpose of ascertaining the truth or falsity of respondent's claims as set out in paragraph 3 herein. The results of said test show and the Commission finds that the respondent's stove tops when used will not lessen the consumption of gas in any respect. Respondent's stove tops will not enable the user to cook from two to four articles with one burner lighted, neither will they increase the cooking capacity of a stove or range to any extent. Said stove tops are not ventilated sufficiently to insure proper combustion but are constructed so that there is a grave danger of carbon monoxide gas which renders their use unhealthy and dangerous. Said stove tops when used will not tend to lessen or prevent the escape of steam and grease from food when cooking and will not therefore prevent walls, windows, and curtains from soiling. Said stove tops will not prevent grease and food particles from depositing on the stove or range and are therefore not perfect sanitary systems for gas ranges and open top gas stoves.

PAR. 5. All of the representations, as above set out, made directly by respondent and his authorized agents, are highly exaggerated, false, and misleading, and had, and now have, the capacity and tendency to mislead and deceive the purchasing public and did, and do now, lead a substantial portion of the purchasing public into the false and erroneous belief that when said appliance is used on an open top gas range or stove: (1) It will reduce the amount of gas consumed to a substantial extent; (2) it will increase the cooking capacity of a stove or range to a substantial extent; (3) it will prevent soiling of walls, windows, and curtains; (4) it is properly ventilated to insure proper combustion; (5) it is entirely safe to use.

PAR. 6. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations hereinabove set out, a substantial number of the purchasing public has purchased a substantial number of respondent's stove tops, with the result that trade

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has been diverted unfairly to the respondent from competitors who are engaged in selling and distributing closed top gas stoves, and from competitors who are engaged in selling appliances for the same purpose and use for which the respondent's product is manufactured, distributed, and sold, and who in no way misrepresent the quality or efficacy of their respective products. As a result of the unfair acts and false and misleading representations of the respondent, injury has been, and is now being, done 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, as herein found, are 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 the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of respondent, testimony and other evidence taken before Robert S. Hall and M. J. Furnas, examiners of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief filed herein by Floyd O. Collins, counsel for the Commission (respondent not having filed brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent, W. K. Honbaum, an individual, doing business under the trade name of Monarch Stove Top Co., has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, W. K. Honbaum, individually and trading as the Monarch Stove Top Co. or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of appliances now designated as "Monarch Stove Tops," or any other appliances of substantially similar construction and design, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that such appliances are properly ventilated or insure proper combustion.
2. Representing that the use of such appliances is safe or harmless.
3. Representing that the consumption of gas in stoves or ranges will be reduced by reason of the use of such appliances.

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4. Representing that the use of such appliances will increase the cooking capacity of a stove or range.

5. Representing that the soiling of walls, windows, or curtains by open top gas stoves or ranges will be prevented by reason of the use of such appliances.

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

H. F. ALLEN, TRADING AS TECHNICAL LABORATORIES
AND AS TECHNICAL PRODUCTS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3435. Complaint, May 21, 1938—Decision, May 31, 1939*

Where an individual engaged in sale of product, under names "Aratone" and "Sinozone," for use by consuming public afflicted with nasal catarrh, simple bronchial asthma and hay fever, and in distributing his said product through wholesale and retail druggists; in advertisements thereof issued, published, and circulated to and among the consuming public of the United States in various forms of printed matter, by radio broadcasts, and in other ways—

- (a) Represented that said product was a competent and safe remedy, cure or treatment for nasal catarrh, hay fever, asthma, and colds, and that it was healing and would prevent or cure nasal irritation and aid in preventing poisons from being carried from the nasal passage into the rest of the body, and would flush out impurities contained therein, and that use thereof was harmless, facts being it would not accomplish said various results, was not a competent treatment or safe and effective remedy for nasal catarrh, hay fever, asthma, or colds, and was no more than a palliative affording temporary relief from some of the symptoms or manifestations of such conditions, repeated use which for such relief might result in harm or serious injury to patient; and
- (b) Represented through use of word "Laboratories" in trade name employed by him, and in his said advertising, that he conducted, operated or maintained a laboratory for the purpose of manufacturing, testing or experimenting with preparation sold by him, facts being he neither owned nor controlled any laboratory for investigation or research in connection with preparation, sale and distribution of such products;

With effect of misleading and deceiving substantial portion of purchasing public into belief that all of said representations made by him, as above set forth and indicated, were true, and with result, as direct consequence of such mistaken and erroneous belief induced by said advertising and representations, of causing consuming public to purchase substantial volume of said preparation, and of thus diverting trade unfairly from others engaged in sale of like and similar products for like and similar purposes, and who truthfully advertise the same; to the substantial injury of competition in commerce:

Held, That such acts and practices, as above set forth, were all 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 the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal

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Trade Commission, having reason to believe that H. F. Allen, trading as Technical Laboratories and as Technical Products Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, H. F. Allen, an individual, trading as Technical Laboratories and as Technical Products Co., with his principal place of business located at 24 Bidge Road, in the city of Berkeley, State of California, is now and has been for more than one year last past engaged in the sale and distribution of a preparation for use in the nose and nasal passages, advertised and sold under the trade names "Sinozone" and "Aratone."

PAR. 2. In the course and conduct of his business, as hereinbefore described, respondent has caused said product, when sold, to be transported from his place of business in the State of California to the purchasers thereof located in various States of the United States other than the State of California, and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent has been, and is now, in substantial competition with other individuals, partnerships, firms, and corporations, engaged in the distribution and sale in interstate commerce of like and similar products or other products and treatments intended, designed and used for similar purposes.

PAR. 4. In the course and conduct of his business, and to induce the purchase of his said product, in said commerce, the respondent, by means of letters, circulars, leaflets, newspaper and magazine advertisements, and radio broadcasts, has circulated and disseminated among prospective purchasers many statements concerning said product. These statements contain many false and misleading representations and implications as to the efficacy of said product and the nature of the business operated by the respondent. Among and typical of the statements so used by the respondent are the following:

Relieves nasal catarrh and simple bronchial asthma.

The medicine will not irritate.

It is healing.

It is harmless.

It will aid in stopping the poisons which are in the nose from being carried into the rest of the body * * * and dropping of mucus into the stomach which causes a loss of appetite, skin eruptions, acid stomach, and a general run-down feeling will be relieved.

It will flush out many impurities in your nasal passages.

Technical Laboratories.

By the means and in the manner aforesaid, the respondent represents and implies that said product is a competent treatment and

effective remedy for nasal catarrh and bronchial asthma; that it is a nonirritating, harmless and healing preparation; that it is of material benefit in stopping the poisons which may be in the nose and which may be carried to other parts of the body; that it is of material benefit in stopping and relieving the dropping of mucus from the nose into the stomach; that it will flush out impurities in the nasal passages; and that its use will prevent the loss of appetite, skin eruptions, acid stomach and a general run-down feeling. Through the use of the word "Laboratories" in his trade name and in his advertising matter, the respondent represents and implies that he maintains a scientifically equipped laboratory wherein tests relating to said product have been and are conducted by trained and qualified scientists.

PAR. 5. The representations and implications so made and used by the respondent, as hereinabove alleged, with respect to said product are grossly exaggerated, false, misleading, and deceptive. In truth and in fact, said product is not a competent treatment and effective remedy for nasal catarrh and bronchial asthma, and it is not a nonirritating, harmless and healing preparation. The use of said product is not of material benefit in stopping the poisons which may be in the nose and which may be carried to other parts of the body and in stopping and relieving the dropping of mucus from the nose into the stomach. Said product will not flush out impurities in the nasal passages and the use thereof will not prevent the loss of appetite, skin eruptions, acid stomach and a general run-down feeling. The respondent does not own, operate or control a scientifically equipped laboratory wherein tests pertaining to said preparation have been and are conducted by trained and qualified scientists.

PAR. 6. Among the competitors of respondent described in paragraph 3 hereof are many who do not in any manner misrepresent the qualities and properties of their products and who do not use the methods, acts and practices used by the respondent, as herein alleged, in connection with the sale and distribution of their said products in said commerce.

PAR. 7. The acts and practices of the respondent in making and using said representations and implications in connection with the sale and distribution of said product in said commerce and to induce the purchase thereof, as hereinabove alleged, have had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that all of said representations and implications are true and have caused many members of the purchasing public, because of said mistaken and erroneous beliefs, to purchase a substantial volume of

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respondent's said product with the result that trade in said commerce has been diverted unfairly to the respondent from his competitors to their injury and to the injury of the public.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 21, 1938, issued and served its complaint in this proceeding upon the respondent, H. F. Allen, an individual, trading as Technical Laboratories and as Technical Products Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent, H. F. Allen, filed no answer to the complaint. Thereafter, 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 Howard F. Allen, 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 testimony and other evidence, and brief in support of the complaint, 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. The respondent, H. F. Allen, is an individual, trading as Technical Laboratories, and as Technical Products Co., with his principal place of business located at 24 Bridge Road, Berkeley, Calif. Respondent is now, and has been for more than 1 year last past, engaged in the sale of a product known as "Aratone" and as "Sinozone," for use by the consuming public who are afflicted with nasal catarrh, simple bronchial asthma and hay fever. Respondent distributes his product through the medium of wholesale and retail druggists.

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PAR. 2. The respondent causes said product, "Aratone" or "Sinozone" when sold, to be transported from his place of business in Berkeley, Calif., to the purchasers thereof located in the States of Oregon and Washington and other States of the United States.

PAR. 3. Respondent is now, and for more than 1 year last past, has been engaged in substantial competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of other products of similar usage in commerce between and among the various States of the United States.

PAR. 4. Respondent, in soliciting the sale of and in selling his said products, and for the purpose of creating a demand therefor, now causes, and for more than 1 year last past has caused, advertisements to be issued, published, and circulated to and among the consuming public of the United States in various forms of printed matter, by radio broadcasts, and in other ways.

PAR. 5. Respondent makes, and has made, to the general consuming public, statements with reference to the alleged value and merit of said products, some of which statements so made and circulated by the respondent are as follows:

The Sinozone Laboratories want you to know, when the statement is made that Sinozone is having an outstanding success in relieving nasal catarrh, hay fever, bronchial asthma and head colds, they are making a statement backed by ample and sufficient proof in their files. Are you troubled with nasal congestion, or stuffed up, and feeling out of sorts? Remember, the Laboratories continually make the claim that ordinarily after you have used Sinozone two or three times you will experience a relief from this bothersome, clogged up condition. This statement is supported by unquestionable proof. And keep in mind the fact that Sinozone is harmless. If you are suffering with hay fever, nasal catarrh, a cold or attacks of bronchial asthma, buy a container of Sinozone from your druggist and note the quick relief it brings. Sinozone is spelled S I N O Z O N E and is sold by all Owl Drug Stores and independent druggists.

When the nasal passages are clogged up due to hay fever, nasal catarrh, or a simple attack of bronchial asthma, you will do anything to secure relief. Nasal congestion is certainly a troublesome and annoying ailment. You can use Aratone to relieve and clear this congestion, knowing it possesses four important qualities:

1. Aratone is dependable. Thousands use it and recommend it.
2. Aratone is safe. It does not contain narcotics.
3. Aratone is effective. It fights nasal catarrh, hay fever, and colds with eleven carefully selected ingredients.
4. Aratone acts promptly. The liquid is designed to relieve the congestion the moment you begin to use it, and remember, it is harmless. Don't suffer. All druggists sell Aratone, spelled A R A T O N E.

Are your nasal passages congested due to hay fever, nasal catarrh, or bronchial asthma? Do you feel you would give most anything for relief from this stuffed up, bothersome condition? The Technical Laboratories tell you continually of the remarkable work Aratone is doing in clearing these stubborn

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congestions. Do you think the Laboratories would broadcast the fact that Aratone has produced this clearing action if this were not the case? Based on results secured by those who have purchased Aratone for hay fever, nasal catarrh, or colds, the Laboratory does not hesitate to say that after the first two or three applications you will ordinarily note a quick relief from these congested conditions. The product contains no narcotics and is harmless. If your druggist does not sell Aratone, send \$1.00 to this station, KNX, Hollywood. Don't let hay fever, nasal catarrh, or simple bronchial asthma get you down. Use Aratone, spelled A R A T O N E. You can get Aratone at any Sontag Drug Store. * * * Above all things, you do not have to wait a day or an hour or two minutes to feel Aratone getting to work. Within one minute after it has entered your nasal passages you will feel it beginning to clear and open up the breathing organs. It does not do this harshly, but in a soothing, cleansing way. The medicine will not irritate. Positively not. It is healing. It is harmless. Where you have a bad cold, Nasal Catarrh, Simple Bronchial Asthma, or Nasal Congestion, it will tend to start a flow of mucus that will relieve you almost immediately * * *.

What "Aratone" Does

It will aid in stopping the poisons which are in the nose from being carried into the rest of the body. That dripping and dropping of mucous into the stomach which causes a loss of appetite, skin eruptions, acid stomach, and a general rundown feeling, will be relieved * * *. It will flush out many impurities in your nasal passages. Those morning headaches will disappear, sneezing will stop, you will have a good night's sleep and above all you will get a breath of real fresh air. And that will aid Nature to do its work, for you will have strength to throw off attacks of these nasal troubles. Aratone gets into those inflamed and swollen nasal passages and fights the congestion the moment it enters the nose.

PAR. 6. "Aratone" and "Sinozone" are exactly the same product made according to the following formula:

Alkaline solution $1\frac{1}{2}$ gallons. Chlorabutonal solution strength .8, $1\frac{1}{2}$ gallons. 4 ounces Lilly's ephedrine sulphate making a 1% ephedrine solution.

Ingredients of alkaline solution:

Alcohol 6%
 Thymol $\frac{1}{2}$ grain
 Menthol $\frac{1}{25}$ gr.
 Phenol $\frac{1}{14}$ gr.
 Eucalyptol $\frac{1}{4}$ min.
 Methyl salicylate $\frac{1}{10}$ min.
 Benzoic acid $\frac{1}{2}$ gr.
 Sodium borate 16 gr.
 Glycerine 40 min.
 Coloring
 Oil of peppermint to perfume.

PAR. 7. Respondent neither owns nor controls any laboratory for investigation or research in connection with the preparation, sale and distribution of the products "Aratone" and "Sinozone."

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PAR. 8. The preparation "Aratone," or "Sinozone," has no curative or remedial effect on existing irritation but will increase existing irritation and cause independent irritation. It is harmful; is not healing; will not aid in stopping the poisons which are being carried into the rest of the body from the nasal passage; and it will not flush out impurities in the nasal passage. The preparation "Aratone," or "Sinozone," is not a competent treatment or a safe, effective remedy for nasal catarrh, hay fever, asthma or colds, and is no more than a palliative, affording temporary relief from some of the symptoms or manifestations of these conditions, and the repeated use thereof for the relief of these conditions might result in harm or serious injury to the patient.

PAR. 9. Each and all of the false and misleading statements and representations made by respondent, as aforesaid by means of advertisements, radio broadcasts and in other ways in offering for sale and selling "Aratone" and "Sinozone" were and are calculated to and have had and now have the tendency and capacity to mislead and deceive, and do mislead and deceive, a substantial portion of the purchasing public into the belief that all of said representations are true.

PAR. 10. Respondent, as a direct consequence of such mistaken and erroneous belief induced by said advertising and representations, causes the consuming public to purchase a substantial volume of said preparation known as "Aratone" and as "Sinozone," with the result that trade has been unfairly diverted from other corporations, firms, partnerships, and individuals engaged in the sale of like and similar products intended to be used for like and similar purposes, who truthfully advertise their products. As a result thereof, substantial injury has been done and is being done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent as set forth in the foregoing findings as to the facts are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce in violation of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, to which no answer was filed, testimony and other evidence taken before Charles P. Vicini, an examiner of the Commission, theretofore duly designated

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by it, in support of the allegations of said complaint and in opposition thereto, and brief in support of the complaint filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, H. F. Allen, an individual, individually and trading as Technical Laboratories and Technical Products Co., or trading under any other name, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of "Aratone" or "Sinozone" in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Representing that the preparation now designated as "Aratone" and "Sinozone" or any other preparation composed of the same or similar ingredients, and possessing similar properties under whatever name sold, is a competent and safe remedy, cure or treatment for nasal catarrh, hay fever, asthma, or colds; that said preparation is healing; that it will prevent or cure nasal irritation; that it will aid in preventing poisons being carried from the nasal passage into the rest of the body; that it will flush out impurities contained in the nasal passages; that its use is harmless, or that said preparation has any medicinal or therapeutic value in the treatment of catarrh, hay fever, asthma or colds other than as a palliative remedy to afford temporary relief.

2. Representing through the use of the word "Laboratory" or any other term of similar meaning or like import as a part of his trade name, or in any other manner, or through any other means or devices, that he conducts, operates or maintains a laboratory for the purpose of manufacturing, testing or experimenting with the preparation sold by him, until and unless he actually owns and operates or directly and absolutely controls a laboratory for said purposes.

It is further ordered, That the respondent, H. F. Allen, an individual, shall, within 10 days after service upon him of this order, file with the Commission an interim report in writing stating whether he intends to comply with this order, and if so, setting forth in detail the manner and form in which he intends to comply; and that within 60 days after the service upon him of this order, said respondent shall file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
MASON, AU & MAGENHEIMER CONFECTIONERY
MANUFACTURING COMPANY

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

Docket 3477. Complaint, July 8, 1938—Decision, May 31, 1939

Where a corporation engaged in manufacture and sale of candy assortments which were so packed and assembled as to involve use of a lottery scheme, gift enterprise, or game of chance, when sold and distributed to consumers thereof, and included two separate packages, which, sold together, constituted one complete assortment which could be sold and distributed to consuming public by means of a lottery scheme, gift enterprise, or a game of chance, and contained, in one of said packages, 150 pieces of penny candy of uniform size and shape, and in other of said packages, 24 larger pieces of candy to be given as prizes to purchasers of said penny pieces of uniform size and shape in first package containing pink instead of white centers;

Sold to dealers and jobbers for display and resale by retail dealer purchasers thereof in accordance with aforesaid sales plan such assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in sale of its products in accordance with such sales plan, involving game of chance or sale of a chance to procure larger piece of candy; contrary to the established public policy of the United States Government and in competition with many who are unwilling to offer or sell candy so packed or assembled as above described or otherwise arranged or packed for sale to the purchasing public so as to involve a game of chance or sale of a chance to win by chance or any other methods contrary to public policy and refrain therefrom;

With capacity and tendency thus to induce wholesalers, jobbers, retailers, and public to purchase its said products in preference to candy offered and sold by its competitors and with results that many dealers in, and ultimate purchasers of, candy were attracted by such methods of packing and assembling said candy, and element of chance involved therein, and were thereby induced to purchase such candy so packed, assembled and sold by it in preference to that offered and sold by competitors who do not use such or equivalent method, and with tendency and capacity, because of said game of chance, unfairly to divert to it substantial trade from its competitors aforesaid who do not use such or equivalent method as unfair or unlawful, to lessen competition in said trade, and to deprive purchasing public of benefit of free competition:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Mason, Au & Magenheimer Confectionery Manufacturing Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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, Mason, Au & Magenheimer Confectionery Manufacturing Co., is a corporation organized and doing business under the laws of the State of West Virginia with its principal office and place of business located at 22 Henry Street, in the city of Brooklyn, State of New York. Respondent is now and for some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to 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 New York to purchasers thereof in other States of the United States and in the District of Columbia at their respective places of business; and there is now and has been for several years last past a course of trade in commerce by said respondent in such candy between and among the States of the United States and in the District of Columbia. 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 in 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 dealers and jobbers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme, gift enterprise, or game of chance when sold and distributed to the consumers thereof.

The respondent has packed and assembled certain of its candies in two separate packages which when sold together constitute one complete assortment which has been and may be sold and distributed to the consuming public by means of a lottery scheme, gift enterprise, or game of chance. One of the said packages contains 150 pieces of candy of uniform size and shape, 126 of which have white centers and 24 of which have pink centers. The other package referred to above contains 24 pieces of candy which said pieces of candy are

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larger than the pieces of candy of uniform size and shape contained in the first package above described. The said 24 pieces of candy in the second package described are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the first package referred to in the following manner: The said pieces of candy of uniform size and shape retail at a price of 1¢ each but the purchasers who procure one of the said pieces of candy having pink centers are entitled to receive and are to be given free of charge one of the said larger pieces of candy heretofore referred to and contained in the second package. The color of the center of the said piece of candy of uniform size and shape is effectively concealed from the purchasers or prospective purchasers until a selection has been made and a particular piece of candy is broken open. The aforesaid purchasers of said candies of uniform size and shape who procure the candy having a pink center thus procure one of the said larger pieces of candy wholly by lot or chance.

PAR. 3. The dealers and jobbers to whom respondent sells its assortments resell the same to retail dealers and said retail dealers expose said assortments for sale and sell said candy to the purchasing public in accordance with the sales plan above described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale of its products in accordance with the said sales plan and said sales plan has the capacity and tendency of inducing wholesale dealers, jobbers, retail dealers, and the public 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 described involves a game of chance or the sale of a chance to procure a larger piece of candy.

The use by respondent of said method and the sale of its candy through the use thereof and by the aid of said method is a practice of the sort which has long been contrary to the established public policy of the Government of the United States.

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 or 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 of a chance to win something by chance or by any other method that is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers and ultimate purchasers of candy are attracted by respondent's said method of packing and assembling 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 assembled and sold by respondent in preference to candy offered for sale and sold by 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, unfairly to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method because the same is unfair or unlawful; to lessen competition in said candy trade; and to deprive the purchasing public of the benefit of free competition.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 8, 1938, issued, and thereafter served, its complaint in this proceeding upon respondent, Mason, Au & Magenheimer Confectionery Manufacturing Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On May 9, 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, Mason, Au & Magenheimer Confectionery Manufacturing Co., is a corporation organized and doing business under the laws of the State of West Virginia with its principal office and place of business located at 22 Henry Street, in the city of Brooklyn, State of New York. Respondent is now and for some time last past has been engaged in the manufacture of candy and in the sale and distribution thereof to 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 New York to purchasers thereof in other States of the United States and in the District of Columbia at their respective places of business; and there is now and has been for several years last past a course of trade in commerce by said respondent in such candy between and among the States of the United States and in the District of Columbia. 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 in 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 dealers and jobbers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme, gift enterprise, or game of chance when sold and distributed to the consumers thereof.

The respondent has packed and assembled certain of its candies in two separate packages which when sold together constitute one complete assortment which has been and may be sold and distributed to the consuming public by means of a lottery scheme, gift enterprise, or game of chance. One of the said packages contains 150 pieces of candy of uniform size and shape, 126 of which have white centers and 24 of which have pink centers. The other package referred to above contains 24 pieces of candy which said pieces of candy are larger than the pieces of candy of uniform size and shape contained in the first package above described. The said 24 pieces of candy in the second package described are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the first package referred to in the following manner: The said pieces of candy of uniform size and shape retail at a price of 1¢ each but the purchasers who procure one of the said pieces of candy having pink centers are entitled to receive and are to be given free of charge one of the said larger pieces of candy heretofore referred to and contained in the second package. The color of the center of the said pieces of candy of uniform size and shape is effectively concealed from the purchasers or prospective purchasers until a selection has been made and a particular piece of candy is broken open. The afore-said purchasers of said candies of uniform size and shape who procure the candy having a pink center thus procure one of the said larger pieces of candy wholly by lot or chance.

PAR. 3. The dealers and jobbers to whom respondent sells its assortments resell the same to retail dealers and said retail dealers expose

said assortments for sale and sell said candy to the purchasing public in accordance with the sales plan above described. Respondent thus supplies to and places in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale of its products in accordance with the said sales plan and said sales plan has the capacity and tendency of inducing wholesale dealers, jobbers, retail dealers, and the public 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 described involves a game of chance or the sale of a chance to procure a larger piece of candy.

The use by respondent of said method and the sale of its candy through the use thereof and by the aid of said method is a practice of the sort which has long been contrary to the established public policy of the Government of the United States.

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 or 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 of a chance to win something by chance or by any other method that is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers and ultimate purchasers of candy are attracted by respondent's said method of packing and assembling 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 assembled and sold by respondent in preference to candy offered for sale and sold by 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, unfairly to divert to respondent substantial trade and custom from its said competitors who do not use the same or an equivalent method because the same is unfair or unlawful; to lessen competition in said candy trade; and to deprive the purchasing public of the benefit of free competition.

CONCLUSION

The aforesaid acts and practices of the respondent as hereinbefore found 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 the Federal Trade Commission Act.

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 fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Mason, Au & Magenheimer Confectionery Manufacturing Co., its officers, representatives, agents, employees, directly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing 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 dealers packages or assortments of candy which are to be used, or may be used, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of candy, or any other merchandise, to the public.

3. Supplying to, or placing in the hands of dealers, assortments of candy or other merchandise together with a lottery device, which lottery device is to be used, or may be used, in selling or distributing such candy or other merchandise to the public.

4. Supplying to or placing in the hands of dealers a lottery device either with assortments of candy or other merchandise, or separately, which lottery device is to be used, or may be used, in selling or distributing such candy or other merchandise to the public.

5. Packing or assembling in the same package, or packages, of candy or other merchandise 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 other articles of merchandise, which said larger pieces of candy, or other articles of merchandise, are to be given as prizes to purchasers procuring a piece of candy having a center of a particular color.

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
PUBLIX PRINTING CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3742. Complaint, Mar. 21, 1939—Decision, May 31, 1939*

Where a corporation engaged in manufacture, sale, and distribution of sales promotion cards, which were so designed and arranged as to involve use of a lottery scheme or gift enterprise when used by dealers in promoting and increasing sales of their merchandise to the consuming public and which included several groups involving in all cases lottery scheme or gift enterprise and varying in detail only, one of which included cards arranged for punching out and recording sales to a total amount of \$5.20 and had enclosed or concealed within a secret panel on card legend entitling holder of card, when opened, to amounts in trade ranging from 20 cents to \$5 and others of which provided for recording sales totaling \$10 worth of merchandise by numbers arranged around the border of the card and for the winning of amounts from 20 cents up to \$10 by holder of card and in accordance with particular legend concealed under secret panel—

Sold to retail merchant customers assortments of such sales promotion cards, together with various display posters and advertisements for merchant's use in distributing and making use of cards in question through distribution, as suggested, to customers of merchant making purchases and the punching out on the margin of the cards of the amount of such purchases, and the awarding of amounts to customer in accordance with legend revealed within secret panel of particular card, upon the completion thereon of the total amount of purchases, and provided with other suggested methods involving in all cases lottery, game of chance or gift enterprise, its various merchant customers, by whom said sales promotion cards were distributed to customers and prospective customers and awards shown on secret panels thereon honored; contrary to an established public policy of the United States Government and in violation of criminal law and in competition with various manufacturers and distributors of such promotion cards, premium cards, price concession cards, and coupon trading stamps, which, when used by dealers do not involve lottery scheme, game of chance or gift enterprise and in competition with many who sell and distribute various cards or devices for promoting or increasing sales of dealers and who are unwilling to offer or sell cards or devices so designed and arranged as above set forth, or otherwise so designed and arranged as to involve a game of chance, lottery scheme, or gift enterprise and refrain therefrom;

With result that consuming public was induced to deal with or purchase merchandise from dealers using its devices because of lottery scheme, game of chance, or gift enterprise connected therewith, in preference to purchasing merchandise from dealers using devices of its competitors, and dealers were thereby induced to buy its said cards in preference to devices of competitors and trade was unfairly diverted to it from its competitors aforesaid:

Complaint

28 F. T. C.

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. D. C. Daniel for the Commission.

Mr. Samuel H. Solomon, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Publix Printing Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Publix Printing Corporation, is a corporation organized and doing business under the laws of the State of Illinois with its principal office and place of business located at 633 South Plymouth Court, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the manufacture of sales promotion cards and in the sale and distribution thereof to dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, its said sales cards, when sold, to be transported from its principal place of business in the city of Chicago, Ill., to purchasers thereof located in the various States of the United States, other than the State of Illinois, and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such sales promotion cards in commerce between and among the various States of the United States and in the District of Columbia. 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 sales promotion cards, trade cards, discount cards, premium cards, coupons, and trading stamps and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells, and has sold, cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondent

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Complaint

manufactures and distributes several groups of sales promotion cards, but they all involve a lottery scheme or gift enterprise and vary only in detail. The sale promotion cards in one such group are herein described for the purpose of showing arrangement, design and principle involved. On the front of such card is the following:

| | | |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 5 | 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 | 5 |
| 25 | Use this card and find This card is valuable ? THE UNKNOWN TREASURE | 15 |
| 25 | Under this Picture of covered wagon Warning! Void if Tampered or Opened Covered Wagon Is Your Award | 15 |
| 25 | Cut here | 15 |
| 25 | EVERY CARD PAYS AN AWARD No Blanks No Blanks | 15 |
| 25 | YOU CAN WIN UP TO FIVE DOLLARS See other side for Rules and Instructions | 15 |
| 5 | 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 15 15 15 | 5 |

Under the secret panel is the following:

When properly punched good for

20¢

IN TRADE

The secret panel referred to on the said card is partially perforated to indicate where it may be opened, but until the said panel is opened, the legend thereunder is effectively concealed from the holder of said card. The said legends under the secret panel vary in amount from 20 cents to \$5. The legend under the secret panel is effectively concealed until the panel has been opened, and the amount which the holder of said card will receive in trade is thus determined wholly by lot or chance. On the reverse or back of the said sales promotion card is the following language:

PROFIT SHARING PLAN

In appreciation of your patronage, we have devised a new plan whereby we share our profits with you. When this card is fully punched, present same to us intact. We will then open the "Covered Wagon" and you will receive the award printed thereon Absolutely Free. Should You Open the "Covered Wagon" the Card Becomes Void. Present this card when making purchases. It will pay you to trade here.

Complaint

28 F. T. C.

AWARDS UP TO \$5.00—NO BLANKS
(Merchant's advertisement)

Other cards manufactured and distributed by the respondent provide for recording the sales of \$10 worth of merchandise by the numbers arranged around the border of the card and provide for the winning of amounts from 20 cents up to \$10 by the legends under the secret panel.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 3. The retail merchants to whom respondent sells assortments of said sales promotion cards, distribute the same to their customers and prospective customers and honor the awards as shown under the secret panel of said cards. One method advocated or suggested by respondent and used by a substantial number of retail merchants is as follows: the cards are distributed without cost to customers and prospective customers of said retail merchants and when purchases are made, punches corresponding to the amount of such purchases are made around the margin of said card and when all the numbers around the margin of said card are punched, the secret panel is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the said secret panel, without additional charge. The respondent in its literature and by its representatives suggests various methods for the use of said cards by its dealers, all of which methods involve a lottery, game of chance, or gift enterprise.

PAR. 4. There are in competition with respondent various manufacturers and distributors of sales promotion cards, premium cards, price concession cards, coupons and trading stamps, which, when used by dealers, do not involve a lottery scheme, game of chance, or gift enterprise. Many persons, firms, and corporations who sell and distribute various cards or devices for promoting or increasing the sales of dealers are unwilling to offer for sale or sell cards or devices so designed and arranged as above alleged, or otherwise designed and arranged, as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

PAR. 5. The use by respondent of said methods in designing and arranging its said cards and distributing the same for redistribution to the public is a practice of the sort which is contrary to an established public policy of the Government of the United States and is in violation of criminal laws. The consuming public is induced to deal with or purchase merchandise from dealers using respondent's cards in preference to purchasing merchandise from dealers using the devices of respondent's competitors, because of the lottery scheme,

game of chance, or gift enterprise connected with respondent's said cards. By reason thereof, dealers are induced to purchase respondent's said cards in preference to devices of respondent's competitors. The sale and distribution of the aforesaid sales cards has the tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors, and as a result thereof substantial injury is being and has been 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 aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 21, 1939 issued and served its complaint in this proceeding upon respondent, Publix Printing Corporation, a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 3, 1939 the respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. 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 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, Publix Printing Corporation, is a corporation organized and doing business under the laws of the State of Illinois with its principal office and place of business located at 633 South Plymouth Court, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the manufacture of sales promotion cards and in the sale and distribution thereof to dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes, and has caused, its said sales cards, when sold, to be transported from its principal place

of business in the city of Chicago, Ill., to purchasers thereof located in the various States of the United States, other than the State of Illinois, and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such sales promotion cards in commerce between and among the various States of the United States and in the District of Columbia. 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 sales promotion cards, trade cards, discount cards, premium cards, coupons, and trading stamps and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells, and has sold, cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise when used by dealers in promoting and increasing sales of their merchandise to the consuming public. The respondent manufactures and distributes several groups of sales promotion cards, but they all involve a lottery scheme or gift enterprise and vary only in detail. The sale promotion cards in one such group are herein described for the purpose of showing arrangement, design and principle involved. On the front of such card is the following:

| | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 5 | 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 | 5 |
| 25 | Use this card and find This card is valuable ? <p style="text-align: center;">THE UNKNOWN TREASURE</p> | 15 |
| 25 | Under this Picture of covered wagon Warning! Void if Tampered or Opened Covered Wagon Is Your Award | 15 |
| 25 | Cut here | 15 |
| 25 | EVERY CARD PAYS AN AWARD | 15 |
| 25 | No Blanks No Blanks | 15 |
| 25 | YOU CAN WIN UP TO FIVE DOLLARS | 15 |
| | See other side for Rules and Instructions | |
| 5 | 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 10 15 15 15 | 5 |

Under the secret panel is the following:

When properly punched good for

20¢

IN TRADE

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Findings

The secret panel referred to on the said card is partially perforated to indicate where it may be opened, but until the said panel is opened, the legend thereunder is effectively concealed from the holder of said card. The said legends under the secret panel vary in amount from 20 cents to \$5. The legend under the secret panel is effectively concealed until the panel has been opened, and the amount which the holder of said card will receive in trade is thus determined wholly by lot or chance. On the reverse of back of the said sales promotion card is the following language:

PROFIT SHARING PLAN

In appreciation of your patronage, we have devised a new plan whereby we share our profits with you. When this card is fully punched, present same to us intact. We will then open the "Covered Wagon" and you will receive the award printed thereon Absolutely Free. Should You Open The "Covered Wagon" The Card Becomes Void. Present this card when making purchases. It will pay you to trade here.

AWARDS UP TO \$5.00—NO BLANKS

(Merchant's Advertisement)

Other cards manufactured and distributed by the respondent provide for recording the sales of \$10 worth of merchandise by the numbers arranged around the border of the card and provide for the winning of amounts from 20 cents up to \$10 by the legends under the secret panel.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 3. The retail merchants to whom respondent sells assortments of said sales promotion cards, distribute the same to their customers and prospective customers and honor the awards as shown under the secret panel of said cards. One method advocated or suggested by respondent and used by a substantial number of retail merchants is as follows: The cards are distributed without cost to customers and prospective customers of said retail merchants and when purchases are made, punches corresponding to the amount of such purchases are made around the margin of said card and when all the numbers around the margin of said card are punched, the secret panel is opened and the customer is entitled to merchandise of the said merchant in the amount shown by the legend under the said secret panel, without additional charge. The respondent in its literature and by its representatives suggests various methods for the use of said cards by its dealers, all of which methods involve a lottery, game of chance, or gift enterprise.

Order

28 F. T. C.

PAR. 4. There are in competition with the respondent various manufacturers and distributors of sales promotion cards, premium cards, price concession cards, coupons, and trading stamps, which, when used by dealers, do not involve a lottery scheme, game of chance, or gift enterprise. Many persons, firms, and corporations who sell and distribute various cards or devices for promoting or increasing the sales of dealers are unwilling to offer for sale or sell cards or devices so designed and arranged as above found, or otherwise designed and arranged, as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

PAR. 5. The use by respondent of said methods in designing and arranging its said cards and distributing the same for redistribution to the public is a practice of the sort which is contrary to an established public policy of the Government of the United States and is in violation of criminal laws. The consuming public is induced to deal with or purchase merchandise from dealers using respondent's cards in preference to purchasing merchandise from dealers using the devices of respondent's competitors, because of the lottery scheme, game of chance, or gift enterprise connected with respondent's said cards. By reason thereof, dealers are induced to purchase respondent's said cards in preference to devices of respondent's competitors. The sale and distribution of the aforesaid sales cards has the tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 fact set forth in said complaint and states that it waves all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to the facts and conclusion that said respondent is violating the provisions of the Federal Trade Commission Act.

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Order

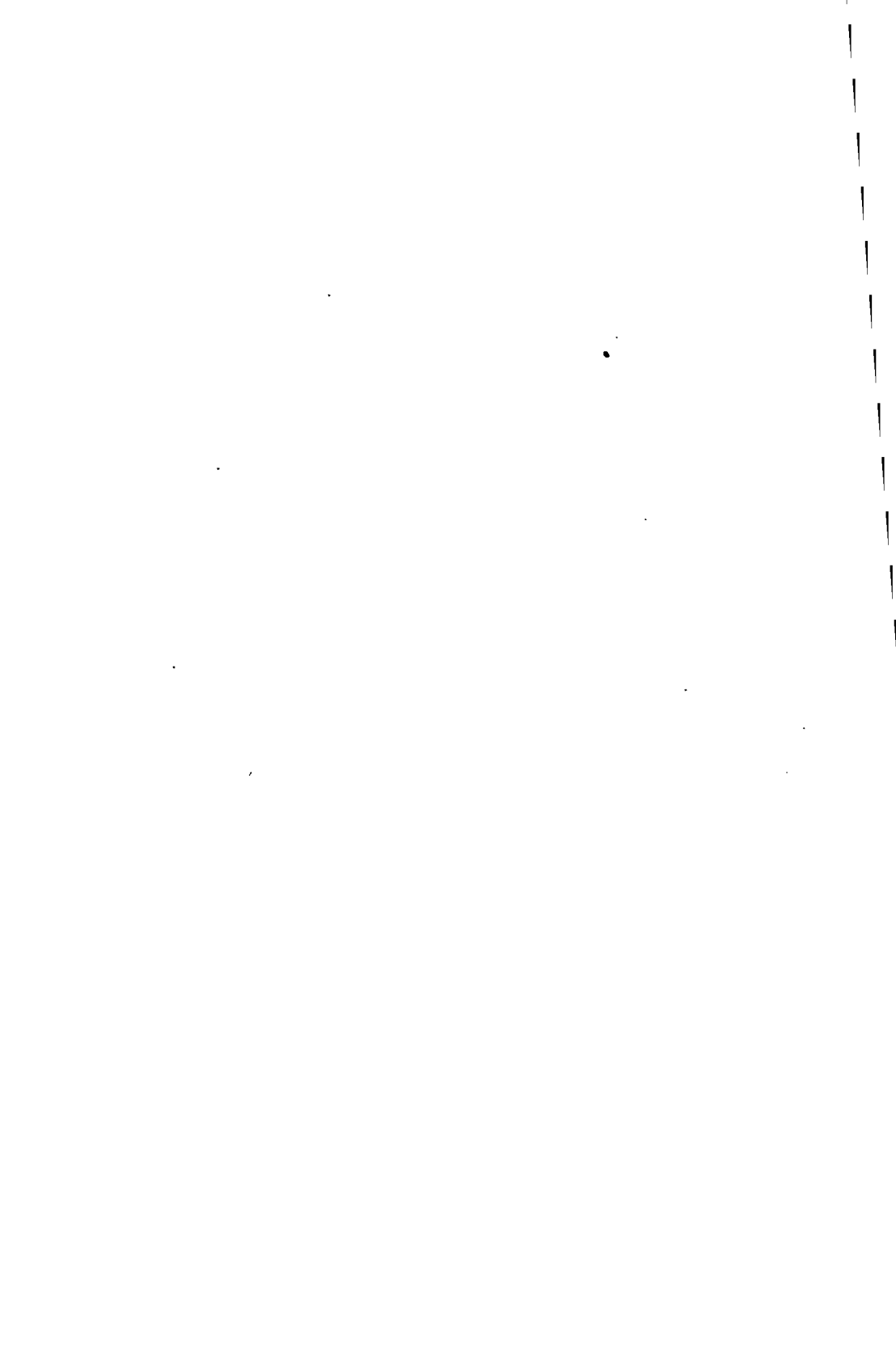
It is ordered, That the respondent, Publix Printing Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of sales promotion schemes or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing sales promotion cards or any other device so made that their use by the retail dealers constitute, or may constitute, the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to, or placing in the hands of, retail dealers or others sales promotion cards or sales booster plans or schemes or any other devices which are used or which may be used, without alteration or rearrangement thereof, to conduct a lottery, game of chance, or gift enterprise when distributed to the consuming public.

3. Furnishing or supplying to dealers display posters or circulars, or other advertising literature, bearing legends or statements informing the public as to the manner in which said sales promotion cards or other lottery devices are to be or may be distributed and used.

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



ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

THE CRANE CHOCOLATE CANDY CO. Complaint, July 9, 1938.
Order, January 12, 1939. (Docket 3482.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candy.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent, a Missouri corporation, has filed with the Secretary of State of the State of Missouri an affidavit of dissolution, 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future 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. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

JOWETT INSTITUTE OF PHYSICAL CULTURE, INC. Complaint, August 8, 1938. Order, January 25, 1939. (Docket 3529.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results of product and prices; in connection with the sale of physical culture correspondence courses of instruction.

Record closed after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that respondent corporation has been inactive for over 1 year last past and has been dissolved, 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Before *Mr. Randolph Preston* and *Mr. John W. Addison*, trial examiners.

Mr. William L. Pencke for the Commission.

Mr. H. R. Van Deusen, of Scranton, Pa., for respondent.

HOCHSCHILD, KOHN & Co. Complaint, November 27, 1936. Order, February 4, 1939. (Docket 2996.)

Charge: Misrepresenting nature or quality of product; in connection with the sale of furs and fur coats.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the complaint, answer, evidence taken in support of the allegations of the complaint and in opposition thereto, and upon briefs and oral argument of counsel for the Commission and for the respondent, and it appearing that the evidence has failed to sustain the allegations of the complaint with respect to interstate commerce, 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 herein issued on November 27, 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 thereof in accordance with its regular procedure.

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

Mr. D. C. Daniel for the Commission.

Knapp, Tucker, Thomas & Gray, of Baltimore, Md., for respondent.

E. L. BRUCE Co. Complaint, August 8, 1938. Order, February 4, 1939. (Docket 3530.)

Charge: Advertising falsely or misleadingly as to business status, and nature, qualities or results of product; in connection with the manufacture and sale of a chemical product called "Terminix" for treating lumber in buildings affected by insects.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent, E. L. Bruce Co., a corporation, has entered into a stipulation as to the facts and an agreement to not resume certain enumerated practices, which stipulation and agreement was, on the 26th day of January 1939, received and filed by the Commission, 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 herein issued on August 8, 1938, 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.

Mr. Jesse D. Kash for the Commission.

Mr. John W. Maher, of Washington, D. C., for respondent.

RUDOLPH H. RAY, trading as INDIVIDUAL MAUSOLEUM Co. and RAY INDIVIDUAL MAUSOLEUM Co. Complaint, October 9, 1937. Order, February 14, 1939. (Docket 3242.)

Charge: Misrepresenting properties of product; in connection with the manufacture and sale of cement burial vaults.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record and it appearing that no interstate commerce has been established, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the complaint herein be, and same hereby is, dismissed.

Before *Mr. Robert S. Hall* and *Mr. William C. Reeves*, trial examiners.

Mr. William L. Pencke for the Commission.

Mr. Charles R. Wilke, of Lincoln, Nebr., for respondent.

JOHN D. PORTERFIELD and ADDIE PORTERFIELD, trading as PORTERFIELD CANDY Co. Complaint, September 7, 1935. Order, February 15, 1939. (Docket 2546.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candy.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future 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. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

W. G. FISHER AND Co., INC. Complaint, November 30, 1938. Order, February 16, 1939. (Docket 3655.)

Charge: Furnishing means or instrumentality of deception through supplying misleading brands or labels as to composition, nature of manufacture, and source or origin of product; in connection with the sale of cloth and woolen fabrics to garment manufacturers for use in manufacturing garments.

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the respondent's motion to dismiss the complaint and upon the record, and it appearing that the respondent corporation was dissolved on

November 9, 1938, prior to the issuance of the complaint herein, as evidenced by certificate of dissolution executed by the Secretary of State for the State of Delaware, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the complaint be, and the same hereby is, dismissed.

Mr. R. A. McOuat for the Commission.

Mr. H. W. Hanscom, of New York City, for respondent.

BROWNFIELD CANDY CO. Complaint, January 25, 1938. Order, February 20, 1939. (Docket 3310.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candy.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent's charter was forfeited January 1, 1939, 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Mr. D. C. Daniel for the Commission.

Mr. Mathew H. Galt, receiver, of Springfield, Mo., for respondent.

JAMES F. COX AND H. C. ELLIOTTE, doing business as HERBTEX Co. Complaint, February 25, 1939. Order, March 23, 1939. (Docket 3723.)

Charge: Advertising falsely or misleadingly as to nature of manufacture, qualities, properties, and safety of product; in connection with the sale of a medicinal preparation.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent, James F. Cox, severed all connection with said respondent company in September, 1938, and that the respondent, H. C. Elliotte, 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 March 16, 1939, approved by the Commission, 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 herein issued on February 25, 1939, be, and the same hereby is, closed with-

out 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.

Mr. Reuben J. Martin for the Commission.

THE HOOVER SUCTION SWEEPER Co. Complaint, January 11, 1919. Order to cease and desist, May 27, 1919. Order vacating order to cease and desist, May 2, 1928. Order closing case, April 14, 1939. (Docket 238.)

Charge: Subsidizing salesmen of dealers and employees of competitors, in giving and offering to give to employees of competitors and employees of dealers handling and selling competitive products, as an inducement to influence them to push or favor sale of its products over those of its competitors, cash bonuses and prizes; in connection with manufacture and sale of vacuum sweepers in interstate commerce.

Case closed without prejudice by following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same, and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint 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 thereof in accordance with its regular procedure.

NOTE.—Order to cease and desist, following findings in the matter as of same date, required respondent, its officers, etc., to “cease and desist from directly or indirectly:

“Giving or offering to give cash bonuses or prizes to employees or salesmen of dealers who handle and sell vacuum sweepers of the respondent and of one or more of the respondent’s competitors, when such employees or salesmen have been instrumental in making a sale of vacuum sweepers manufactured by the respondent.”

Said order was thereafter vacated by following order:

This matter came on for consideration by the Commission on the motion on behalf of the Commission that the order to cease and desist issued herein May 27, 1919, be modified by adding thereto the following: “without the full knowledge and consent of the employers of such employees or salesmen” and on the application of counsel for the respondent filed April 26, 1928, to vacate and set aside said order to cease and desist on the ground that said order is contrary to law.

It appeared (A) that, after the complaint herein was issued and an answer filed by the respondent, a stipulation between the Commission and the respondent was made and filed, agreeing and consenting to certain facts as therein set forth and to the issuing of an order to cease and desist as prayed for in the complaint; (B) that thereafter the Circuit Court of Appeals in the cause entitled *Federal Trade Commission v. Kinney-Rome Co.* [275 Fed. 605]

held that the giving of premiums by a manufacturer to salesmen of dealers to further sales of its product in preference to the products of its competitors did not constitute an unfair method of competition when premiums were so given with the knowledge and consent of said dealers; (C) that there was and is in the possession of the Commission no evidence tending to show that this respondent ever gave premiums or rewards to salesmen of dealers without the latter's knowledge and consent.

Wherefore, the Federal Trade Commission after consideration holds that the order to cease and desist heretofore entered herein, pursuant to the agreement and stipulation of the respondent, is not contrary to law nor void, but that in order to equalize competitive conditions between the respondent and its competitors, this Commission should in the exercise of its discretion cause said order to be vacated.

Now, therefore, The Federal Trade Commission orders that the said order to cease and desist be and the same is hereby vacated.

Appearances in the earlier proceedings were:

Mr. Charles D. Moore for the Commission.

Mr. Clarence G. Herbruck and Black, McCuskey, Ruff & Souers, of Canton, Ohio, for respondent.

ECONOMIC FILMS, INC., ET AL. Complaint, February 19, 1935.
Order of dismissal, April 14, 1939. (Docket 2301.)

Charge: Claiming or implying, falsely and misleadingly, indorsement or sponsorship of President; in connection with sale, lease and distribution of film captioned "Forward America," which, as alleged, purports to be dedicated to American housewife, contrasts, through pictorial and oral representation, system of retail distribution and sale through independent stores, with that through chain stores and mail-order organizations, and includes, in representations therein contained, repeated use of likeness of President, and in oral comment repeated reference to President, with alleged direct tendency and capacity to mislead and deceive housewives and others attending as hereinbefore indicated, facts being President never directly authorized use of his name or likeness in said picture or in connection therewith.

Dismissed by following order:

This matter coming before the Commission, and the Commission being fully advised in the premises by memorandum of the Chief Counsel and otherwise, and it appearing that there is at this time no substantial public interest supporting the prosecution of this proceeding,

It is hereby ordered, That the above-entitled proceeding be, and the same hereby is, dismissed.

Mr. Eugene W. Burr for the Commission.

Mr. Jas. Maxwell Fassett, of New York City, for respondents.

TEMPLE ELECTRIC CORP., ACME RADIO CORP., LEON C. SACKS, CHARLES JOHANNES, MORRIS A. WEINER, ERIC HOUSER, OTTO DREHER, CHARLES DREHER, J. R. ROSENBERG, DAVID I. MORRISON AND RUTH WASSERMAN. Complaint, December 8, 1934.¹ Order, April 27, 1939. (Docket 2215.)

Charge: Using misleading trade name or brand as to source or identity of product; in connection with the manufacture and sale of radio sets.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing to the Commission that the proceedings in Docket 2656,² in the matter of Knight Electric Co., Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, Gillet Radio Corporation, Radio Products Corporation, Franklin Sales and Distributing Co., Inc., and Eric Houser, individually, and as president, director and agent of said several companies; and David I. Morrison, A. M. Frank, Leon C. Sacks, Charles Johannes, Morris A. Weiner, Otto Dreher, Charles Dreher, Ruth Wasserman, J. R. Rosenberg, S. Buchman, as officers, directors and agents of said companies; and Harvard Radio Tube Testing Stations of Pennsylvania, Inc., and Julius M. Schoenberg, individually, and as president, director and agent of said company; Ross Distributing Co., and Larry B. Ross, individually, and as president, director and agent of said company; Sun Radio and Service Supply Corporation, and Emanuel Rosenweig, individually, and as president, director and agent of said company; Schiller Brothers, Inc., and Louis S. Schiller, individually, and as president, director and agent of said company; F. C. Scruggs, individually, and trading under the name Call Radio Co.; Peter Robbins, individually, and trading under the names Robbins Radio Co. and Ambassador Radio Co.; and Metal Etching Corporation, and M. Hermann, individually, and as president, director and agent of said company; Etched Products Corporation, and Albert Nierenberg, Walter H. Miller, individually, and as officers, directors and agents of said company; Electro Chemical & Engraving Co., and F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes, L. S. Southwick, individually, and as officers, directors and agents of said company; Premier Metal Etching Co., and Herbert Pape, Carl J. Johnson, Ernest A. Rottach, Hugo Lehrfeld, individually, and as officers, directors, and agents of said company; Crowe Name Plate & Manufacturing Co., and E. C. Coolidge, I. Robinson Smith, individually, and as officers, directors and agents

¹ Amended and supplemental.

² See decision in 24 F. T. C. 1310.

of said company, and the findings as to the facts entered therein involved identical acts and practices on the part of all the respondents herein, and that the order to cease and desist entered therein prohibits the respondents herein from engaging in the practices charged in this complaint, 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 herein, be and the same hereby is closed without prejudice to the right of the Commission, should future acts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Mr. Carrel F. Rhodes for the Commission.

HAWAIIAN DISTILLERIES, LTD. Complaint, November 27, 1936. Order, May 2, 1939. (Docket 2999.)

Charge: Using misleading corporate name and misrepresenting business status and nature of product; in connection with purchasing, rectifying, blending, bottling, and selling Okolehao, brandies, liqueurs, and other spirituous beverages.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent now owns and operates registered distillery No. 2, Fourteenth District, Hawaii, under Distiller's Permit No. D-896, issued to it by the Federal Alcohol Administration on September 23, 1938, and the Commission having duly considered the same, and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Mr. R. E. Joyce, of Washington, D. C., for respondent.

BETHLEHEM STEEL CORP. ET AL. Complaint, January 26, 1923. Order, May 5, 1939. (Docket 962.)

Charge: Entering into agreements to combine, consolidate, and unite numerous and extensive properties, businesses, and interests into a common enterprise, involving acquisition of assets, businesses, and capital stocks, and including physical properties and assets; with resulting substantial lessening, if not complete elimination of potential and actual competition theretofore existing, contrary to public policy expressed in section 7 of Clayton Act and in violation

of section 5 of Federal Trade Commission Act, and with dangerous tendency unduly to hinder competition in iron and steel industry in northeastern section of United States, as in complaint specified, through union of respondents, as alleged in complaint, and in unreasonable restriction of competition amounting to restraint of trade; contrary to public policy expressed in sections 1 and 3 of Sherman Antitrust Act, and in violation, as aforesaid, of section 5, through control and dominant influence brought about through challenged combination.

Case closed by following order:

This proceeding having been on the suspense calendar of the Commission and being now removed from such suspense calendar for consideration, and the Commission having duly considered the same and being fully advised in the premises;

Now, therefore, it is hereby ordered, That the case growing out of the complaint herein be, and the same hereby is closed.

Mr. Edward L. Smith for the Commission.¹

Cravath, DeGersdorff, Swaine & Wood, of New York City, for Bethlehem Steel Corp., Bethlehem Steel Co., and Bethlehem Steel Bridge Corp.

Chadbourne, Babbitt & Wallace, of New York City, for Midvale Steel & Ordnance Co. and Cambria Steel Co.

SAV-AN-UPPER Co. Complaint, November 4, 1935. Order, May 5, 1939. (Docket 2611.)

Charge: Advertising falsely or misleadingly as to earnings and opportunities of agents or salesmen, and qualities or properties of product, and business status; in connection with offer and sale of "Sav-An-Upper" liquid shoe polish, enamel, dressing or finish.

Case closed by following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that on April 30, 1937, in a proceeding against Perfect Manufacturing Co., Docket 2899, the Commission issued an order to cease and desist from the specific practices here involved,² and that the party respondent in both proceedings is identical, 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 issued herein be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume prosecution thereof in the event the facts so warrant.

¹ Mr. Baldwin B. Bane, with whom was also associated Mr. E. C. Alvord, both of Washington, D. C., but not presently members of the Commission staff, was in active charge of the presentation of testimony and evidence in support of the complaint in this proceeding.

² See 24 F. T. C. 1163.

Mr. Marshall Morgan for the Commission.

Paxton & Seasongood, of Cincinnati, Ohio, for respondent.

FREDERICK D. MOSS. Complaint, April 2, 1938. Order, May 8, 1939. (Docket 3372.)

Charge: Misrepresenting properties of product; in connection with the compounding and sale of "Unearthment" cure for tuberculosis, kidney trouble, and other ailments.

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 is now serving a sentence in a Federal prison, and further, that no one is now carrying on the respondent's business during his period of incarceration, 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 herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Mr. S. Brogdyne Teu, II for the Commission.

GENERAL CONCESSIONS CORP. Complaint, January 27, 1936. Order, May 18, 1939. (Docket 2692.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, 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 future 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. P. C. Kolinski, *Mr. Henry C. Lank*, and *Mr. D. C. Daniel* for the Commission.

A. L. HILKEMEYER AND R. J. C. TRICOU, trading as LOUISIANA HATCHERIES. Complaint, October 22, 1936. Order, May 31, 1939. (Docket 2956.)

Charge: Misrepresenting quality of product; in connection with the sale of baby chicks.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record and it appearing that respondent, R. J. C. Tricou, is the sole owner of the business conducted under the name Louisiana Hatcheries; that respondent, A. L. Hilkemeyer, is not a partner in said business; and that respondent, R. J. C. Tricou, has agreed to observe and abide by the Trade Practice Rules for the Baby Chick Industry promulgated December 31, 1938, which rules regulate the practices herein involved, 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 herein be, and the same hereby is, dismissed as to respondent, A. L. Hilkemeyer.

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed as to respondent, R. J. C. Tricou, without prejudice to the right of the Commission to reopen the same and resume prosecution thereof in accordance with its regular procedure should future facts so warrant.

Before *Mr. Robert S. Hall, Mr. W. W. Sheppard,* and *Mr. Edward E. Reardon,* trial examiners.

Mr. John Darsey and *Mr. Carrel F. Rhodes* for the Commission.

Mr. Paul J. Gannucheau, of New Orleans, La., for R. J. C. Tricou.

STIPULATIONS ¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST ²

2351. Radios—Prices.—Midwest Radio Corp., engaged in the manufacture of radio receiving sets 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.

Midwest Radio Corp., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from illustrating or describing a radio set or any other merchandise and quoting therewith a display price in the advertising copy which is not the actual price of the set or other merchandise as illustrated or described; from illustrating a high-priced set and quoting a price which applies to a less expensive set, or otherwise making representations in advertising copy which do not conform accurately to the representations and illustrations contained in its sales catalog. From quoting a price which does not cover the complete set as illustrated, unless in juxtaposition therewith and in equally conspicuous type the explanation be made that the price quoted applies only to specified parts or items and no more. (Jan. 3, 1939.)

2352. Automobile Parts and Accessories—Source or Origin, Business Status and Prices.—Dallas E. Winslow, Inc., a corporation, trading under the name Continental-DeVaux Parts and Service Division and

¹ For false and misleading advertising stipulations effected through the Commission's radio and periodical division, see p. 1825 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, January 1, 1939, to May 31, 1939, inclusive. Digests of all previous stipulations of this character accepted by the Commission—that is, numbers 1 to 2350, inclusive—may be found in vols. 10 to 27 of the Commission's decisions.

² In the interest of brevity there is omitted from the published digests of the published stipulations agreements under which the stipulating respondent or respondents, as the case may be, broadly agree that should such stipulating respondent or respondents ever resume or indulge in any of the practices, methods, or acts in question the stipulation may be used in evidence against such respondent or respondents in the trial of the complaint which the Commission may issue, or that in event of such resumption or indulgence, or of issuance by Commission of complaint and institution of formal proceedings against respondent, as in the stipulation provided, such stipulation and agreement, if relevant, may be received in such proceedings as evidence of the prior use by the respondent or respondents of the methods, acts, or practices herein referred to.

also as Continental Automobile Co., engaged in the sale and distribution of automobile parts and accessories 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.

There was formerly on the market an automobile named "DeVaux," put out by the DeVaux Automobile Co. In 1932 a deal was made whereby the manufacture of the DeVaux automobile was assumed by the Continental Motors Corp. of Detroit, Mich., which thereupon organized the Continental Automobile Co. for the subsequent manufacture of DeVaux cars. The name "DeVaux" was dropped, and instead there was substituted the name "Continental," under which name the car was thereafter sold. The new Continental and the old DeVaux were much alike, so that parts were interchangeable. In 1934 the manufacture of the Continental automobile was discontinued and the Continental Automobile Co. was dissolved, whereupon the parent company, Continental Motors Corp., sold to Winslow-Baker-Meyerling Corp. of Detroit, predecessor of the present Dallas E. Winslow, Inc., all production and service parts, fixtures, and equipment owned by the Service Department of the Continental Automobile Co. The purchaser also acquired the right to use the name "Continental Automobile Company" for a period of 2 years and until revocation by Continental Motors Corp. At the end of the 2-year period, in 1936, the Continental Motors Corp. rescinded the right to the use of the name "Continental Automobile Company" by Dallas E. Winslow, Inc.

Dallas E. Winslow, Inc., in advertising and promoting its sale of automobile parts in interstate commerce, by means of catalogs, trade literature, spoken statements, or otherwise, agreed to cease and desist from—

The use of the trade name "Continental-DeVaux Parts and Service Division," or the trade name "Continental Automobile Company," or the name "Continental," or the name "DeVaux," or the word "Division" in connection with any trade name; or otherwise designating itself in a manner so as to import or imply that it is in any way connected with the makers of Continental or DeVaux automobiles, or that its business is conducted by them as a division of their establishment, when such are not the facts.

Representing, either inferentially or by direct statement, that it conducts a manufacturing business; or by the use of statements such as "Genuine factory parts," "Factory service facilities," etc., that the automobile parts sold by it are made in a factory owned, operated or controlled by it, when such are not the facts.

Representing pictorially or otherwise that its premises and equipment are more extensive than they are in fact, or that it occupies the whole of the premises depicted, when such is not the fact.

Representing either directly or inferentially that all Continental or DeVaux automobile parts sold by it are made by the Continental Automobile Co. or by the Continental Motors Corp., when such is not the fact.

Representing, by the use of such statements as "Low factory prices," "Order your parts direct from the factory," or in any other way, that the customer is dealing with the manufacturer and not with a jobber, or that the prices quoted are the actual manufacturers' prices, when such are not the facts. (Jan. 3, 1939.)

2353. **Faucet Type Water Heater—Nature, Qualities and Safety.**—Louis Newland, Louis B. London, and Marice Grober, copartners trading as Hot Flash Co., engaged in the business of manufacturing a so-called faucet type water heater and in the sale thereof under the trade name "Hot Flash" 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.

Louis Newland, Louis B. London, and Marice Grober agreed and each of them agreed, in soliciting the sale of and selling said Hot Flash devices in interstate commerce, to cease and desist from the use in advertisements and advertising matter or in any other way of statements or representations which directly assert or import or imply that the said devices can be operated as cheaply as most household electrical devices, or that the said devices will supply or are capable of supplying hot water of any stated gallonage and of any specified temperature in excess of what is actually the fact. The said copartners also agreed to cease and desist from stating or representing that the said Hot Flash devices, employing the recommended use of a 20-ampere, 125-volt fuse plug in connection with the kind of circuit found in the ordinary home, is either safe, sane, or sound, when such is not the fact. (Jan. 3, 1939.)

2354. **Correspondence and Shop—Training Courses—Opportunities, Earnings, Employment, Business Status, Endorsements and Testimonials.**—Ralph Hemphill, an individual residing at Glendale, Calif., is the president of and owns the controlling interest in Hemphill Schools, Inc., a California corporation; Hemphill Schools, Inc., a Washington corporation; Hemphill Schools, Inc., an Illinois corporation; Hemphill Schools, Inc., a New York corporation; Hemphill Schools, Inc., a Tennessee corporation; Hemphill Schools, Inc., a Massachusetts corporation; each of the aforesaid corporations have been engaged in conducting a finishing school of residential instruction in Diesel

mechanics and operation, as a complement to preliminary home-study correspondence courses of instruction in said subjects conducted by the California corporation, Hemphill Schools, Inc. The said Hemphill Schools, Inc. (of California) now sells and for some time past has sold said correspondence courses of instruction in interstate commerce. The business thus cooperatively engaged in by the aforesaid corporations has been at all times herein referred to in competition with that of other corporations, individuals, firms, and partnerships likewise engaged. Said corporations have entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Hemphill Schools, Inc., a California corporation; Hemphill Schools, Inc., a Washington corporation; Hemphill Schools, Inc., a Michigan corporation; Hemphill Schools, Inc., an Illinois corporation; Hemphill Schools, Inc., a New York corporation; Hemphill Schools, Inc., a Tennessee corporation; Hemphill Schools, Inc., a Massachusetts Corporation; and Ralph Hemphill, agreed, and each agreed, in soliciting the sale of and selling their correspondence and combination correspondence and shop-training courses in interstate commerce, to cease and desist—

From overstating and misrepresenting the demands and opportunities for employment in the Diesel field, and from making any representations the effect of which is to convey the belief that the opportunities for those who take the instruction courses sold by Hemphill Schools, Inc., exceed the facts.

From using in their advertising matter, or in talks by their solicitors, overstatements or misrepresentations as to the actual earning power or probable salaries, advancement, promotions, or future security of their graduates and students.

From the use of statements or representations importing or implying that they are in position to offer employment to their graduates, or will procure employment for all their graduates, when such are not the facts.

From designating themselves as "Engineering Schools" or their graduates as "Engineers," so long as they do not maintain the full curriculum of approved engineering schools and their graduates have not the status and standing of graduate engineers.

From advertising their business or courses of study under the classification of "Help Wanted" or "Male Help Wanted," so as to import or imply that said corporations have positions open and available, when in fact the purpose of said advertising is but to enroll students for a course of instruction.

From representing that the combination course offered is full or complete, or will equip one generally for any position in the Diesel

field when such is not the fact; and from concealing that greater "horsepower rating" at additional cost to the student, will be essential before he is so qualified.

From representing, either directly or indirectly, that any person, though lacking in proper education, experience, or aptitude, can become a competent and expert Diesel man by taking their courses of instruction.

From representing that the Diesel industry is giving "innumerable" men a new start, or is "sweeping the country," or "revolutionizing industry," or "fast replacing all other forms of power"; or is "man's greatest power producer," or that "nation-wide Dieselization is here."

From representing that for students of their study courses there are "unlimited" or "tremendous" opportunities, "brilliant future," "rich, sure, and permanent rewards in all branches"; opportunities to triple one's income, double his earning power, or increase his monthly wage by an amount equalling the total cost of the course; that such opportunities for their students are "increasing year by year" or are "greater than ever before"; or that qualified Diesel men are "in demand," or that "the Diesel industry needs your services."

From representing that the Hemphill Schools are "recognized as the Official Practical Diesel Engineering Schools of America"; are "connected" with the most important Diesel users; the "only" school indorsed by leaders of the industry; have more successful graduates than "all" other Diesel schools; or that manufacturers, distributors and owners "when in need of trained men write to Hemphill Diesel Schools."

From asserting that a testimonial letter from one Diesel manufacturer is indicative of what Diesel manufacturers "as a whole" think of the Hemphill training and the ability of its graduates.

From representing that the city of Boston extended an "invitation" to establish a Hemphill Diesel School there. (Jan. 4, 1939.)

2355. Correspondence Courses—Nature, Etc.—Vocational Service, Inc., a corporation, engaged in the business of enrolling students and selling in interstate commerce, home-study courses of instruction in Diesel engines, air conditioning, and aircraft construction, exclusively for Hemphill Schools, Inc., Thermo Air Conditioning Service, Inc., and Aero Industries Technical Institute, Inc., respectively, the controlling stock of all four corporations named being owned by Ralph Hemphill; causing said printed and mimeographed courses of instruction to be shipped 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.

Vocational Service, Inc., in soliciting and promoting the sale of and selling instruction courses in interstate commerce, agreed to cease and desist from:

Representing that Vocational Service, Inc. was established for the specific purpose of rendering a two-fold service; or is dedicated to an impartial and disinterested helpful guidance service to the student in selecting the right training; or that it makes no difference what line the student may consider; or from using any other form of presentation the effect of which is to convey the belief that its object is to serve the student primarily, when such is not the fact.

Stating or otherwise representing that Vocational Service, Inc., was founded by outstanding men in the industrial educational field, and put into action to fill a need for vocational guidance for young men and young women everywhere to find the proper kind of work best suited to them, and help them to a better understanding of such work.

Promising, either directly or inferentially, to recommend qualified vocational schools in the broad field of arts and crafts suitable to whatever line would be appropriate to the inquirer; or to "find the right school for the right student," whatever his inclination or aptitude; when in fact no schools whatsoever are recommended but the three mechanical schools whose courses it sells.

Representing, either by direct statement or by inference, that Vocational Service, Inc., is not bound in any way to recommend the various schools and institutions which it represents; or that it exercises the greatest freedom of action, or has any independence of action in such respect.

The use of the title "Registrar" in referring to its sales agents, or of any other word or words the effect of which is to import or imply that such representatives have any official or other capacity than that of salesmen of certain courses of instruction offered for sale by Vocational Service, Inc.

The use, either in its sales-promotional literature or in talks by its solicitors, of statements such as, "I am not a salesman," "I am not here to sell your husband anything, not even an idea. My job is to investigate," "I will never tell him he should take the (Diesel, air conditioning, or aircraft) training," "My job is to investigate for various vocational training organizations," "Before the schools will consider the student we must know a lot about him and that is why I am checking up on this fellow," "I am supposed, at this time, to recommend your acceptance or rejection. If I tell the school to accept you and it should develop that you are not qualified for this kind of work, it would reflect on me and Vocational Service, so I must be very careful about my decision"; or of any other statements importing or

implying that the primary purpose of the so-called "service" and of the agent conducting the interview is other than that of selling certain courses of instruction to all likely prospects.

Asserting that the school it represents is "very strict" about admitting students, or that it accepts them "only after a very thorough investigation"; or that its salesman will "try to make it possible" for the prospect to gain admission; or by guile, artifice, or subtlety conveying the impression that it is a rare privilege for one to be permitted to buy said course of instruction, when it is in fact available to any mechanically minded person who can pay for it.

The use of adroit statements such as, "In order to have the greatest freedom of independent action, Vocational Service, Inc., does not accept any responsibility for the fulfillment of any contract between students and its subscriber schools"; or of any other statements couched in language the effect of which may be to confuse and mislead the reader into the belief that its refusal to stand back of the contracts it negotiates, is for the purpose of better serving him and the public, when such is not the fact.

The use of statements such as, "With a fair and conscientious observance of the responsibility of such a task, Vocational Service, Inc. warrants the highest degree of public confidence and cooperation," or of any other statement or representation of similar implication so as to import or imply, or which may cause the belief by prospects that assistance or advice tendered or to be tendered them by the said Vocational Service, Inc., is in no wise biased or influenced by its common aims, objects, ownership, or financial interests with the three mechanical schools whose courses it sells; when such is not, in practice, the fact. (Jan. 4, 1939.)

2356. Vending Machines—Employment, Opportunities, Guarantees, Earnings, Qualities, Etc.—The Ad-Lee Co., Inc., an Illinois corporation, engaged in the sale and distribution, in interstate commerce, of coin-operated vending machines and of confections for use therein, 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 Ad-Lee Co., Inc., in soliciting the sale of and selling its vending machines, by published advertisements, by trade-promotional literature, or by spoken statement, agreed to cease and desist from:

Advertising or otherwise representing that a manager is wanted; or that any position is being offered, or employment in the handling of its business, or an immediate income or any income whatsoever in such alleged capacity; or making representations of any kind the effect of which may be to cause the reader to believe that anything is

intended thereby but the sale of merchandise to him, when such is not the fact.

Overstating and misrepresenting the opportunities for large and exceptional profits to be made in the vending-machine merchandising business; and making representations the effect of which is to convey the belief that the opportunities for those who buy and operate "Ever-Ready Merchandisers" exceed what the facts disclose.

Representing that a cash return on the investment is guaranteed to the buyer of an "Ever-Ready Merchandiser," or that the company guarantees him against loss of his investment, or insures him against any money loss; or that such covenants are written into the company's sales contract with him; when such are not the facts.

Overstatements or misrepresentations as to the actual profits made by "Ever-Ready" merchandisers; or representations that an operating profit of 53 percent, or an average monthly net profit of \$5.63 per machine, or a monthly net profit of \$563 on 100 machines may reasonably be expected by the owners of "Ever-Ready Merchandisers"; or that many such owners have reported net profits up to \$10 monthly or up to \$15 monthly, when such are not the facts; or in any other way, representing probable average profits in excess of the average made by all its purchasers, or unusual profits in any case not reliably supported by facts.

Representations, either directly or by specious argumentation or concealment of facts, that the expense of a merchandising business through vending machines is "automatically kept at a minimum, thus always assuring maximum profits"; or that such is a "protected" or "simple" business, or is adapted to "any man of normal intelligence" regardless of qualifications and environment; or that one's problems are "solved" and his future "assured" if he will purchase and operate its "Ever-Ready Merchandisers."

Representations that every man, woman, and child is a potential customer of an "Every-Ready" vending machine, or that each 1,000 persons in a community can profitably support 10 such machines; or that the prospective buyer may confidently visualize himself as the owner of 200, 300, or 400 "Ever-Ready Merchandisers each serving its quota of customers, making money for you, rain or shine, night and day, winter and summer, year after year."

Asserting or implying that money invested in coin-controlled machines pays in returns several times what the same amount invested in any other business would pay; or that the returns are five to ten times as much; or, without proper qualification that a vending-machine business pays its owner from \$150 to \$1,000 monthly.

Representing that the "Ever-Ready Merchandiser" is slug-proof or that with said vending machine only a bona-fide 1-cent piece will

cause the automatic mechanism to respond, when such is not the fact.

Representing that the mechanism of the "Ever-Ready Merchandiser" is so exactly adjustable that the same amount of confections will be released each time, when such is not the fact. (Jan. 5, 1939.)

2357. Prophylactics—Business Status.—Joseph S. Massimo, an individual trading as Lewis Druggist Supply Co. engaged in the business of selling prophylactics in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Joseph S. Massimo, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the word "manufacturer" or of any other word or words of similar meaning in his advertisements and advertising matter or in any other way so as to import or imply or the effect of which conveys or tends to convey the belief that the said individual 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. (Jan. 5, 1939.)

2358. Sales-Promotion Cards—Selling Lottery Devices.—Sam Sandor, also known as S. B. Saunders, conducting a printing and publishing business under the assumed or trade name of Fidelity Sales Promotion Service, engaged in the sale and distribution of sales-promotional devices 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.

Sam Sandor, in connection with the offering for sale, sale and distribution of sales-promotion cards or trade cards in interstate commerce, agreed to cease and desist from selling and distributing sales-promotion cards so designed that their use by retail merchants constitutes or may constitute the operation of a lottery, game of chance, or gift enterprise; supplying to or placing in the hands of retail merchants or others sales-promotion cards or sales-booster plans or schemes which are used or which may be used without alteration or rearrangement to conduct a lottery, game of chance, or gift enterprise when distributed to the consuming public. (Jan. 6, 1939.)

2359. Plush and Pile Fabrics—Composition.—Sidney Blumenthal & Co., Inc., a corporation, engaged in the manufacture and in the sale and distribution of plush and pile fabrics simulating various furs in appearance, 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.

Sidney Blumenthal & Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use, or from placing in the hands of others for their use, of labels bearing the word "seal," either alone or in connection with the word "Hudson" and also of the word "Sealo," or any other word or words, so as to import or imply that the products thus labeled are made or fabricated from the fur or pelt of a seal when such is not the fact; labels containing picturization designed to indicate or to give the impression that such products are fabricated from the fur or pelt of a seal, when such is not the fact; labels bearing the word "Sealkin" or the word "Molekin," or any other phonetic spelling or contraction of the words "sealskin" and "moleskin," respectively, so as to import or imply that the products to which said word or words refer are made or fabricated from the fur or pelt of a seal or mole, when such is not the fact. (Jan. 6, 1939.)

2360. **Plush and Pile Fabrics—Composition.**—Saltex Looms, Inc., a corporation, engaged in the manufacture and in the sale and distribution of plush and pile fabrics simulating various furs in appearance; 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.

Saltex Looms, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use, or from placing in the hands of others for their use, of labels bearing the word "seal," either alone or in connection with the word "Hudson" and also of the word "Sealo," or any other word or words, so as to import or imply that the products thus labeled are made or fabricated from the fur or pelt of a seal when such is not the fact; labels containing picturizations designed to indicate or to give the impression that such products are fabricated from the fur or pelt of a seal, when such is not the fact; labels bearing the word "Sealkin" or the word "Molekin," or any other phonetic spelling or contraction of the words "sealskin" and "moleskin," respectively, so as to import or imply that the products to which said word or words refer are made or fabricated from the fur pelt of a seal or mole, when such is not the fact. (Jan. 6, 1939.)

2361. **Plush and Pile Fabrics—Composition.**—Shelton Looms Distributing Corp., engaged in the sale and distribution, of plush and pile fabrics simulating fur, manufactured by Sidney Blumenthal & Co., Inc., 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.

Shelton Looms Distributing Corp., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use, or from placing in the hands of others for their use, of labels bearing the word "seal," either alone or in connection with the word "Hudson" and also of the word "Sealo," or any other word or words, so as to import or imply that the products thus labeled are made or fabricated from the fur or pelt of a seal when such is not the fact; labels containing picturizations designed to indicate or to give the impression that such products are fabricated from the fur or pelt of a seal, when such is not the fact; labels bearing the word "Sealkin" or the word "Molekin," or any other phonetic spelling or contraction of the words "sealskin" and "moleskin," respectively, so as to import or imply that the products to which said word or words refer are made or fabricated from the fur or pelt of a seal or mole, when such is not the fact. (Jan. 6, 1939.)

2362. **Burial Vaults—Qualities.**—Permanent Concrete Products, Inc., a corporation, engaged in the business of manufacturing burial vaults made of concrete and in the sale 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.

Permanent Concrete Products, Inc., 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 said word "Permanent" or of any other word or words of similar meaning, either alone or in connection or conjunction with the statement "The Answer To The Sunken Grave Problem" or in any other way so as to import or imply or the effect of which tends or many tend to convey the belief to purchasers or prospective purchasers that said vaults will give or furnish everlasting protection to either caskets or bodies encased therein, when such is not the fact. The said corporation also agreed to cease and desist from the use of the statement "100 Year Products" or of any other statement or representation referring to the durability or other qualities of its vaults in the absence of substantiating proof as to the truth thereof. (Jan. 6, 1939.)

2363. **Men's Shirts—Government Specifications or Requirements; Conformance and Source.**—Jacob Rombro and Theodore Rombro, co-partners trading under the firm name and style of Rombro Bros., engaged in the business of manufacturing men's shirts 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.

Jacob Rombro and Theodore Rombro, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the letters "U. S. A." either independently or in connection or conjunction with any other word or words or in any way so as to import or imply or the effect of which is to convey or may tend to convey the belief to purchasers that the products so labeled, branded, marked, or advertised are or have been made for the United States Government or its Army in accordance with Government specifications or requirements or that the said products are or have been disposed of by the United States Government or Army as surplus stock. (Jan. 6, 1939.)

2364. **Merchandise—Lottery Scheme.**—Jacob Ruderman, an individual trading as Consolidated Specialty Co., engaged in the business of selling numerous articles of 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.

Jacob Ruderman, in soliciting the sale of and selling his merchandise 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 such merchandise which involves or includes the use of any lottery, alleged gift enterprise or scheme of chance whereby the identity of an article of merchandise to be purchased or the price to be paid therefor, or both the article and its price, is or are determined by lot or chance. (Jan. 7, 1939.)

2365. **Face Powder—Quantity.**—Premier Laboratories, Inc., a corporation, engaged in the sale of a face powder designated "Max Factor," 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.

Premier Laboratories, Inc., agreed, in connection with the sale or offering for sale of its face powder in interstate commerce, to cease and desist from representing through the use of over-sized cartons or containers or in any other manner that a substantially larger quantity or amount of such face powder is contained therein than is actually the case. (Jan. 9, 1939.)

2366. **Jewelry—Composition and Government Specifications or Requirements Conformance.**—Automatic Chain Co., a corporation, engaged in the manufacture of low-priced jewelry, including neck chains and bracelets fabricated from gold-covered wire of a type known to the industry as rolled gold plate, and in the sale and distribution thereof in interstate commerce, in competition with other corpora-

tions, 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.

In the jewelry trade the mark "12 Kt 1/20" means and is understood to mean that one-twentieth by weight of the entire article is 12-carat gold, or that, on a fractional basis, the gold content is 25/1000 fine gold; the mark "14 K 1/10" means that one-tenth by weight of the entire article is 14-carat gold, or, on a fractional basis, 58.3/1000. Allowing for a ten-per-cent tolerance, an article so marked is deemed misbranded which does not have an actual fine-gold content of 52.5/1000. The term "gold filled," as established by the commercial standards set up by the Department of Commerce of the United States Government, means and is understood to mean that the article so marked has a coating of gold of not less than 10-carat fineness, and that the weight of such gold is not less than one-twentieth the weight of the entire article.

Automatic Chain Co., in promoting the sale of and selling its products in interstate commerce, agreed to cease and desist from—

The use in its advertising or as a stamp or marking or label for its neck chains or other articles of the term "12 Kt 1/20," either alone or in connection with the words "gold filled," or otherwise, when in fact the gold content of said mounting is other than 25/1000 fine gold or better; or the use of the term "14 K 1/10," either alone or in connection with the words "gold filled," or otherwise when in fact the gold content of such articles is not 14 K 1/10 or better and does not assay at least 52.5/1000 fine gold throughout.

Marking or otherwise labeling or designating a neck chain or other article with the gold designations of the wire from which such chain or article was fabricated when the completed chain or article does not itself have such gold content.

Labeling or otherwise describing articles which have been merely gold-flashed with terminology that indicates the presence of substantial quantities of gold, when such is not the fact.

The use of the word "gold" as applicable to an article whose gold content is too minute to merit such description or whose coating is too thin to constitute a gold plate.

The use in its advertising or as a stamp or marking for a product of the term "gold filled," unless such article has a coating of gold of not less than 10-carat fineness and unless the weight of such gold is at least one-twentieth the weight of the entire article.

Guaranteeing or otherwise representing that an article offered for sale is gold filled or otherwise in strict accordance with the commercial standards issued by the United States Department of Commerce and/or approved by the American Standards Association, when such is not the fact. (Jan. 11, 1939.)

2367. **Luggage—Composition.**—Meyer Brodie and Morris White, co-partners trading under the firm name and style of “M & M Bag and Suitcase Company,” engaged in the business of manufacturing luggage and in the sale thereof in interstate commerce, in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Meyer Brodie and Morris White, in soliciting the sale of and selling their bags in interstate commerce, agreed to cease and desist from the use as a mark, stamp, brand, or otherwise to designate said products, of a picturization of the head or any other characteristic representation of a steer, cow, or animal so as to import or imply or the effect of which conveys or may tend to convey the belief to purchasers that the material of which said bags are made is in fact leather, that is to say, the hide or skin of an animal which has been tanned, tawed or otherwise dressed for use, when such is not the fact. (Jan. 3, 1939.)

2368. **Supplemental Feed Products for Poultry and Hogs—Composition.**—Consolidated Products Co., a corporation, engaged in the business of manufacturing four supplemental feed products for poultry and hogs which it sells and has sold under the general trade name “Semi-Solid,” 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.

Consolidated Products Co., in soliciting the sale of and selling its said product in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter of whatever kind or character, or in any way, of the word “milk” to designate or as descriptive of said product which is not in fact whole milk from the cow. Said corporation also agreed to cease and desist from the use of the word “milk,” without proper qualification, as descriptive of an ingredient which the said product contains so as to import or imply that said product actually contains whole milk from the cow as an ingredient thereof, when such is not the fact. (Jan. 10, 1939.)

2369. **Dental Floss—Nature of Manufacture.**—Woltra Co., Inc., a corporation, engaged in the sale and distribution of dental floss 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.

Woltra Co., Inc., in soliciting the sale of and selling its dental floss in interstate commerce, agreed to cease and desist from the use on its labels, in its advertising matter, or otherwise, of the use of the

word "Sterilized" as descriptive of said product so as to import or imply or the effect of which is to convey or tend to convey the belief to purchasers that said product so described is sterile at the time of its purchase and/or will remain so until removal thereof from its package. (Jan. 10, 1939.)

2370. **Cosmetic Preparation—Qualities.**—Dermique, Inc., a corporation, engaged in the sale and distribution of a cosmetic preparation under the trade name "Beauty Sleep" and the further description "The Miracle Masque Cream" 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.

Dermique, Inc., in soliciting the sale of and selling its "Beauty Sleep" preparation in interstate commerce, agreed to cease and desist from the use in its advertisements and printed matter or otherwise of statements or representations, the effect of which is to convey or to tend to convey the belief to purchasers that said preparation, when externally applied to the skin, will correct or remove wrinkles and lines over night or at all, regardless of the cause thereof, or will refine crepy skin and large pores or cause sagging contours to become firm or solid, when such are not the facts. (Jan. 11, 1939.)

2371. **Coffee—Composition and Source or Origin.**—Joseph Victori and Co., Inc., a corporation, engaged in the importation of oils, wines, coffee, and other specialties from tropical or subtropical countries 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.

The coffee grown in Puerto Rico has a distinctive flavor and quality esteemed by many consumers. A high grade of such coffee is blended and packed by Cafeteros de Puerto Rico, of Ponce, Puerto Rico, a cooperative organization of Puerto Rican coffee blenders, and marketed under the trade name "Cafe Rico." Cafeteros de Puerto Rico has advertised this blend extensively emphasizing the trade name.

Joseph Victori and Co., Inc., in promoting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Rico Cafe" as a trade name or otherwise to designate a blend of coffees offered for sale and sold by it so as to import or imply, or the effect of which is to convey or tend to convey the belief to purchasers that the product so labeled or designated is Puerto Rican coffee or a blend thereof, when such is not the fact. Listing, designating, or in any manner whatsoever representing any coffee product as "Cafe Rico" which is not the actual blend of coffee

packed and marketed by Cafeteros de Puerto Rico and properly so branded; Representing, by the use of words, names, or places applicable to Puerto Rico, or in any other manner, that a product so designated has its origin in Puerto Rico, when such is not the fact; Selling a product labeled or tagged in a manner that states, imports, or implies that such product is blended and packed in Puerto Rico, when such is not the fact. (Jan. 11, 1939.)

2372. **Coffee—Composition and Source or Origin.**—Dannemiller Coffee Co., a corporation, engaged in the business of importing, blending, and distributing tea and coffee, including a blend of coffees imported from Central America, South America and Arabia, which blended coffee it designates and labels “Rico Cafe,” causing the same, so branded, to be placed in the channels of interstate commerce through the medium of Joseph Victori and Co., Inc., which sells and ships said “Rico Cafe” 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.

Dannemiller Coffee Co., in connection with the sale of its products, agreed to cease and desist from—

(a) The use of the words “Rico Cafe” as a trade name or otherwise to designate a blend of coffees offered for sale and sold by it so as to import or tend to convey the belief to purchasers, that the product so labelled or designated is Puerto Rican coffee or a blend thereof, when such is not the fact.

(b) Holding itself out, by means of labels or in any other way, to be a blender and roaster of coffee in Yauco or elsewhere in Puerto Rico, under the trade name Solivellas & Co., Sucrs., or otherwise, when such is not the fact.

(c) Representing, by the use of words, names or places applicable to Puerto Rico, or in any other manner, that a product so designated has its origin in Puerto Rico, when such is not the fact. (Jan. 11, 1939.)

2373. **Hair Preparations—Qualities, Etc.**—The Mme. C. J. Walker Manufacturing Co., Inc., a corporation, engaged in the business of manufacturing toilet and cosmetic products, including a shampoo, designated “Mme. C. J. Walker’s Vegetable Oil Shampoo,” and two hair preparations known as “Madam C. J. Walker’s Wonderful Hair Grower” and “Madam C. J. Walker’s Temple Grower,” and selling said preparations 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 Mme. C. J. Walker Manufacturing Co., Inc., in soliciting the sale of and selling its so-called “Hair Grower,” or its “Temple

Grower" in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter of whatever kind or character, or on its cartons, or in any other way, of statements or representations which directly assert or clearly import or imply that said preparations, or either thereof, when used upon the scalp or hair, will promote hair growth or will cause hair to grow or prevent its falling out or will accomplish such, or any other results for which there is no proper medical or other substantiation or proof. Said corporation also agreed to cease and desist from stating or representing in its advertising matter or otherwise that its shampoo product, through application thereof to the hair or scalp, will nourish or furnish nutriment to the hair through the roots thereof. (Jan. 11, 1939.)

2374. **Calling and Business Cards—Nature of Manufacture.**—Frederic Eschenburg, an individual, engaged in the business of selling a type of calling and business cards prepared by the process known as raised or processed printing and also as "Thermography," a process of writing involving the use of heat, 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.

Frederic Eschenburg, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the word "engraving" or "embossed" to represent or as descriptive of his products in his advertising matter of whatever kind or character, either independently or in connection or conjunction with any other word or words so as to import or imply that such products are engraved or are the result of impressions made from inked engraved plates, commonly known to the trade and purchasing public as "engraving" or "embossing"; and from the use of such words, or either thereof, in any way, the effect of which is or may be to convey the belief to purchasers that said products are engraved or embossed. (Jan. 11, 1939.)

2375. **Courses of Instruction—Nature, Opportunities, Earnings, Etc.**—Southwestern Diesel Schools, Inc., a corporation, engaged in conducting a vocational school in Diesel engines and in the sale and distribution, of a combination home-study and practical Diesel course, in interstate commerce, in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Southwestern Diesel Schools, Inc., in soliciting the sale of and selling its courses of instruction in interstate commerce, agreed to cease and desist from—

(a) Representing, by statements such as, "Learn Diesel in Monroe," "Learn Diesel in Tampa," "This is not a correspondence course," that the prospective student is offered complete theory and shop training in his home town, when such is not the fact.

(b) Overstating and misrepresenting the demands and opportunities for employment in the Diesel field, and making any representations the effect of which is to convey the belief that the opportunities for those who take the course sold by Southwestern Diesel Schools, Inc., exceed the facts.

(c) Using in its advertising matter or in personal solicitations by salesmen, overstatements or representations as to the actual earning power or probable salaries, advancement, promotions, or future security of its graduates and students.

(d) Representing that the Diesel industry offers "Financial independence," or is "rebuilding the whole world," or "changing the industrial world," or "changing the social world," or has "limitless possibilities for multiplying jobs"; or that "the need for skilled men in it is becoming greater with each succeeding month"; or that it "offers even greater opportunities" than did the automotive industry; or that "thousands of specially trained men will be needed" or the number "will grow with increasing rapidity"; or that "Diesel power is rapidly replacing steam and gas and no one engaged in the production of power can definitely say how long their jobs will last"; or that such opportunity "has no ceiling"; or that no other field offers or "has ever offered greater opportunities"; or that Diesel training is "enabling men to earn greater incomes than any former position could have yielded"; or that through Diesel, men "have in a comparatively short time become outstanding in industry and are well on their road to fortune"; or that "every industry is now turning to Diesel power"; or that "the world is urgently calling" for Diesel men; or that "never before has industry so strongly urged men who are prepared to come forward".

(e) Designating its course as "Diesel Engineering," so long as it does not maintain the full curriculum of an approved engineering school. (Jan. 12, 1939.)

2376. **Optical Goods—Composition.**—Bishop Co., Inc., a corporation, engaged in the manufacture of optical goods 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.

In the optical and jewelry trade the marks "1/10-12 K" and "1/10-12 K G. F." mean and are understood to mean that one-tenth by weight of the entire article is 12-carat gold, or that, on a fractional basis, the gold content is 50/1000 fine gold. Allowing for a ten-per

cent tolerance, any article so marked is deemed misbranded if it does not have an actual fine-gold content of 45/1000.

Bishop Co., Inc., in promoting the sale of and selling its optical goods in interstate commerce, agreed to cease and desist from stamping, marking or labeling spectacle frames or mountings with the term "1/10-12 K," either alone or in connection with the initials "G. F.," or otherwise, when in fact the gold content of such frames or mountings is not 1/10-12 K or better and does not assay at least 45/1000 fine gold throughout. (Jan. 13, 1939.)

2377. Casein Glue—Qualities, Etc.—Tenex Manufacturing Corp., a corporation, engaged in the business of manufacturing casein glue 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.

Tenex Manufacturing Corp. agreed to cease and desist from the use on its labels or in its advertisements of the word "waterproof" or the statement "immune to water" as descriptive of its Tenex Glue offered for sale and sold in interstate commerce, when in fact, said product is not waterproof; and from the use of the word "waterproof" or the statement "immune to water" or of any other word or statement of similar meaning so as to import or imply that the product thus referred to is impervious to the effect of water, when such is not the fact. (Jan. 16, 1939.)

2378. Jewelry—Composition.—Bastian Brothers Co., a corporation, engaged in the manufacture of class and fraternity jewelry and in the sale and distribution thereof in interstate commerce, in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the alleged unfair methods of competition as set forth therein.

In the jewelry industry and trade an article described as "gold" is understood to be of ten carats or better in fineness, unless an inferior quality be duly stamped or branded in connection with the word "gold."

Bastian Brothers Co., in promoting the sale of and selling its products in interstate commerce, agreed to cease and desist from stamping, branding, labeling or otherwise designating an article as "gold" the quality of which is less than ten carats fineness, unless such word "gold" be immediately accompanied by a quality mark indicating clearly and accurately its degree of fineness throughout the article; as, for example, "8 K Gold." (Jan. 16, 1939.)

2379. Correspondence Courses of Instruction—Opportunities, Earnings, Guarantees, Employment, Etc.—Public Office Preparation, Inc., a corporation, engaged in conducting a correspondence school and in the

sale of courses of study intended to prepare students for examinations for civil-service positions in the United States Government, selling and distributing such printed courses of instruction in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Public Office Preparation, Inc., in soliciting the sale of and selling its courses of instruction in interstate commerce by means of sales literature, spoken statements, or otherwise, agreed to cease and desist from—

Overstating and misrepresenting the opportunities for employment in the service of the United States Government; and from making any representations the effect of which is to convey the belief that the opportunities for those who take the instruction courses sold by Public Office Preparation, Inc., are greater than is in fact the case.

Representing, either by direct statement or by inference, that there are approximately 800,000 Government employees in the classified civil service, or that all but a small percentage of civil employees in the Government are in such classified service, when such is not the fact.

Representing that there never was a greater opportunity to get into Government service than there is today, when such is not the fact.

Using in its advertising matter or in personal solicitations by salesmen, overstatements or misrepresentations as to the actual earning power or probable salaries, advancement, promotions, or security of its graduates and students.

Representing that the basic salary of Government stenographers is \$1,600 per annum, or that, if work is satisfactory, a \$100 promotion each year is given, or that two mental tests are given each year by the Government with salary increases for those who pass with good grades, or that, when annual leave or sick leave has not been taken by the end of the year, the Government employee will receive money instead, or that a Government Civil Service position will be guaranteed any of its students who may pass the examination with a satisfactory grade.

Representing that it has placed more people in Government positions in the past three years than Harvard University has placed in the past three hundred years; or that it has "placed" any persons whatsoever in Government positions, when such is not the fact.

Making unfounded or exaggerated statements as to the probable number of civil-service positions available at any time in any given locality, or generally.

Representing, either directly or inferentially, that it is specially prepared or authorized to give full information regarding civil-serv-

ice examinations to be held and the qualifications with respect thereto, or that it has a knowledge of or access to examination questions that will be given, or obtains the same, through devious channels or in any other manner.

The use in mailing matter or otherwise of terms or phrases so worded as to have the capacity to mislead or confuse prospective students into the belief that they are receiving a communication from or are dealing with the United States Government, when such is not the fact. (Jan. 17, 1939.)

2380. Dental Floss—Nature.—Belding-Heminway-Corticelli, a corporation, engaged in the business of manufacturing a dental floss 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.

Belding-Heminway-Corticelli, in offering for sale and selling its dental floss in interstate commerce, agreed to cease and desist from the use on labels or otherwise of the word "Sterilized" so as to import or imply or the effect of which is to convey or which may tend to convey the belief to purchasers that the said product is sterile at the time of its purchase and removal from its original package. (Jan. 17, 1939.)

2381. Governors for Trucks or Motor Vehicles—Success.—Handy Governor Corporation, engaged in the business of manufacturing governors, among other automotive devices, and in the sale thereof to manufacturers of truck or motor vehicles in interstate commerce, in competition with other manufacturers, 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.

Handy Governor Corporation, in soliciting the sale of and selling its said governors in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter or otherwise of the statements "close to 90 percent of all 1938 trucks specify Handy" or of any other statement or representation of similar implication, the effect of which conveys or may tend to convey the belief that approximately nine-tenths of all trucks manufactured in 1938 were equipped with Handy governors, and from the use of the said or any similar statement or representation referring to alleged installations of the Handy governors which is exaggerated, that is to say, in excess of the number of installations of such governors actually made during the stated period of time in the said motor vehicles. The said corporation also agreed to cease and desist from stating or representing that its Handy governors are used as "standard" equipment for the various trucks or motor vehicles in which they are

installed, when in fact, the said devices are installed as optional, and not as standard equipment. (Jan. 18, 1939.)

2382. Gas Ranges, Etc.—Prices and Government Approval.—George Wasserman, an individual trading as George's Radio Co., engaged in the business of selling and distributing household appliances in retail stores maintained by him in the District of Columbia, engaged in commerce as defined by the Federal Trade Commission Act, selling and distributing merchandise, including gas ranges, in competition with other individuals, firms, partnerships, and corporations, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

George Wasserman, in promoting the sale of and selling merchandise in commerce, as defined by the Federal Trade Commission Act, agreed to cease and desist from—quoting a fictitious price as being the regular price or the list price of merchandise which he offers for sale, or quoting a figure purporting to be its actual or genuine value which is in excess of the price for which said merchandise is sold or can be obtained in the usual course of business; representing that a price quoted for merchandise offered for sale is “special,” when it is in fact the regular price for which he sells such merchandise; representing, either directly or inferentially, by the adroit use of words, by confusing picturization, concealment of fact, or in any other manner, that an article of merchandise pictured or otherwise featured may be bought for a price indicated, when such is not the fact; representing that a certain kind of gas range is selected by the United States Government for P. W. A. new housing projects because of its greater efficiency and longer life, when such is not the fact. (Jan. 19, 1939.)

2383. Mufflers—Composition.—Cisco, Inc., a corporation, engaged in the business of manufacturing men's and women's mufflers and scarves 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 methods of competition as set forth therein.

Cisco, Inc., in soliciting the sale of and selling its mufflers in interstate commerce, agreed to cease and desist from the use on its brands or labels or in its advertisements or advertising matter of whatever kind or character of the words “All Silk” or the word “Silk” or any other silk-connoting word as descriptive of a product not composed wholly of silk, the product of the cocoon of the silk worm, or as descriptive of the substantial silk content of a product but which silk content has been weighted or contains any metallic weighting whatsoever: *Provided, however,* That if the product is composed in sub-

stantial part of weighted silk and the word "silk" or other silk-connoting word is used to describe or refer to such weighted silk content, then in that case, the said silk-connoting word shall be immediately accompanied by the word "Weighted" or "weighting" printed in equally conspicuous type, together with the percentage of such weighting as, for example, "silk, weighted 45%," "silk with 45% metallic weighting," or the like: *Provided, further*, That if the said product is composed in part of rayon and in greater part of weighted silk, then in that case, any and all advertising, branding, labeling, marking, selling, offering for sale, invoicing, or representations concerning or pertaining to said product shall clearly and unequivocally disclose such rayon content as well as the fact that the silk content of said product is weighted as, for example, "Silk (weighted 45%) and Rayon." (Jan. 19, 1939.)

2384. **Typewriter Ribbons—Composition, Success and Business Status.**—Clayton J. Tiller, an individual trading as C. J. Tiller Co., engaged in the sale and distribution of typewriter ribbons 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.

Clayton J. Tiller, in soliciting the sale of and selling typewriter ribbons in interstate commerce, agreed to cease and desist from the use in his advertising of whatever kind or character, on the boxes containing said products, or in any other way, of the words "Sea Island" as descriptive of said products not made of that kind of cotton known as "Sea Island" cotton; and from the use of the said words together with tropical island scenery or in any other way so as to import or imply or the effect of which conveys or may tend to convey the belief to purchasers that the said products are made or manufactured of Sea Island cotton, when such is not the fact. Said individual also agreed to cease and desist from stating or representing that he has sold "thousands" or any other indicated amount of the so-called "Executive Trays" during the last year or at all for \$3.50 or any other price, when such is not the fact. The said individual further agreed to cease and desist from the use on his letterheads or otherwise of the use of the words "Manufacturers of" or of any other words of similar meaning so as to import or imply that he makes or manufactures the products offered for sale and sold by him or that he actually owns and operates the plant or factory in which said products are manufactured, when such is not the fact. (Jan. 19, 1939.)

2385. **Optical Goods—"Certified" and Composition.**—Gate City Optical Co., a corporation, engaged in the sale and distribution of optical goods and supplies 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.

In the optical and jewelry trade, the mark "1/10-12 K" means and is understood to mean that one-tenth by weight of the entire article is 12-carat gold, or that, on a fractional basis, the gold content is 50/1000 fine gold. Allowing for a 10-percent tolerance, an article so marked is deemed misbranded if it does not have an actual fine-gold content of 45/1000.

Gate City Optical Co., in promoting the sale of and selling its optical goods in interstate commerce, agreed to cease and desist from the use of the word "certified" as applied to or descriptive of an article of merchandise which has not been analyzed or appraised by an authorized impartial agency, its quality being duly attested in writing by such agency, to be as represented; The use in its advertising or as a stamp or marking for its spectacle mountings of the term "1/10-12 K," either alone or in connection with the initials "AaA1," or in any way, when in fact the gold content of said mountings is other than 45/1000 fine gold or better; Designating or describing a "center" mounting for spectacles as being solid gold or 1/10-12 K throughout when it is not so composed in all its parts; or using the word "guaranteed" as applied to products which are not in fact duly guaranteed. If the gold content of but a part of said centers assays 45/1000 fine gold or better and the term "1/10-12 K" or the term "solid gold" is used it shall be made clearly to appear that such term refers only to that part of said centers which assays as represented and that the remaining parts thereof are not so included; designating spectacle frames or other products as "rhodium" which are not composed throughout of rhodium. If the article is composed of some other metal and only the surface has been finished or coated with rhodium, such fact shall be clearly indicated by suitable terms. (Jan. 23, 1939.)

2386. **Spectacle Mountings—Composition.**—Louis Jacobitti, an individual trading under the name of National Optical Co., engaged in the manufacture of optical goods 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.

In the optical and jewelry trade the mark "1/10 12 K G. F." means and is understood to mean that one-tenth by weight of the entire article is 12-carat gold or that, on a fractional basis, the gold content is 50/1000 fine gold. Allowing for a 10-percent tolerance, any article so marked is deemed misbranded which does not have an actual fine-gold content of 45/1000.

Louis Jacobitti, in promoting the sale of and selling his spectacle mountings in interstate commerce, agreed to cease and desist from stamping, marking or labeling such mountings with the term "1/10 12 Kt," either alone or in connection with the initials "G. F.," or in any way, when in fact the gold content of said mountings is other than 1/10 12 K and/or assays other than 45/1000 fine gold or better; and from guaranteeing or otherwise representing that a product contains not less than 45/1000 fine gold where the fine-gold content is actually less than 45/1000. (Jan. 23, 1939.)

2387. **Books—Composition, "New" and Prices.**—William H. Wise and Co., Inc., engaged in the business of publishing books 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.

William H. Wise and Co., Inc., in soliciting the sale of and selling its books in interstate commerce, agreed to cease and desist, in its advertisements or trade-promotional literature, from the use of the words "Stamped in gold," "Richly stamped in gold," "Rich gold-stamped," as descriptive of bindings which are not in fact stamped in gold or gold leaf, and from the use of the word "gold" in any way so as to import or imply that the material used in marking or stamping said books is gold leaf, when such is not the fact; representing that a book offered by it for sale is "new," is being published for the "first time," that "never before have the contents been gathered together in one volume," or that "it is the only book of its kind," when in fact one or more previous editions of the text thereof have been marketed; quoting a fictitious price as being the regular price of a book, or quoting a figure purporting to be its actual or genuine value which is in excess of the price for which said book is sold or can be obtained in the usual course of business; representing that a price offered is "special" or that the price is "going up," so as to import or imply that the price asked for the book is other than its regular price or that the quoted price will be available only for a short duration of time or by prompt acceptance, when such are not the facts; representing that the price offered is made possible only through thousands of orders received prior to publication or because of cooperation by many friends and customers, when such are not the facts. (Jan. 23, 1939.)

2389.* **Cloth fabrics or Pieces—Nature, Price of Premium and Employment.**—Rolla L. Long, an individual, trading as National Distributors, engaged in the business of selling cloth fabrics or pieces in interstate commerce, in competition with other individuals, firms, partnerships,

* Stipulation No. 2388 was accepted by the Commission on December 29, 1938, and may be found in vol. 27 at p. 1573.

and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Rolla L. Long, in soliciting the sale of and selling his cloth pieces in interstate commerce, agreed to cease and desist from the use in his advertisements and advertising matter or otherwise of such words as "Beautiful Silk Pieces" or "Fast Color Prints and Percales" as descriptive of cloth pieces so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the cloth pieces are of sufficient size so as to be adapted for use in the making of garments, as dresses, unless, if and when the said quoted words are so descriptively used, they shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that the said cloth pieces are only remnants or scraps whose utility is limited to uses such as the making of quilts. The said individual also agreed to cease and desist from stating or representing in his advertising matter or otherwise that the face powder offered as an inducement to prospective customers is priced at \$1, when in fact, such alleged price is fictitious and much in excess of the price at which the said powder is sold in the usual course of trade. The said individual further agreed to cease and desist from offering through the medium of his advertising or otherwise, to employ prospective customers to address postal cards at home, when in fact such offer is not a bona fide one, that is to say, all acceptances of such offer are ignored by the said Rolla L. Long. (Jan. 24, 1939.)

2390. Casein Glue—Qualities.—I. F. Laucks, Inc., a corporation, engaged in the business of manufacturing a casein glue and in the sale and distribution thereof under the trade name "Lauxein" 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.

I. F. Laucks, Inc., agreed to cease and desist from the use on its labels or in its advertising matter of the word "Waterproof" as descriptive of its "Lauxein" glue offered for sale and sold in interstate commerce, when in fact, said product is not waterproof; and from the use of the word "waterproof" in any way so as to import or imply that said product is impervious to the effect of water, when such is not the fact. (Jan. 26, 1939.)

2391. Correspondence Courses of Instruction—Opportunities, Earnings, Employment, Business Status, Etc.—Roy C. Landry is a sole trader operating variously in Manufacturers' School, Manufacturers' School of Technology, The Original School, Electric Refrigeration Instruction Laboratories, and Manufacturers' Laboratories. Manufac-

urers' Laboratories, Inc., is a corporation owned and controlled by Roy C. Landry. Roy C. Landry, operating at various times under the aforesaid names, and for part of said time under the corporate status mentioned, engaged in conducting a trade school and selling correspondence courses in refrigeration and air conditioning and in Diesel mechanics and operation, in interstate commerce, in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Roy C. Landry and Manufacturers' Laboratories, Inc., in soliciting the sale of and selling their correspondence courses in interstate commerce, agreed to cease and desist from overstating and misrepresenting the demands and opportunities for employment in the Diesel field, and from making any representations the effect of which is to convey the belief that the opportunities for those who take the course sold by Roy C. Landry and/or Manufacturers' Laboratories, Inc., exceed the facts; using in their advertising matter or in personal solicitations by salesmen overstatements or misrepresentations as to the actual earning power or probable salaries, advancement, promotions, or future security of their graduates and students; the use of "Help Wanted" or other employment columns in newspapers or other publications to contact prospective students in such manner as to mislead or deceive such prospective students into the belief that a job is offered; representing that they will "select" or will "accept" a limited number of persons for training, when in fact their course is available to all persons able to pay for same; representing that they have local Diesel operating jobs available in the vicinity of the prospect's home, or any other employment, for which he may be selected as a trainee, when such is not the fact; representing that they find employment for their graduates, or that they have authority to offer all available positions on new installations of Diesel to those on their lists, or that they maintain a placement service for all graduates, when such are not the facts; representing, either directly or indirectly, that any person, though lacking in proper education, experience or aptitude can become a competent and expert Diesel man by taking their course of instruction; the use of any name, title or other designation, such as "Chairman of the Advisory Board," "Vocational Director," "Registrar," "President," "Technical Engineering Experts," "Employment Service," or "Placement Service," having the tendency or capacity to mislead students, prospective students or the public as to the character of said school, its courses of instruction, or its influence in obtaining employment for students; designating graduates of their course as "Certified Diesel Engine Technicians,"

or in any other way, so as to import or imply that such persons are competent technicians or experts or have been so attested in writing by a qualified independent agency, board or commission; designating their course as "Diesel Engineering" so long as they do not maintain the full curriculum of an approved engineering school; designating a refund agreement as a "Money Back Guaranty" where the decision as to the making of the refund is left entirely to the pleasure of the one called upon to make it and/or where \$30, or any other sum, is to be held out by them and not refunded under any circumstances; the use as a trade name or as a corporate name of any of the following: "Manufacturers' School"; "Manufacturers' School of Technology"; "Manufacturers' School, Division of Manufacturers' Laboratories, Inc."; "Manufacturers' Laboratories, Inc."; "Manufacturers' Laboratories, Inc."; "Manufacturers"; "The Original School"; or of any other name or expression the effect of which is to convey or tend to convey the belief that the said school is maintained, supported or sponsored by or in any way affiliated with manufacturing concerns, or that it teaches the technical science of the industrial arts, or that it is the pioneer of technical and practical training, when such are not the facts. (Jan. 30, 1939.)

2392. Ladies' Wearing Apparel—Composition.—Herman B. Levy, an individual, trading as Sally Negligee Co., engaged in the business of manufacturing ladies' wearing apparel 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.

Herman B. Levy, in promoting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the words "pure dye," or the word "satin," or the word "crepe," or any other silk-connoting word or words, as descriptive of fabrics not composed of silk, the product of the cocoon of the silkworm; or in any way so as to import or imply that the fabrics, or any part thereof, to which said words refer are composed of silk, when such is not the fact. If the word "crepe" is used properly to describe the type of weave or construction of a rayon fabric, in such case the word "crepe" shall be immediately accompanied by the word "rayon," printed in type equally conspicuous, so as to indicate clearly that said product is in fact rayon; as, for example, "rayon crepe." From the use of the word "Sil-Key," or of any phonetic spelling or contraction of the word "silk" so as to import or imply that the products to which said word refers are or may be composed of silk, when such is not the fact. From selling or offering for sale any product made of rayon without disclosure of the fact that the material of

which said product is composed is rayon, made clearly and unequivocally, in the invoices and labeling and in all advertising matter, sales-promotional descriptions or representations thereof, however disseminated or published. (Jan. 30, 1939.)

2393. *Photographic Enlargements and Frames Therefor—Free Product, Nature, Special Offers, Price, Etc.*—Fine Arts Association, a corporation, engaged in the sale and the offering for sale and selling in interstate commerce of tinted or colored enlargements of photographs and frames therefor, 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.

Fine Arts Association, in soliciting the sale and the selling in interstate commerce of pictures and frames therefor, agreed to cease and desist from stating or representing, either directly or through its salesmen or agents or in any other way, that a picture or portrait offered as an inducement to obtain a prospective customer's order: is a "free" gift valued at \$25 or any other designated amount, when such is not the fact; is being, or will be, sold only to a limited number of customers, or otherwise misrepresenting any material fact concerning the terms and conditions of sales, or the extent to which the sale of such pictures is limited; is given free or as a gratuity to the customer or can be obtained other than or by the purchase or in consideration of the purchase of merchandise with which the alleged "free" gift is included, when such is not the fact.

Fine Arts Association further agreed in connection with the aforementioned sale and soliciting of its said pictures and frames therefor to cease and desist from representing: That its said colored or tinted pictures, photographs, or photographic enlargements are hand-painted or are paintings, and from using the terms "oil painting," "portrait painting," "hand painting," or the word "painting," either alone or in conjunction with any other terms or words in any way to designate, describe, or refer to colored or tinted pictures, photographs, or photographic enlargements or other pictures produced from a photographic base; through the use of a "draw" or voting contest or through the use of "lucky" blanks, slips, coupons, or certificates, or through use of any other device, plan, or scheme or through any contest or special introductory or advertising offer, that any customer thereby would obtain a financial advantage or be entitled to receive any picture free or receive any discount or reduction in the price of any picture or pictures.

The said Association further agreed to cease and desist from the practice of withholding or concealing from customers purposely or otherwise information regarding the price they must pay for frames,

and from withholding or concealing likewise from customers information disclosing that the products of the company when shipped to the customer will be shipped "collect on delivery" and that the customer will not be permitted to inspect the same, including the quality or faithfulness of respondent's work, until the customer has paid in full any and all charges due for a frame or for a picture or portrait and frame. (Feb. 3, 1939.)

2394. Rings—Composition.—Loren Murchison & Co., Inc., a corporation, engaged as a jobber in the sale and distribution of school jewelry, medals, and trophies 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.

In the jewelry trade the term "10 K" as applied to a ring means that the ring is composed throughout of gold alloy of 10-carat fineness, which is to say that the fine gold content is $\frac{10}{24}$ by weight of the entire article. Thus, a ring with a shell of 10-carat gold enclosing a core of silver or some other base metal is not properly referred to as a solid-gold ring or as a 10-carat ring.

Loren Murchison & Co., Inc., in promoting the sale of and selling merchandise in interstate commerce, agreed to cease and desist from exhibiting, through its authorized agents or otherwise, rings of 10 K solid gold with the statement or representation that it will deliver rings as ordered according to sample, when such agreement is not performed; representing that a ring offered for sale is solid gold or of 10 K quality, when in truth the ring delivered to the purchaser has but a shell of gold enclosing a core of base metal and/or is not composed throughout of a gold alloy of 10 K fineness or better; representing itself to be a manufacturer of rings or other merchandise, when such is not the fact. (Feb. 3, 1939.)

2395. Bread and Soft Drinks—Lottery Scheme.—Arthur W. Covert and Nell Covert, copartners trading under the name and style of Covert Baking Co., engaged in the bread-making business and in the sale and distribution of such bread and of soft drinks 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.

Arthur W. Covert and Nell Covert agreed, and each of them agreed, in soliciting the sale of and selling 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 said products which involves any gift enterprise, lottery, or scheme of chance whereby cash or its equivalent is given or offered as a prize or premium for or in consideration of the purchase of any other article. (Feb. 3, 1939.)

2396. **Toothache Remedy—Qualities.**—William G. Turner, an individual trading as Lenox Manufacturing Co., engaged for a number of years in the business of manufacturing a toothache remedy and in the sale of said product under the trade name "Dent-Zel-Ite" in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

William G. Turner, in connection with the sale and distribution of his product designated "Dent-Zel-Ite" in commerce as defined by said act, agreed to cease and desist from the use in his advertisements and advertising matter of whatever kind or character or in any other way of statements or representations which directly assert or import or imply that the said product is a tooth filling or that its use will prevent tooth decay, close, seal, or protect tooth cavities, or will banish toothaches or sleepless nights or prevent formation of tooth cavities or relieve one of the necessity of professional dental treatment, or that by its use, one is enabled to perform the functions of a dentist or be one's own dentist. (Feb. 6, 1939.)

2397. **Peanuts—Lottery Scheme.**—D. Walter Turner, an individual, trading as the Walter Turner Coffee Co., engaged in sale of peanuts 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.

D. Walter Turner, in connection with the sale and distribution of his merchandise in interstate commerce, as defined by the act, agreed to cease and desist from the use of any scheme, plan, or method of sale or of promoting the sale of such merchandise which involves the use of any gift enterprise, lottery, or 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. (Feb. 13, 1939.)

2398. **Correspondence Courses of Instruction—Opportunities, Earnings, Employment, Limited Offers, Etc.**—Diesel Engineering School of Los Angeles, a corporation, and its officers, William O. Anderson, president, John I. Anderson, vice president, Grace E. Hague, treasurer, and Harold McClanahan, secretary and counsel, engaged in conducting a vocational school in Diesel engines and in the sale and distribution, in interstate commerce, of a combination home study and practical course in Diesel mechanics and operation, 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.

Diesel Engineering School of Los Angeles and William O. Anderson, John I. Anderson, Grace E. Hague, and Harold McClanahan agreed, and each agreed, in soliciting the sale of and selling their correspondence course in interstate commerce to cease and desist from—

Overstating and misrepresenting the demands and opportunities for employment in the Diesel field, and from making any representations the effect of which is to convey the belief that the opportunities for those who take the instruction courses sold by Diesel Engineering School of Los Angeles exceed the facts.

Using in their advertising matter or in talks by their solicitors overstatements or misrepresentations as to the actual earning power or probable salaries, advancement, promotions, or future security of their graduates and students.

The use of statements or representations importing or implying that they are in position to offer employment to their graduates or will procure employment for all their graduates, when such are not the facts.

Designating their school as an "engineering school" or its graduates as "engineers," so long as it does not maintain the full curriculum of approved engineering schools and its graduates have not the status and standing of graduate engineers, or designating a staff member as a "consulting engineer" when he is not such in fact.

Advertising their business or course of study under the classification of "Help Wanted" or any other employment columns of publications, so as to import or imply that they have positions open and available, when in fact the purpose of said advertising is but to enroll students for a course of instruction.

Representing, either directly or indirectly, that any person, though lacking in proper education, experience, or aptitude, can become a competent and expert Diesel man by taking their course of instruction.

Publishing such statements as "Diesel unlimited. Wanted One Million Men," "No great business has ever expanded as fast as Diesel," "Nothing else offers equal opportunity for quick, sure advancement," "Fastest growing industry in the world," "High pay and success await the trained Diesel engineer," "Better jobs and higher pay available," "Unlimited opportunity for thousands of men," "The whole world of Diesel stretches ahead of you with your Engineer Certificate," "We have covered the principal sources of employment for trained Diesel men, and so far our efforts in placement have been uniformly successful," "The owners of Diesel are eager to find anyone who has a knowledge of Diesel engines," "Qualified repair men are scarce and wages are correspondingly high," "Because of

the few available men experienced in Diesel engineering, salaries are high," "Within a few years time there will be more than one million men to handle the available jobs"; or any other words, statements, expressions, or picturizations tending to lead a reader to believe that high salaries, genuine success, and unlimited opportunities are assured him by enrolling in said course; or that available men in Diesel are few or scarce, or that the wages are correspondingly high.

Representing an offer to be limited as to the number of persons to be accepted or selected for such instruction, or otherwise, when there is in fact no such limitation and no selection, the course being available to all persons who can pay for it.

The use of any so-called satisfaction agreement or other refund or money-back agreement between said school and a student wherein such refund is conditioned upon contingencies entirely within the control of the school and/or upon requirements which normally cannot be met by the average dissatisfied student.

Issuance of any certificate or diploma which represents the course of study or instruction covered or completed, or the accomplishments or standing of the student receiving such certificate of diploma, in a manner having the capacity or tendency to mislead students, prospective students, or the public. (Feb. 14, 1939.)

2399. Correspondence Courses of Instruction—Business Status, Opportunities, Earnings, Employment, Etc.—Robert A. Flinn and Ruby L. Flinn, copartners trading under firm name and style of "Associated Training Institute," with James M. Cattanach engaged in capacity of general manager of said business, engaged in sale and distribution of printed and mimeographed correspondence courses of instruction in Diesel mechanics and operation, 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.

Robert A. Flinn and Ruby L. Flinn and James M. Cattanach, in connection with the sale and distribution of their courses of instruction in commerce as defined by the act, agreed to cease and desist from—

(a) The use in their trade name or in any other manner as applied to their school, of the word "Institute" either alone or in connection with any other word or words; or from the use of any similar term, title, or designation the effect of which is to import or imply or cause the belief that such correspondence trade school is an institution or organization for the promotion of learning, philosophy, art or science.

(b) Overstating and misrepresenting the demands and opportunities for employment in the Diesel field or the air-conditioning and refrigeration field; and from making any representations, the effect of which is to convey the belief that the opportunities for those who take the course sold by them exceed the facts.

(c) The making of misleading or deceptive statements or representations by way of advertising, oral representations, or otherwise, concerning the character, nature, quality, value, or scope of the course of instruction or educational service offered by them or in any other material respect, with the tendency or capacity to mislead or deceive students, prospective students, or the public;

(d) The making of misleading or deceptive statements or representations regarding actual or probable earnings or opportunities for students or prospective students of such courses.

(e) The making of misleading or deceptive statements or representations as to services to be rendered in connection with the securing or attempting to secure employment for students.

(f) Representing either directly or indirectly that any person, though lacking in proper education, experience, or aptitude, can become a competent and expert Diesel man or air-conditioning and refrigeration man by taking their courses of instruction.

(g) Referring to a home-study course as "strictly practical" which consists merely of printed texts and includes no shop or practical training; or as an "Extension Course" where the same is not offered by a resident school.

(h) Representing that they operate "in cooperation with" or "under contract with" Diesel Engineering Institute or with "the world's oldest and largest institute for the advancement of Diesel power," or with "the world's oldest and largest institute of its kind," or with Greer Shop Training, Inc., or with "the million dollar school," or with schools of 30 or 36 years' standing, or with a school "guaranteeing 100% satisfaction to students"; when in fact their only real contracts with such concerns are, on the one hand, to buy printed texts from a publishing house, and on the other hand, to refer students to a shop-training school for practical work, where such students make their own arrangement; or the making of any other direct or implied representations, the effect of which is to convey the belief that their business coordinates with and has the backing, the prestige, and the responsibility of certain outstanding institutions in the Diesel and air-conditioning field, when such is not the fact.

(i) The use of titles such as "Chief Vocational Advisor" when there is none, and "Consulting Engineer" for a staff employee, or of any other name, title, or designation having the tendency or capacity to mislead students, prospective students, or the public as to the character of the institution or its courses of instruction.

(j) Alteration of purported quotations from industrial or other authorities whereby, through omissions or changes, such quotations appear to refer to the air-conditioning and refrigeration industry, when such is not the fact.

(k) Description of a Diesel text publishing house in such way as to convey the impression that it is the world's oldest and largest institute for air-conditioning and refrigeration; or the use of any other subtlety or artifice, the effect of which is to imply that this school is affiliated or associated with the oldest and largest air-conditioning and refrigeration institute in the world, when such is not the fact.

(l) The use of a fictitious name such as "The Engineering Institute" to conceal the real name and the limited scope of "Diesel Engineering Institute."

(m) The issuance of a "Diesel Proficiency Certificate" or of an "A. T. I. Proficiency Certificate" to one who has completed a mere home study course in Diesel engines or in air-conditioning and refrigeration; or of any other type of certificate or diploma having the capacity or tendency to convey an erroneous belief as to the accomplishments or standing of a student receiving same.

(n) The use of any refund agreement or similar contract between school and student, such as an "Honor Roll Scholarship," or otherwise, which is conditioned upon circumstances entirely within the control of the school; or of any agreement to refund voluntarily the full amount paid by the student, or any part thereof, within 30 days or at all, upon the school's finding, from his "Qualification Record," that he should not continue the course; or of any other refund agreement conditioned upon the decision or judgment of the school, or otherwise involving deception, misrepresentation, bad faith, or the deceptive concealment of pertinent facts.

(o) Issuing any so-called "Post Graduate Advisory Service and Employment Plan," or similar instrument, which requires the payment of \$60 or any other sum for alleged future services for which a student has already paid or obliged himself, by separate contract, to pay; representing that such "certificate" is worth \$60 or any other sum; or by befuddling or confusing promises, procuring an assignment from the student of future earnings as and when received, and/or whether or not such earnings are secured through the school's efforts. (Feb. 11, 1939.)

2400. **Cooking Assemblies—Capacity and Earnings.**—Leonard E. Dickerson, an individual trading as Dickerson Manufacturing Co., engaged in the business of manufacturing gas and electric cooking assemblies, Models D and H, for lunch counter operations and in the sale and distribution thereof under the trade name "Mexihot Barbecue Hamburger Machine" 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.

Leonard E. Dickerson, in connection with the sale and distribution of his machine assemblies in commerce as defined by the act, agreed to cease and desist from the use of the statement that the griddle of such device is "14 x 16 inches," the effect of which is to convey or tend to convey the belief to purchasers or prospective purchasers that the useful or operative cooking surface or area of said griddle actually is of the dimensions and size indicated; that each of the food containers of said device is of "one gallon" capacity so as to import or imply that such container actually will hold one gallon, that is to say, four standard quarts. The said Leonard E. Dickerson also agreed to cease and desist from stating or representing that either of said machines will "pay for itself first week" so as to import or imply that the average purchaser of such machine will be able to realize sufficient profits during the first week of its use to cover the cost of the same, when such is not the fact. (Feb. 15, 1939.)

2401. Correspondence Courses of Instruction—Business Status, Employment, Opportunities, Earnings, Endorsements, Etc.—Motor Institute of America, a corporation, engaged in the sale and distribution of a printed mimeographed correspondence course of instruction concerning automobiles and Diesel engines, 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.

Motor Institute of America, in connection with the sale and distribution of its courses of instruction in commerce as defined by the act, agreed to cease and desist from:

(a) The use of the word "Institute" either with or without the words "Motor" and "America" as a part of or in connection with the corporate name under which it carries on its business; and from the use of said word "Institute" independently or in connection with any other words or expressions implying or suggesting that such correspondence trade school is an organization conducted for the promotion of learning, philosophy, art, or science, or is an association of the members of the motor industry of America for the purpose of considering and solving their problems as such.

(b) The use in advertisements of words such as "men wanted" or expressions of similar import, featured in headlines or otherwise, to contact prospective students in such manner as to mislead or deceive such prospective students into the belief that a job is offered.

(c) The use of "blind" advertisements to attract prospective students when such advertisements fail to set forth that courses of

instruction or other educational services are being offered in such manner as to mislead or deceive students, prospective students, or the public.

(d) Overstating and misrepresenting the demands and opportunities for employment in the Diesel field, and from making representations, the effect of which is to convey the belief that the opportunities for those who take the course sold by it exceed the facts.

(e) Using in its advertising matter or in personal solicitations by its salesmen overstatements or misrepresentations as to the actual earning power or probable salaries, advancement, promotions, or future security of its graduates and students.

(f) The making of misleading or deceptive statements or representations by way of advertising, oral presentation, or otherwise concerning the character, nature, quality, value, or scope of the course of instruction or educational service offered; or in any other material respect with a tendency or capacity to mislead or deceive students, prospective students, or the public.

(g) Representing that said school has laboratories or shop facilities of its own for the training of its students; that it was a pioneer in the field of Diesel training; that it is affiliated with, or endorsed by, leading members of the industry; or that industries look to said school for their Diesel men; or that its Diesel graduates are occupying profitable positions throughout the world; or making any claims or assertions of like import when not the facts.

(h) Representing either directly or indirectly that any person, though lacking in proper education, experience, or aptitude, can become a competent and expert Diesel man by taking its course of instruction.

(i) The making of misleading or deceptive statements or representations as to the services to be rendered in connection with the securing or attempting to secure employment for its students; or as to its influence or connection with any industrial or other organization, such as the Chrysler, Studebaker, or Pierce Arrow companies.

(j) Representing an offer as "special" when it is in fact a regular offer, or as "low" when it is in fact higher than its previous prices charged for the course, with a tendency or capacity to mislead, and deceive students, prospective students, or the public.

(k) Representing that certain testing equipment will be given a student upon payment of a stated amount toward his tuition when it fails to give the equipment as promised.

(l) Representing that it will "select" or will "accept" a limited number of persons for training when in fact its course is available to all likely prospects.

(m) Representing that said concern is a pioneer school in the Diesel field, or that its graduates have made their success in Diesel, when such are not the facts.

(n) Alteration of testimonial letters or other purported quotations whereby, through deletion of dates and by substitutions and omissions of words, such letters or quotations appear to refer to the Diesel course of instruction offered by said school, when such is not the fact.

(o) The use of the title "Vocational Adviser" for its sales agents; or "Acceptance Committee," "Technical Department," "Placement Department," etc., for nonexistent groups or entities; or of assertions such as "I am here to select * * * and recommend," "This is where my job comes in. I am selecting men to be admitted to our Training Program," "Now, I cannot actually accept any man's application for admittance. I can merely approve it and recommend it to the Acceptance Committee of the Motor Institute of America," "I am sent here to make the decision as to whether or not you can qualify for this Training," "My job is to look you over as carefully as I can to determine, in advance, if you can qualify to take this training and to make good in the Diesel Field," "If I feel you ARE qualified and accept your Application, you will be investigated still further when your Application reaches Chicago"; or of any other statements importing or implying that said concern is strict about admitting its trainees, receives them only after careful investigation, and confers a privilege by accepting enrollments, or that, the purpose of the agent conducting the interview is other than that of simply selling said course of instruction to all persons who can pay for it. (Feb. 16, 1939.)

2402. Files—Old as New.—Ferris Q. Sumner, an individual trading as "Kelly Precision Tool & Die Works" and "Kelly Tool & Die Works," engaged in the business of selling a type of file 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.

Ferris Q. Sumner, agreed to cease and desist from offering for sale or selling in interstate commerce old, worn, used or second-hand files which have been reconditioned or whose usefulness has been renewed by any process or processes without clearly disclosing and indicating the fact that said products are reconditioned products and/or are not new. (Feb. 17, 1939.)

2403. Baby Chicks—Business Status, Registered and Inspected.—The Wolf Hatching & Breeding Co., trade name under which Ida B. Wolf, Dan A. Wolf, Gilbert C. Wolf, and Gerald Wolf conduct a business, engaged in the purchase of eggs from various poultry raisers or

breeders and the sale of baby chicks hatched from such eggs, 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 herein.

Ida B. Wolf, Dan A. Wolf, Gilbert C. Wolf, and Gerald Wolf agreed to cease and desist from the use of the word "Breeding" as part of the trade name under which they or any of them advertise, offer for sale, or sell baby chicks in commerce as defined by the act, and from the use of the word "Breeding" either alone or in connection or conjunction with the word "Company" or "Farms" or with any other word or words or in any way, the effect of which is to import or imply or which may tend to convey the belief to purchasers that the said individuals actually own and operate or control a place or farm where they breed and raise poultry, when such is not the fact. The said individuals also jointly and severally agreed to cease and desist from the use in advertisements and advertising matter or in any other way of statements or representations which directly assert or clearly import or imply that all of the chicks offered for sale and sold by them have been registered or inspected by American Poultry Association, or inspected, blood tested, culled, and leg banded by a licensed A. P. A. inspector, or have been bred and hatched under the supervision of a licensed A. P. A. inspector, or that all of such chicks come from a breeder and flock improvement programs or from a breeder that has been blood tested for B. W. D., or that all of said chicks are backed by the integrity, reputation, and guarantee of the said individuals, when such is not the facts. (Feb. 17, 1939.)

2404. Corrugated Boxes—Business Status.—Odman Corp., engaged in the sale and distribution of corrugated boxes or shipping containers 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.

Odman Corp., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from marking or stamping its products with its corporate or trade name together with the words "Certificate of Box Maker" or the word "Maker" or any other word or words of similar meaning so as to import or imply that the said Odman Corporation makes or manufactures the said 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. (Feb. 21, 1939.)

2405. **Eggs or Baby Chicks—Business Status.**—Stanley E. Patterson, an individual, trading under the name and style "Patterson Custom Hatchery and Breeding Farms," engaged in the business of "custom hatching" eggs and also of selling eggs for hatching purposes 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 in commerce as set forth therein.

Stanley E. Patterson agreed to cease and desist from the use of the word "Breeding" as part of the trade name under which he advertises, offers for sale, or sells eggs or baby chicks in commerce as defined by the act, and from the use of the word "Breeding" either alone or in connection or conjunction with the word "Farms" or with any other word or words or in any way, the effect of which is to import or imply or which may tend to convey the belief to purchasers that the said Stanley E. Patterson actually owns and operates or controls a place or farm where he breeds and raises poultry, when such is not the fact. (Feb. 24, 1939.)

2406. **Rubber Bands—Government Standards Conformance.**—Plymouth Rubber Co., Inc., a corporation, engaged in the business of manufacturing rubberized materials, including rubber bands, and in the sale of its said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Plymouth Rubber Co., Inc., in connection with the sale and distribution of its rubber bands in commerce as defined by the act, agreed it would cease and desist from the use in its advertising matter of the statements "Our Bands are guaranteed to meet Federal Trade Commission Specifications in every detail" or "Our bands are guaranteed to meet Federal Commission specifications in every detail," when in fact, there are no "Federal Trade Commission" or so-called "Federal Commission" standard specifications for products of such character; and from the use of the said statements, or either of them, or of any other statement or representation of similar meaning, the effect of which is to convey or tend to convey the belief to purchasers that the Federal Trade Commission or any "Commission" of the United States Government has adopted, approved, or promulgated standard specifications or requirements for rubber bands. The said corporation also agreed to cease and desist from stating or representing that its rubber band products conform to specifications or requirements that have been or may hereafter be adopted by the Federal Government or any branch or agency thereof, when such is not the fact. (Mar. 1, 1939.)

2407. **Chick Brooders—Unique and Qualities.**—Makomb Steel Products Co., a corporation, engaged in the business of manufacturing, among other things, a type of chick brooder equipped with an electrically heated metallic element against which the chicks may place their backs to keep warm, 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.

Makomb Steel Products Co., in connection with the offering for sale, selling, and distribution of its Biddy-Way brooders in commerce as defined by the act, agreed it will cease and desist from the use in its advertisements and advertising matter or in any other way of statements or representations which directly assert or the effect of which is to convey or tend to convey the belief to purchasers that the said brooder is the only electric battery with or which supplies so-called contact heat or is the only brooder of the "contact" or electric heat type which so closely or effectively duplicates the type of brooding provided by the mother hen, or that the said device will maintain the constant temperature of 105 degrees or any other constant temperature when left in a room though the temperature of such room may vary from 75 degrees to 55 degrees, or that the said device will produce a constant, unvarying face temperature of 105 degrees at a room temperature of 65 degrees, when such are not the facts. (Mar. 2, 1939.)

2408. **Books—Composition.**—Publishers Service Co., Inc., and New York Post, Inc., corporations, engaged individually and jointly in the business, among other things, of offering for sale, selling, and distributing books, including sets of 10 volumes titled "Oxford Universal Dictionary" and "Oxford Universal English Dictionary" 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.

Publishers Service Co., Inc., and New York Post, Inc., in connection with the sale and distribution of their books in commerce as defined by the act, agreed, and each of them agreed to cease and desist from the use in their or its advertisements and advertising matter or in any other way of the words "gold leaf" as descriptive of the lettering, embossing, or finishing of such books which are not in fact lettered, embossed, or finished in gold leaf or gold; and from the use of the word "gold" in any way so as to import or imply that the material used in the lettering, embossing, or finishing of said books is gold leaf or gold, when such is not the fact. (Mar. 2, 1939.)

2409. **Casein Glue—Qualities.**—Adhesive Products Co., a corporation, engaged in the business of manufacturing a casein glue and in the

sale thereof under the trade name "Kaseno No. 414" 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.

Adhesive Products Co., in connection with the sale and distribution of its product in interstate commerce, agreed it will cease and desist from the use on its labels or in its advertising matter of the word "waterproof" as descriptive of its No. 414 Kaseno Glue, which in fact is not waterproof, and from the use of the word "waterproof" in any way so as to import or imply that the product to which said word refers is impervious to water, when such is not the fact. (Mar. 2, 1939.)

2410. Casein Glue—Qualities.—T. B. Kane Manufacturing Co., a corporation, engaged in the manufacture of a casein glue and in the sale 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.

T. B. Kane Manufacturing Co., in connection with the sale and distribution of its product in commerce as defined by the act, agreed it will cease and desist from the use in its printed or advertising matter or otherwise of the word "waterproof" or the word "watertite" as descriptive of its casein glue which is not in fact waterproof or impermeable to water and from the use of the word "waterproof" or the word "watertite" in any way so as to import or imply that said product is impervious to water, when such is not the fact. (Mar. 2, 1939.)

2411. Candies—Lottery Scheme.—Brock Candy Co., a corporation, engaged in the business of manufacturing and packing candies in various assortments 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.

Brock Candy Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed it will cease and desist from the use of any scheme, plan, or method of sale or of promoting the sale of its products which involves or includes the use of any gift enterprise, lottery or scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article. (Mar. 6, 1939.)

2412. Drawing Instruments—Business Status.—Theo. Altenecker & Sons, a corporation, engaged in the business of manufacturing draw-

ing instruments, a classification which includes compasses, bow instruments, ruling pens, beam compasses, dividers, and railroad pens, and in the sale of said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Theo. Alteneder & Sons, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating or representing in its catalogs or otherwise that the drawing instruments offered for sale and sold by it are the only drawing instruments that are presently made in the United States of America and/or that it is the only manufacturer of drawing instruments in this country, when such is not the fact. (Mar. 7, 1939.)

2413. **Surgical Instruments and Laboratory Supplies—Source or Origin.**—Clay-Adams Co., Inc., a corporation, engaged in the business of selling at wholesale various types of surgical instruments and laboratory supplies, including microscope cover glasses, 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.

Clay-Adams Co., Inc., in connection with the sale and distribution of its products in commerce as defined by the act, agreed it will cease and desist from the use on its labels affixed to the containers of its products or in any other way of the slogan "Made in U. S. A." or of any other word or words of similar inference so as to import or imply that the glass of which said products are composed is or that the products in their entirety are of domestic origin, when such is not the fact. (Mar. 8, 1939.)

2414. **Flour—Lottery Schemes and Devices.**—Dobry Flour Mills, Inc., a corporation, engaged in the business of selling flour 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.

Dobry Flour Mills, Inc., agreed, in connection with the offering for sale, sale, and distribution of its products in commerce as defined by said act, it will cease and desist from supplying to or placing in the hands of others lottery cards or devices for the purpose of enabling such others to dispose of or sell any merchandise by the use thereof; shipping, transporting, or mailing to the trade or members of the public lottery cards or devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use

thereof; selling or otherwise disposing of any merchandise by the use of lottery cards or devices; the use of any scheme, plan or method of sale or of promoting the sale of merchandise which involves the use of any gift enterprise, lottery, or scheme of chance whereby an article or thing of value is given as a prize or premium for or in consideration of the purchase of any other article. (Mar. 8, 1939.)

2415. Toilet Goods, Cosmetics, Medicinal Preparations, Luck Charms, Etc.—Qualities, Safety, Origin, Free, Success Guarantee, Special Offers, Earnings, Etc.—Keystone Laboratories, Inc., a corporation, operating also as Memphis Mail Order House, Curio Products Co., and White Line, engaged in the sale and distribution in interstate commerce of toilet goods, cosmetics, medicinal preparations, luck charms, and numerous other kinds of merchandise, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Keystone Laboratories, Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from:

Representing that Poreen ointment, La Jac Lovin Pink Cream for Dark Skins, La Jac Orange Beauty Glow Cream, or any similar preparation is a skin food or a skin whitener; or has the capacity to remove, free the skin of, cause to vanish, or otherwise do away with imperfections, blackheads, eczema, tetter, pimples, ringworms, eczemic itch, rash, bumps, dark or flabby or blemished skin, or acid condition of the skin; or brightens or lightens dark skin unless limited to a temporary lightening thereof; or makes the skin smooth or soft, or gorgeous or ravishing, or lovely, radiant, or beautiful, instantly or at all.

Representing that La Jac Massage Cream, Rite Now Miracle Bleach and Facial Pack, Jean Noel Turtle Oil Tissue Cream, Hi-Hat Turtle Oil Tissue Cream, Darboux 3-Way Youth Cream, Darboux Skin and Tissue Cream, or any similar preparation eliminates, rubs out, removes, ends, banishes, prevents, keeps away, builds up, closes, or fills out wrinkles, lines, crow's feet, bumps, sagging skin, aged skin, droopy contours, coarse or gaping pores; or tones, invigorates, penetrates, nourishes or works beneath the skin; or builds up underlying or broken skin tissues; or gives the face, throat, neck or cheeks a youthful contour; or gives the skin a lasting beauty, or a beauty that will not wear off or wash off; or makes the skin fairer, softer or fairly smooth; or that turtle oil keeps the skin youthful.

The use of the words "Tissue Cream," either independently or in connection with the words "Jean Noel," "Hi-Hat," "Turtle Oil," "Darboux," or any other words, as descriptive of its products; or

of any similar term, designation or expression the effect of which is to import or imply that such a product builds up or otherwise beneficially affects the tissues of the skin.

Representing that La Jac Brite Skin Bleach or any similar product will overnight, or in any stated time, make the skin five shades lighter, or any number of shades lighter; or is "nature's gift" to take from the skin "all that is ugly and unattractive," or leaves "only the beautiful, the radiant and the lovely."

Representing that Roreen, Keystone Combination Pressing Oil Compound and Hair Grower, Keystone Mange & Scalp Treatment, F. M. Hair Restorer, Wang, La Jac Temple Oil, La Jac White Hair Pressing Pomade, Hi-Hat Combination Pressing Oil Compound Straightener and Hair Grower, Hi-Hat Nu-Life Hair Grower Mange and Scalp Treatment, Hi-Hat Jockey & Jickey Nu Gloss Four Way Hair Dressing Pomade, or any similar preparation grows hair, soft lustrous hair, longer hair, hair longer, short hair longer, or hair on temples, thin spots, or bald spots; lengthens hair, thickens thin hair, or promotes new growth of hair; strengthens, enlivens, or revitalizes the hair; gives every hair new life and vitality, or glamorous new life to harsh, dull hair; or causes the life force of the hair to resume its work; Restores gray and faded hair to its natural color, or gray lifeless hair to youthful color, luxuriousness and vitality; Works both outside and inside the hair shaft, or from hair roots to hair ends, or beneath the scalp; or tones the scalp; or makes the scalp healthy or scale-free, without regard to underlying causes; Ends dandruff, or removes the cause of dandruff; or works in the worst cases of dandruff; or stops hair from falling out; or, inferentially or otherwise, is a competent treatment for dandruff, tetter or eczema; Removes the handicap of short, skimpy hair; insures a head of healthy hair; or gives lavish beauty to the hair; Is a sensational preparation or a cure; or accomplishes any of the foregoing results "actually," "Instantly," "almost instantly," "quicker," "faster," "in record-breaking time," or at all; The use of the words "Hair Grower" or "Hair Restorer," either independently or in connection with the words "Keystone," "Hi-Hat," "Nu-Life," "F. M." or any other words, as descriptive of its products; or of any similar term, designation or expression the effect of which is to import or imply that such a product will cause hair to grow or will restore a growth of hair.

Representing that Biff An Inhalant, Flu-Go, Cu-Bo One Night Healing Salve or any similar preparation will cure colds or sore throats, or is a competent treatment or effective remedy for such conditions or for bronchitis, flu or pneumonia; Representing that

pneumonia, tuberculosis and other serious pulmonary complications frequently follow common colds, irritating coughs or sore throats.

Representing that Keystone Rx 4344 or any similar preparation will cure, remove the cause of, or is a competent treatment or an effective remedy for kidney, bladder or liver ailments, rheumatism or backache; or that K&B Rx 4344 is a stimulant for the kidneys or exerts antiseptic action upon the kidneys or urinary tract.

Representing that Germ-Ex or any similar preparation kills germs instantly or prevents all germicidal infections; or inferentially or otherwise, that its use as a douche will prevent venereal disease or other communicable infections.

Representing that Ansan Powder or any similar preparation corrects the tendencies of female organs toward diseases or infections; or, inferentially or otherwise, that it is a dependable protection against the contracting of venereal disease; or that it is the prescription of a renowned women's doctor, when such is not the fact.

Representing that Velvene or any similar preparation is a germ killer, or that germs can't live in it or with it; or that it invigorates weak, puny hair.

Representing that BWI Tonic or any similar preparation is a competent treatment or an effective remedy for pimples, sores and other skin diseases due to bad blood, or that it corrects all these troubles.

Representing that Fe-Tone or any similar preparation is an effective treatment or a competent remedy for any form of female troubles, or is a women's tonic, or regulates or alleviates painful menstrual periods or the discomforts incident thereto.

Representing by inference or otherwise, that its medicines are "guaranteed" to insure one's health and happiness, or to make one well and keep him well, strong, healthy, and at his best all the time; or from the use of the word "guaranteed" or the word "guarantee" unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is actually offered by way of security, as for example, refund of purchase price. Representing, by the use of expressions such as "The answer to modern woman's demand for safety," "Are you ready for the expense and responsibilities babies demand," "The dangers and tribulations of child birth," "The coming of babies a menace to health," "Protection," "Better be safe than sorry," "Be free from worry at all times," "Harmless preventives," "Absolutely safe," "100% effective," or otherwise, that Saftee-Vags or any similar preparation is a safe or dependable contraceptive or can be relied upon to prevent pregnancy.

Representing that Keystone Nux and Iron (Make Man) Tablets or any similar preparation is a powerful tonic or invigorator; makes

vigorous and robust men and women out of weaklings, without regard to age, or at all; is an effective remedy for run-down conditions, lack of vitality or general debility however caused, or at all; or by the use of expressions such as "Restore youthful courage, virility, and ambition," "Make life worth living and love worth having," "They produce for you just the results you have in mind—safely and without delay," "Do their work quickly and effectively," or otherwise, that such a preparation is an aphrodisiac or is a competent, quick, or efficient aid to the pursuit of venery.

Representing that the possession or use of Lucky Mojo Good Luck Incense, Hindu Mystic Love Perfume, Lucky Mojo Sweetheart Drops O'Love, Lucky Love Sachet Powder, Holy Oil with Live Loadstone, High John the Conqueror Root, or any similar article or product brings good luck or keeps out bad luck; or brings to the possessor love, romance, power, life, inspiration, easy money, popularity, irresistibility, attraction, fidelity of spouse or sweetheart, and/or success in games, business "and everything"; or will in any way affect one's fortunes or the attainability of his desires.

Representing that a perfume is of "Hindu" or other foreign origin when such is not the fact; or that said perfume was used by the princes and princesses of India to gain love, power or romance.

Representing that any article is given "free" when receipt of such article is contingent upon any consideration, terms, or conditions, as payment of money or rendering of services, not clearly and unequivocally disclosed in direct connection with the making of such representations.

Representing that an agent's outfit or selling kit has a value in excess of the actual cash value of the various items therein contained;

Representing that it sets up any dealers in business on its own capital; or that such business will not cost the dealer one penny; or that such dealer takes no risk of loss; or ever fails, or that his success is guaranteed; when such are not the facts.

Representing that an offer is "special" or limited in any way when in fact such offer is the usual and customary proposition made to all inquirers.

Advertising products as being those of "Dr. Menke" or any other fictitious person.

Making unmodified representations or claims of earnings in excess of the average earnings of its active full-time salespersons or dealers achieved under normal conditions in the due course of business; Representing that its salespersons or dealers will have the chance or opportunity of earning any amount which is in excess of amounts theretofore actually earned by one or more of its salespersons or dealers under normal conditions in the due course of business. (Mar. 9, 1939).

2416. **Readers' Preference Reports—Nature of Business or Service and Testimonials.**—Russell J. Waldo, an individual trading as North American Editors' Service, engaged in the sale and distribution in interstate commerce of Readers' Preference Reports designed to influence the decisions of persons purchasing advertising space in magazines, 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.

Russell J. Waldo, in connection with the sale and distribution of his Readers' Preference Reports in commerce as defined by said act, agreed to cease and desist from representing that his Readers' Preference Reports are based upon replies to 90% of the questionnaires sent out by him or upon any other percentage or number of replies in excess of those actually received by him; representing that his report service is conducted at the instance of eight advertising agencies or of any advertising agencies; representing that publications have gained or lost advertising lineage according to whether they have purchased or used his Readers' Preference Reports; Publication, as a general endorsement of himself and his business, of a testimonial letter intended by the writer for a specific individual case; or altering in any way a letter used by him for publicity, such as by adding an official title which did not appear in the original letter; use of the term "Editors' Service" as part of his trade name or otherwise descriptive of his business when such business is not in fact a service for editors. (Mar. 9, 1939.)

2417. **Imitation Food Flavorings—Earnings, Opportunities, Refunds, National Advertising and Composition.**—Nelson A. Frazar, an individual, engaged in the manufacture of imitation food flavorings for use in making jellies, syrups, soft drinks, and wines, 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.

Nelson A. Frazar agreed, in connection with the sale and distribution of his products in commerce as defined by the act, to cease and desist from overstating and misrepresenting the actual demand for his products and the repeat business enjoyed by his distributors; Making unmodified representations or claims of earnings or profits in excess of the average earnings or profits of his active full-time distributors or dealers achieved under normal conditions in the due course of business; Representing that his distributors or dealers will have the chance or opportunity of earning or profiting in amounts exceeding those theretofore actually earned or profited by one or

more of his distributors or dealers under normal conditions in the due course of business; Representing that refunds are made of money paid in by persons and firms desiring territory already taken by other when such is not the fact; representing that his products are nationally advertised, or that orders received through national advertising are turned over to the local distributors, when such are not the facts: the use in advertising or trade promotional literature of the word "Maple-X" in any way so as to import or imply that the product to which said word refers is derived from the sap of the maple tree. If the flavor of the product simulates that of maple and the word "Maple-X" is used as descriptive of such flavor, then, in that case, the word "Maple-X" shall be accompanied by some other word or words in equally conspicuous type indicating clearly that the product is not maple, or is other than an imitation maple flavor. (Mar. 10, 1939.)

2418. **Course of Instruction—Business Status, Qualities, Results, Connections and Testimonials.**—The College of Intellectual Science, a corporation, engaged in the sale and distribution in interstate commerce, of a printed and mimeograph set of lessons in a branch of psychology which it designates "Intellectual Science," 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 College of Intellectual Science, in connection with the sale and distribution of its course of instruction in commerce as defined by said act, agreed to cease and desist from the use in its corporate or trade name of the word "College," either with or without the words "Intellectual Science," as descriptive of its organization, or in any other manner with the capacity and tendency to convey the belief that it conducts an institution of higher learning with authority to confer degrees, when such is not the fact; referring to its organization as a "correspondence school," when in fact no correspondence course is given as the term is commonly understood and accepted by the public; representing that it has a "faculty," when there is no teaching staff worthy of such designation; or describing as a "diploma" any paper or instrument given to a student which is not based upon ascertained proficiency in the branches taught; representing that the instruction offered is new or startling or reveals hidden secrets; or that by following such instruction one will be able to control or master his own fate or shape his own future as he wills it or use the forces of creation for his own purposes; or realize one's dreams or attain or insure success, wealth, financial independence, social advancement, prestige, intellectual powers, vigorous health, long life, renewed vitality or attraction for the other sex; or banish

or eliminate fear or worry; or accomplish these or any similar results immediately or at all; the use of the name "Thomas A. Edison" or of any other notable personage in a manner the effect of which is to import or imply or cause the belief that such person was in any way interested in the inception of the course of instruction offered for sale, in the absence of substantial evidence thereof; publishing or causing to be published any testimonial containing any representation contrary to the foregoing agreements. (Mar. 16, 1939.)

2419. **Coloring Compound for Noodles, Spaghetti, Etc.—Composition, Government Sanction and Certification.**—Reuben-Richards Co., Inc., a corporation, engaged in the sale and distribution in interstate commerce of a coloring compound for noodles, macaroni, and spaghetti, designated "Richards Danish Vegetable Base—N—For Noodles," 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.

Reuben-Richards Co., Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed it will cease and desist from selling, shipping to or placing in the hands of food purveyors any yellow coloring preparation designated "Richards Danish Vegetable Base—N—for Noodles" or otherwise, for use in any noodle, macaroni, or related product in such manner as deceptively to import or imply to purchasers, prospective purchasers or the consuming public that such product contains egg in greater proportion than is in fact present or in such manner as to mislead or deceive in any other respect; Representing that all Federal and State Pure Food Laws permit the usage of this product or of any similar color preservative or other substance in the preparation of any articles of food in a manner whereby inferiority is concealed. The use in its advertising matter of any certificate of analysis by a chemist in a manner importing or implying that such certificate refers to the product featured, when such is not the fact; or representation by caption or other conspicuous reference to the State of New Jersey in such published certificate in a manner having the tendency and capacity to lead customers to believe that the State of New Jersey has analyzed the finished product containing "Richards Danish Vegetable Base—N—For Noodles" and found no coloring matter present, when in fact such certificate was not made by or for the State of New Jersey but by a private laboratory not connected with it. (Mar. 17, 1939.)

2420. **Cosmetics—Composition, Qualities, Nature of Manufacture, Success, Business Status and Connections.**—James Benson and Ruby Allen Trimble, copartners, trading under the firm name and style of

"Ruby's Cosmetic Laboratories," engaged in preparation of their cosmetics designated "Ruby's Bleaching Cream," "Ruby's Scalp Food Compound," "Ruby's Straightening Oil," and in the sale thereof in interstate commerce in competition with other partnerships, firms, individuals, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

James Benson and Ruby Allen Trimble, in connection with the sale and distribution of their products in commerce as defined by the act, agreed to cease and desist from—

(a) Stating or representing in their advertisements and advertising matter of whatever kind or character or in any other way that the said product, "Ruby's Bleaching Cream," contains a vitamin as an ingredient thereof and that due to this or any other content, the said product, when locally applied to the skin, will rejuvenate or vivify such skin, feed the underlying tissues, keep the face young, eliminate wrinkles, or restore firmness of youth.

(b) The use of the word "Food" as part of the trade name or designation for its Compound or otherwise as descriptive of said product designed for local application to the scalp of users.

(c) Stating or representing that the local use of either their "Scalp Compound" or their "Straightening Oil" product upon hair will cause such hair to grow one-half inch monthly or increase hair growth to any extent beyond what it would naturally grow under normal circumstances without the use of the product or that it would have any effect other than possibly to straighten kinky hair.

(d) Stating or representing that their aforesaid products, or any thereof, are or is manufactured by a registered chemist or that said products, or any thereof, are or is now being used in thousands of beauty shops and homes throughout the world.

(e) The use of the word "Laboratories" as a part of their trade name or in any other way so as to import or imply that the said copartners own, operate, or control laboratories in which their products are made or prepared.

(f) Stating or representing that the business conducted by them is a subsidiary of or in any way connected or associated with a so-called Beauty University. (Mar. 17, 1939.)

2421. **Chemical Compounds—Government Reports, Endorsements or Approval.**—Ro-Ed Engineering & Combustion Co., a corporation, engaged in the sale and distribution in interstate commerce of chemical compounds including "Art-Gel" and "Art Solv," which products, designed for the removal of scale and carbon from engines, boilers, water mains, etcetera, are purchased from another concern and resold by Ro-Ed Engineering & Combustion Company under its own brand

names of "Knox-Skale" and "Knox-Karbo;" 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.

Ro-Ed Engineering & Combustion Co., in connection with the sale and distribution of its products "Knox-Skale" and "Knox-Karbo," in commerce as defined by the act, agreed it would cease and desist from unauthorized publication in its advertising matter, trade promotional literature, or otherwise, of copies of Navy Laboratory Test Reports, Certificates of Approval, confidential interdepartmental Naval communications, or any other document, writing, or notation whatsoever of a confidential or restricted nature; altering in any manner a purported copy of a Navy Certificate of Approval or other instrument or in any other way representing, directly or indirectly, that the Navy Department has endorsed, approved or recommended "Knox-Skale" and/or "Knox-Karbo," when such is not the fact. (Mar. 17, 1939.)

2422. **Handkerchiefs—Business Status.**—H. I. Herzmann, Inc., a corporation, engaged in the business of selling 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.

H. I. Herzman, Inc., agreed, in connection with the sale and distribution of its products in commerce as defined by said act, it will cease and desist from the use on its stationery and other printed or advertising matter of the word "Manufacturers" or the statement "we manufacture" as descriptive of its business, and from the use of the word "Manufacturers" or "manufacture" or of any other word or words of similar meaning so as to import or imply or the effect of which is to convey or tend to convey the belief to purchasers that the said corporation makes or manufactures the handkerchiefs offered for sale and sold by it or that it actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured. The said corporation also agreed to cease and desist from stating or representing in any way on its printed or advertising matter that it has or owns a factory at Passaic, N. J., or that it maintains foreign offices at Belfast, Brussels, Puerto Rico, Swatow, China, or elsewhere abroad, when such is not the fact. (Mar. 17, 1939.)

2423. **Sun Glasses—Source or Origin.**—Max Pressner and Emanuel Pressner, copartners engaged in the sale and distribution of sun glasses 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.

Max Pressner and Emanuel Pressner agreed and each of them agreed, in soliciting the sale of and selling sun glasses in interstate commerce, to cease and desist from the use on display cards which serve as a mounting for said sun glasses of the words "Made in America by American Workmen" as descriptive of products not composed of parts all of which are made in the United States of America and by American workmen; and from the use in any way of the words "Made in America" either alone or in connection with the words "by American Workmen" or with any other word or words so as to import or imply that the products to which said words refer are composed of parts all of which are made in America and/or by American workmen, provided that, if said products are composed in part of a part or parts which are made in the United States of America and the words "Made in America" are used to designate the same, then in that case said words shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said products are composed in part of a part or parts not made in the United States of America. (Jan. 26, 1939.)

2424. Stationery—Nature of Manufacture.—Flexible Printing Co., Inc., a corporation, engaged in the business of printing cards, letter-heads, and other stationery, 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.

Flexible Printing Co., Inc., in connection with the sale and distribution of its printed products in commerce as defined by the act, agreed it will cease and desist from using in its advertising matter the words "engraved" or "engraving," either alone or in connection or conjunction with the word "process" or any other word or words as descriptive of its products, so as to import or imply, or convey or tend to convey the belief to purchasers, that said products are made by engravers and are the result of making impressions from inked, engraved plates, commonly known to the trade and purchasing public as "engraving" or embossing. (Mar. 21, 1939.)

2425. Skin Cream—Qualities.—Lord & Taylor, a corporation, engaged in the business of operating a department store from which it sells and distributes merchandise, including cosmetics, 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.

Lord & Taylor, in connection with the sale and distribution of a cream product in commerce as defined by the act, agreed it will cease and desist from the use in its advertising matter or in any other way of the word "nourishing" as part of the trade name for said product, and from the use of the word "nourishing" or the words "Food For Your Skin" or of any other word or words of similar import, the effect of which is or may be to convey the belief to purchasers that the product to which the word or words refer, when used upon the skin, will nourish or feed the same, when such is not the fact. (Mar. 22, 1939.)

2426. *Skin Preparations—Qualities and Business Status.*—Mary Dunhill, Inc., a corporation, engaged in the business of selling and distributing cosmetics 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.

Mary Dunhill, Inc., in offering for sale and distributing its cream products in commerce as defined by the act, agreed it will cease and desist from the use in its printed or advertising matter, on its containers or in any other way of the word "nourishing" either alone or in connection or conjunction with the word "cream" or with any other word or words as a trade name for or otherwise descriptive of its said product so as to import or imply or the effect of which is or may be to convey the belief to purchasers that the said product, when used upon the skin, will nourish or feed the same, when such is not the fact. The said corporation also agreed, in connection with the advertising, labeling, sale, and distribution of its lotion and astringent products, to cease and desist from stating or representing that its said products, or any thereof, will correct acne or is a treatment for an acne condition of the skin, regardless of the cause of such condition, or that any of such products is a skin tonic. The said corporation further agreed to cease and desist from the use on its labels or otherwise of the word "Paris" so as to import or imply that the said corporation has an office, branch, or connection at Paris, France, when such is not the fact. (Mar. 22, 1939.)

2427. *Cosmetics and Hair Preparations—Qualities, Value, Special Price Free, Guarantee, Special Offers, Earnings and Business Status.*—Three Dreams Laboratories, Inc., a corporation, Golee B. Bryant, the sole owner and secretary-treasurer of said corporation and conducting its business, engaged in the sale and distribution of cosmetics and hair preparations 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.

Three Dreams Laboratories, Inc., and Golee B. Bryant agreed, and each of them agreed, in connection with the sale and distribution of their products in commerce as defined by the act, to cease and desist from—

Representing that the products offered and sold under the "Three Dreams" brand, or any similar preparations, are efficacious or of value for beauty troubles generally, or will make a person lovely all the time or keep one lovely all the time or bring love, romance, admiration, or popularity to the user.

Representing that such products are the great sensation of the age or that thousands have used and praised them or that any persons in excess of the actual number have so used or acclaimed them.

The use of the words "Hair Grower" or of any similar terms, designation, or expression, or of any statement, the effect of which is to import or imply that such a product will cause hair to grow, or to grow long or beautiful or lustrous or wavy; or that such preparation is a hair-growing treatment of the highest power or of any power.

Representing that the preparations heretofore sold as "Three Dreams Hair Grower" or "Three Dreams Special Hair Grower" or any similar preparation, is a competent treatment or an effective remedy for dandruff, tetter, eczema, falling hair, or dry, itchy scalp, every time or at all.

Representing that Three Dreams Turtle Oil Bleach Cream or any similar preparation is nourishing to the skin or will rid any person of an ugly, muddy skin, or works quickly or works three times faster or is not "just another cream."

Quoting a figure purporting to be the "value" of an article or a group of articles which is in excess of that for which said article or group of articles is sold or can be obtained in the usual course of business; or representing that a price named for an article is "Special" when it is in fact the regular and customary price for which said article is sold.

Representing that any article is given "Free" or without cost when receipt of such article is contingent upon any consideration, terms, or condition, as payment of money, purchase of other articles, or rendering of services, not clearly and unequivocally disclosed in direct connection with the making of such representations.

Use of the word "Guarantee" unless whenever used clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security, as for example, refund of purchase price.

Representing that the regular offer made to agents is a "Special Offer" or that such agents pay half price for their goods, or double their money three times faster or make three times more money or any

more money whatsoever than other agents, when such are not the facts.

The making of any unmodified representations or claims of earnings or profits made by sales persons or distributors in excess of the average earnings or profits achieved under normal conditions in the due course of business.

The use of the word "Laboratories" as part of the corporate or trade name under which they carry on their business; and from the use of the word "Laboratories" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said company owns, and operates or directly and absolutely controls a laboratory, plant, or factory in which the products which it sells are made, manufactured, or compounded, when such is not the fact. (Mar. 23, 1939.)

2428. Radios—Quality and Manufacturer.—Pierce-Airo, Inc., a corporation, engaged in the business of manufacturing radio-receiving sets, certain thereof being designed for home use and bearing the trade name "DeWald," and others carrying the trade name "Motor-tone," for use in automobiles, and has sold and distributed its said products in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Pierce-Airo, Inc., agreed, in its advertising or in any other way in connection with the sale and distribution of its radio-receiving sets in commerce as defined by the act, to cease and desist from stating or representing that said sets have or contain 12 or any other designated number of tubes so as to import or imply or the effect of which statements or representations is to convey or tend to convey the belief to purchasers or prospective purchasers that said radio-receiving sets not only have or contain 12 or other designated number of tubes but that each of such tubes functions in a radio sense and is other than a mere balance tube, when such is not the fact. Said corporation also agreed to cease and desist from the use on its stationery, printed or advertising matter or in any other way of the words "Pierce-Airo" either alone or in connection with an arrow, or of any other phonetic or correct, spelling of the words *Pierce Arrow* so as to confuse, mislead, or deceive purchasers or prospective purchasers of its radio-receiving sets that said products are or have been made, manufactured, or sold by Pierce Arrow Motor Car Co. of Buffalo, N. Y., or by any subsidiary or successor thereof, when such is not the fact. (Mar. 23, 1939.)

2429. Dresses—Patents.—Magic Snap-On Dress Co., Inc., a corporation, engaged in the manufacture of women's popular priced dresses

including dresses equipped with snap fasteners as closures, 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.

Magic Snap-On Dress Co., Inc., in connection with the sale and distribution of its products in commerce as defined by the act, agreed it will cease and desist from the use on tags or labels attached to or accompanying ladies' dresses or other products sold by it, or in any other way, of statements such as "Protected by patents granted," or assertions of similar meaning so as to import or imply, or the effect of which is to convey or tend to convey the belief to purchasers that the products to which such statements refer are actually protected by virtue of existing granted patents, when such is not the fact; statements such as "Protected by patents pending," or assertions of similar meaning so as to import or imply, or the effect of which is to convey or tend to convey the belief to purchasers that a pending application for a patent is or affords protection to the applicant against infringement prior to the issuance of the same. (Mar. 27, 1939.)

2430. Dresses—Patents.—Roselle Frocks Manufacturing Co., Inc., a corporation, engaged in the manufacture of women's popular-priced dresses including dresses equipped with snap fasteners as closures, 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.

Roselle Frocks Manufacturing Co., Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed it will cease and desist from the use on tags or labels attached to or accompanying ladies' dresses or other products sold by it, or in any other way of statements such as "Protected by patents granted," or assertions of similar meaning so as to import or imply, or the effect of which is to convey or tend to convey the belief to purchasers that the products to which such statements refer are actually protected by virtue of existing granted patents, when such is not the fact; statements such as "Protected by patents pending," or assertions of similar meaning so as to import or imply, or the effect of which is to convey or tend to convey the belief to purchasers that a pending application for a patent is or affords protection to the applicant against infringement prior to the issuance of the same. (Mar. 27, 1939.)

2431. **Jewelry—Composition and Guarantee.**—J. V. Mulligan, sole trader, engaged in sale and distribution of class, school, and fraternity jewelry in interstate commerce, in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

J. V. Mulligan, in connection with his sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) The use in his advertising or sales representations or as a stamp or marking or label for his rings or other articles of the term "10-K," or words, phrases, statements, or representations of similar import as descriptive of a ring or other article of which the gold content is other than 10 carats or better of fine gold throughout.

(b) Guaranteeing or otherwise representing that an article offered for sale by him is of a specified quality when he does not in fact replace inferior articles thus sold with others that would meet the specifications stated. (Mar. 30, 1939.)

2432. **Courses of Instruction—Opportunities, Refund, Employment, Sponsors, Etc.**—Walter H. Candler, a sole trader, doing business under the name and style of Candler System Co., engaged in selling courses of instruction in the Continental Code for use by radio operators and the sending of instructions by mail for the use of students of such courses, in interstate commerce, in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Walter H. Candler, in connection with the sale and distribution of his course of instruction in commerce as defined by the act, agreed he will cease and desist from—

Overstating and misrepresenting the demands and opportunities for employment in the radio-communication field, and from making any representations the effect of which is to convey the belief that the opportunities for those who take the instruction course sold by Walter H. Candler exceed the actual facts.

Representing that the Candler training "offers" or otherwise tenders or assures world-wide travel, adventure and/or a good rate of pay; or that success will be "certain" for any person taking such instruction.

The use of any so-called "money-back" guarantee, or refund agreement conditioned upon the student's failure to pass a code test or other contingency which has the capacity, tendency, or effect of misleading or deceiving students or prospective students because of the circumstances or other conditions of its use, or which otherwise involves deception, misrepresentation, bad faith, or the deceptive concealment of pertinent facts.

Representing that an employment service is available to the student or graduate without cost, when such is not the fact; or making deceptive statements as to services to be rendered in connection with the securing or attempting to secure employment for such students or graduates.

Representing that Jean Hudson obtained her license through or as the result of Candler training, when such is not the fact.

The use of the words "Association Western Union Employees" on his printed matter or trade promotional literature or otherwise, in any manner the effect of which is to convey or tend to convey or cause the belief that the Association of Western Union Employees publishes or sponsors such printed matter or promotional literature, when such is not the fact. (Apr. 3, 1939.)

2433. Plush and Pile Fabrics—Source and Composition.—Albert A. Levy, William E. Roehen, and John Hastedt, executors of the estate of Otto Timme, deceased, engaged in commerce under the trade name of E. F. Timme & Son, with their place of business in the city of New York. Victoria Plush Mills is a Pennsylvania corporation with principal office in the city of New York and plants in cities of Swarthmore and Lenni, State of Pennsylvania. Woonsocket Falls Mill is a Rhode Island corporation with principal office in city of New York, and its plant in the city of Woonsocket, State of Rhode Island. All three concerns occupy the same or adjoining offices in New York City.

Victoria Plush Mills and Woonsocket Falls Mill, engaged in the manufacture of plush and pile fabrics simulating furs in appearance and in the sale and distribution thereof through E. F. Timme & Son as their sales agent, in interstate commerce, in competition with other corporations and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Albert A. Levy, William E. Roehen, and John Hastedt, and Victoria Plush Mills and Woonsocket Falls Mill each agreed that in connection with the sale and distribution of their products in commerce as defined by said act, they would cease and desist from the use, or from placing in the hands of others for their use, of—

(a) Labels, brands, or other trade indicia bearing the words "Labrador Fur" or "Klondike Fur," or words, phrases, statements, or representations of similar import as descriptive of products not procured from Labrador or Klondike and/or not composed of fur; or picturizations on labels, brands, or other trade indicia of seals or other fur-bearing animals designed to indicate or give the impression that such products are fabricated from the fur or pelt of a seal, of other fur-bearing animal, when such is not the fact.

(b) Labels, brands, or other trade indicia bearing the words "Artica" or "antartica," or words, phrases, statements, or representations of similar import as descriptive of products not procured from the said Polar regions; or picturizations on labels, brands, or other trade indicia of polar bears or other fur-bearing animals designed to indicate or give the impression that such products are fabricated from the fur or pelt of a polar bear or other fur-bearing animal, when such is not the fact.

(c) Labels, brands, or other trade indicia bearing the word "Squirrel" either independently or as a part of the word "Squirrelece," or words, phrases, statements, or representations of similar import as descriptive of products not composed of squirrel fur. (Apr. 3, 1939.)

2434. **Mattresses—Value and Price.**—J. M. Kanter and M. A. Kanter, copartners, trading under firm name and style "Empire Mattress Company," engaged in business of manufacturing mattresses and in the sale thereof in interstate commerce, in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

J. M. Kanter and M. A. Kanter, in connection with the offering for sale, sale or distribution of their products in commerce as defined by the act, agreed to cease and desist from:

1. Representing, directly or indirectly, that said products retail, or were manufactured to retail, at a price in excess of the price at which said products are regularly and customarily offered for sale and sold by retailers.

2. Placing on said products labels or tags indicating a retail price in excess of the price at which said products are regularly and customarily sold by retailers.

3. Selling or supplying customers for sale to others products to which are affixed or which bear any false, fictitious or misleading price in excess of the price at which said products are usually sold at retail. (Apr. 3, 1939.)

2435. **Stamps and Philatelic Supplies—Value, Prices, Fictitious Collection Agency, Etc.**—Lawrence K. Shaver, a sole trader, doing business under the various names of Mystic Stamp Co., World Wide Stamp Co. and National Credit Bureau, engaged in the sale and distribution in interstate commerce of stamps and philatelic supplies, in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Lawrence K. Shaver, in connection with his sale and distribution of stamps and philatelic supplies in commerce as defined by the act,

agreed he will cease and desist from representing, either by direct assertion or by implication, that any recipient of approval sheets of stamps or other merchandise not ordered or otherwise requested by said recipient, is under contract, legally enforceable, either to pay for said unsolicited merchandise or to return the same; quoting a figure purporting to be the actual or genuine value of a stamp, set of stamps or other merchandise which is in excess of the price for which said article or group of articles is sold or can be obtained in the usual course of business; or representing that the actual value of a miscellaneous assortment of stamps in bulk is the sum of the catalog nominal list prices of all such stamps; or applying the term "catalog value" to a packet of stamps in a manner so as to import or imply or cause the belief that any figure so designated is its actual value, when such is not the fact; the use of the trade name "National Credit Bureau" or of any other fictitious name purporting to be an independent collection agency or credit bureau, for the purpose of collecting payments on his contracts or his alleged contracts, when in fact no such agency exists or is employed by him; representing that such spurious credit bureau is a nation-wide institution for the interchange of credit information and general collection of accounts, or is in position to impair one's credit standing with the various stamp dealers; or the use of pretended notices simulating court summons or similar instruments designed to frighten debtors by false appearance of legal proceedings against them. (Apr. 4, 1939.)

2436. Burial Vaults—Composition and Qualities.—Arthur Martin and Joe Fitzjarrald, copartners trading under the firm name and style "Progress Manufacturing Company," engaged in the business of manufacturing metal burial vaults and in the sale thereof in interstate commerce, in competition with other partnerships, corporations, individuals, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Arthur Martin and Joe Fitzjarrald agreed, and each of them agreed, to cease and desist from stating or representing, in connection with offering for sale or selling in interstate commerce burial vaults, in purported guarantees, in advertising, or in any other manner, that said vaults, or any thereof, are or is made of rust-resisting materials or of material which will not rust, or that said vaults, or any thereof, are or is waterproof or impervious to the passage therethrough of water or air and/or that they, or any thereof, will so remain and endure under any and all burial conditions. (Apr. 4, 1939.)

2437. Casein Glue—Qualities.—Henning-Larson Glue Co., a corporation, engaged in the manufacture of a casein glue and other products 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.

Henning-Larson Glue Co., in connection with the sale and distribution of its casein glue in commerce as defined by the act, agreed it will cease and desist from the use on its labels, stationery or printed matter or otherwise of the word "Waterproof" as descriptive of a casein glue which is not, in fact, waterproof, and from the use of the word "Waterproof" in any way so as to import or imply that said product is impervious to water or its effects, when such is not the fact. (Apr. 4, 1939.)

2438. Beverage Product and Correspondence Courses—Qualities, Composition, Business Status, Etc.—C. Harrison Lund, an individual, engaged in the sale under the trade name "Lund's Grape Juice Company," of a beverage designated "Lund's Magic of the Grape," and also in the sale, under the trade name "Lund's Health Institute," of correspondence courses consisting of some 50 lessons in dietetics, in interstate commerce, in competition with other individuals, firms, corporations and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

C. Harrison Lund, in connection with the sale and distribution of his beverage product in commerce as defined by the act, agreed he will cease and desist from the use in his advertisements and advertising or printed matter of whatever kind or character or in any other way of statements or representations so as to import or imply or the effect of which is to convey or which may tend to convey the belief to purchasers that the said product is an adequate treatment for or will have any curative effect on all or any of the various diseases named in paragraph 2 of the stipulation, namely, cold, stomach, liver, kidney, intestine, lung, or bladder trouble, rheumatism, emaciation, over-weight, cancer, or any other sickness, or that the said product is such as to effectively control, maintain or restore health or frequently all that is needed to get well. The said individual also agreed to cease and desist from the use of the words "Magic of the Grape" as a trade name or designation for said product which is not composed of the juice or the fruit of the grape, and from the use of the word "grape" in any way so as to import or imply that said product is composed of the juice or the fruit of the grape, when such is not the fact. If the product is composed in substantial part of the juice or fruit of the grape and in part of other substance, and the word "grape" is used as a trade name or otherwise as descriptive thereof, then in that case, the word "grape" shall be immediately accompanied by some other word or words printed in equally con-

spicuous type so as to indicate clearly that said product is not composed wholly of grape. The said individual further agreed to cease and desist from the use of the words "Health Institute" as a part of or in connection with the trade name under which he carries on his business, and from the use of the word "Institute" either alone or in connection with the word "Health" or with any other word or words so as to import or imply that the business carried on by the said individual is that of an organization conducted for the promotion of learning, philosophy, art or science or is an institution or sanatorium equipped for the restoration of health; the said individual also agreed to cease and desist from stating or representing in his advertising matter or in any other way that the so-called "Consulting Dietist" correspondence course offered by him is of such efficiency that all persons who take the same will be thereby so qualified as to be properly designated "Consulting Dietist." The said individual also agreed to cease and desist from stating or representing that disease generally is curable by the use of natural foods or by dieting, when such is not the fact. (Apr. 3, 1939.)

2439. **Health Food Products and Devices and Correspondence Courses—Business Status, Scientific Facts, Government Sanction, Competitive Products, Qualities, Etc.**—Martin W. Pretorius, an individual doing business under the trade name of Food Chemistry Educational Institute, and New Century Foods, Inc., a corporation, engaged in the sale and distribution in interstate commerce, of health food products, health appliances and cooking devices, and the publication of a magazine entitled "Food Science," in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Martin W. Pretorius and New Century Foods, Inc., in connection with the sale and distribution of food products, devices and correspondence courses in commerce as defined by the act, agreed they will cease and desist from—

The use of the word "Institute" as part of or in connection with the trade name with which they carry on their business; and from the use of the word "Institute" independently or in connection with any other words or expressions implying or suggesting that their private business is either an organization for the promotion of learning, philosophy, art or science or an association of food chemists for the purpose of considering and solving their problems as such.

Representing that the primary purpose of their organization is "for educating the laymen in the science of building perfect bodies" or as "purely educational" or that the foods sold by them are "merely to accommodate our students" where a certain food is "not

available," when in fact the principle purpose is to sell their so-called health foods and devices to all persons that can be persuaded to buy them.

Representing that they manufacture the products sold by them or that such products are prepared under the direction or supervision of Nutritional Chemists, New Century Foods, Inc., or of Nutritional Chemists, Food Chemistry Educational Institute, or of New Century Foods, Inc., when such are not the facts.

Falsely attributing alleged scientific findings or statements to Dr. H. A. McGuigan or any other person.

Misquoting any records of the Federal Trade Commission or other Government agency.

Representing, by published statements, oral presentation, or otherwise, that food is poisoned by the use of aluminum cooking utensils, or that boiling water in aluminum produces hydro-oxide acid poison; cooking an egg in aluminum produces aluminum phosphate poison; boiling salt meat in aluminum produces aluminum chloride poison; frying bacon in aluminum produces a powerful narcotic acid poison, which produces coma and in excessive doses will cause death; boiling soda water in aluminum produces hydro-oxide of sodium; all vegetables cooked in aluminum are made poisonous by the production of hydro-oxide acid; water boiled in aluminum vessels neutralizes digestive juices, prevents digestion, produces stomach and gastrointestinal disorders, ulcers of the stomach, acidosis of the blood, or a condition similar to anaemia.

The use in any way of fictitious, bewildering, or pseudoscientific terms or any combination of chemical terms so arranged as to have the capacity or tendency to mislead, confuse, or deceive the purchasing public regarding the chemical or physiological properties of any article or product.

Representing that cancer is believed to be due to aluminum poisoning or that aluminum is one of the chief chemical poisons responsible for such disease, or that the use of aluminum pots is forbidden in the preparation of food for cancer patients in hospitals, or that the use of aluminum utensils is known to interfere with recovery from cancer; or that by the use of their parchment paper for cooking one may easily safeguard himself from such alleged aluminum poisoning or consequent bodily ills.

Representing that by the use of their foods, health courses, or devices one can solve his individual health problem, "no matter what it is"; and that "there is no need for you to continue to suffer"; or that the foods offered for sale by them "produce specific results in the body," when such are not the facts.

Representing that "alkalinization" will serve to correct bodily ills generally; or that the various products or health courses recom-

mended and sold by them constitute competent treatments or remedies for any of the following conditions: Anemia, apoplexy, acute appendicitis, cancer, diphtheria, fibroids, gallstones, locomotor ataxia, multiple sclerosis, abscess, acne, ascites, bladder stones, boils, Bright's disease, influenza, and cold in the head, insomnia, jaundice, leucorrhoea, menopause, menstrual disorders, mental derangement, paralysis, pleurisy, fever, pneumonia, enlargement of prostate gland, syphilis, tonsillitis, tapeworms, tumors, tuberculosis, uremia, rheumatism, acidosis, diabetes, failing sight, the pains of child delivery, cataract, or the debilitations of old age.

The use of such deceptive, fallacious, and extravagant statements as "Guaranteed health for life," "No Doctor or hospital bills," "No loss of pay because of sickness," as descriptive of benefits to be received through the "Pretorius Scientific Feeding." (Apr. 4, 1939.)

2440. Rugs and Other Household Goods—Source or Origin, Nature of Manufacture and Seconds.—May, Stern & Co., a corporation engaged in the sale of household goods, including rugs, 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, Stern & Co., in connection with the offering for sale, sale and distribution in commerce as defined by the act, agreed it will cease and desist from the use of the word "Persian" or the word "Chinese" either alone or in connection or conjunction with any other word or words or in any way as descriptive of its products so as to import or imply or the effect of which conveys or may tend to convey the belief to purchasers that said products are of the designated oriental origin or manufacture, when such is not the fact. Said corporation also agreed to cease and desist from the use in its advertisements and advertising matter or otherwise of the words "triple-loomed" as purportedly descriptive of its products, when in fact such words are meaningless and not warranted. Said corporation further agreed to cease and desist from advertising or otherwise offering for sale products which are, in fact, what is known as "factory" or "mill" seconds, without clearly and unequivocally disclosing such fact. (Apr. 7, 1939.)

2441. Perfumes—Imported, Business Status and Source or Origin.—Benjamin J. Rosenthal, an individual, trading as "Francaise Parfumerie et Cie," engaged in business of bottling perfumes purchased by him in bulk and in the sale of such bottled 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 in commerce as set forth therein.

Benjamin J. Rosenthal agreed that in connection with the offering for sale, sale and distribution of his products in commerce as defined by the act, he will cease and desist from the use in advertisements and advertising matter or in any other way.

1. Of the words "Imported Perfumes" to define or as descriptive of his products in such manner or in any way so as to import or imply that the products referred to were compounded or manufactured abroad into finished or completed perfumes and as such brought or shipped to the United States of America, when such is not the fact.

2. Of the words "Reproductions of fine imported perfumes" or from the use of the word "reproductions" in connection with named French or other fine perfumes in any way as descriptive of his products, when in truth his said products were not reproductions of the said named French or other fine perfumes.

3. Of the words "Paris London" or any other foreign address on his stationery or otherwise so as to import or imply that the said individual has a place of business or an office at said places or at any of them, when such is not the fact.

4. Of the words "Francaise Perfumerie et Cie" as and for the trade name under which he offers for sale or sells his products and from the use of the word "Francaise" or of the word "French" or of any other word or words of similar meaning in any way so as to import or imply that the products offered for sale and sold by him are of French origin, when such is not the fact. (Apr. 10, 1939.)

2442. **Novelty Merchandise, Fireworks and Punchboards—Lottery Schemes and Devices.**—Irwin Siegel, a sole trader residing in Cleveland, Ohio, and doing business as U. S. Merchandise and Fireworks Co., engaged in the sale and distribution of novelty merchandise, fireworks and punchboards 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.

Irwin Siegel, in connection with the sale and distribution of his products in commerce as defined by said act, agreed he will cease and desist from supplying to, or placing in the hands of others, punchboards, push or pull cards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof; mailing, shipping, or transporting to agents or to distributors or members of the public punchboards, push or pull cards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof; selling or otherwise disposing of any merchandise by the use of

punchboards, push or pull cards, or other lottery devices. (Apr. 10, 1939.)

2443. **Electric Fans, Pen and Pencil Sets and Push Cards—Lottery Schemes and Devices.**—T. J. Leviton and Harry Cole, copartners trading under the firm name of Transcontinental Sales Co., engaged in the sale and distribution of electric fans, pen and pencil sets, and push cards in interstate commerce, in competition with other firms, partnerships, corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

T. J. Leviton and Harry Cole, and each of them, agreed that in connection with their sale and distribution of merchandise in commerce as defined by the act, agreed they will cease and desist from supplying to, or placing in the hands of others, push or pull cards, punchboards, or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof; mailing, shipping, or transporting to agents or to distributors or members of the public push or pull cards, punchboards, or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof; selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards, or other lottery devices. (Apr. 10, 1939.)

2444. **Stationery, Etc.—Nature of Manufacture.**—Branford Press, a corporation, engaged in the business of selling stationery, wedding invitations, engagement announcements, and the like, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Branford Press, in connection with the offering for sale, sale, and distribution of its products in commerce as defined by the act, agreed it will cease and desist from the use in its advertising or printed matter or in any other way of the word "engraved" or of any other word or words of similar meaning as descriptive of said products so as to import or imply or the effect of which causes or may tend to convey the belief to purchasers that said products are the result of impressions made from inked engraved plates, generally known to the purchasing public as "engraving" or "embossing," when such is not the fact. (Apr. 10, 1939.)

2445. **Sweaters and Other Knitted Wear—Prices.**—M. W. Carp and J. L. Diener, copartners trading under the firm name and style of Cardean Knitwear Co., engaged in the jobbing or wholesale distribution of sweaters and other knitted wear 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.

M. W. Carp and J. L. Diener, agreed they will cease and desist, both in their capacity as copartners and as individuals, from selling and distributing in commerce as defined by the act, or from selling and distributing in such commerce to others for sale, products to which are affixed or which are accompanied by tags or other indicia bearing what purports to be a retail selling price, but which price is exaggerated and fictitious and/or much in excess of the price at which said products are sold in the ordinary course of trade. (Apr. 10, 1939.)

2447.⁴ **Hair and Scalp Preparation—Qualities.**—Alexander C. Brent, Jr., an individual trading as Cuban Cosmetic Co., engaged in the business of manufacturing or compounding a preparation for use upon the hair and scalp and in the sale and distribution thereof under the trade name “Four-In-One Cuban Combination Hair Treatment” 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.

Alexander C. Brent, Jr., in connection with the sale and distribution of his product in commerce as defined by the act, agreed he will cease and desist from the use in his advertisements and advertising matter of whatever kind or character or in any other way of any statement or representation which directly asserts or which clearly imports or implies or the effect of which tends or may tend to convey the belief to the consuming public that said product, when locally applied to the scalp, will cause hair to grow, or that such use of the said product will stop or correct falling hair or dandruff or will stop eczema, tetter, ring worm, or any other fungus infection. (Apr. 11, 1939.)

2448. **Citrus Fruits—Source or Origin.**—Cooperative Indian River Growers, Inc., a corporation, engaged in the business of packing citrus fruits for its own members, under the trade name “Indian River,” and also in the packing of fruits for other concerns, and in the sale and distribution of the fruits which it packs, 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.

The term “Indian River,” when used to describe the origin of citrus fruits, refers to a territory on the East Coast of Florida along the

⁴ Stipulation No. 2446, rescinded on May 24, 1939, was reinstated on October 5, 1939, and will be found in volume 29.

Indian River and in the Counties of Brevard, Indian River, St. Lucie, and Martin. The citrus fruits grown in the Indian River section have long enjoyed a reputation for superior quality, and the growers of and dealers in such fruits have acquired a valuable good will in the term "Indian River" as applied to such fruits.

Cooperative Indian River Growers, Inc., in connection with its sale and/or distribution of citrus fruits in commerce as defined by the act, agreed it will cease and desist from the use, or placing in the hands of others for their use, of labels, brands, or other trade indicia bearing the words "Indian River," or words, phrases, statements, or representations of similar import as descriptive of citrus fruits not produced or grown in the Indian River region of Florida; and from the use of the words "Indian River" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products so designated were grown or produced in the Indian River region of Florida, when such is not the fact. (Apr. 12, 1939.)

2449. Citrus Fruits—Source or Origin.—Brandes & Lipschitz, Inc., a corporation, engaged in operating retail fruit stands in the city of New York and also importing into New York citrus fruits produced in Florida, and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The term "Indian River," when used to describe the origin of citrus fruits, refers to a territory on the East Coast of Florida along the Indian River and in the Counties of Brevard, Indian River, St. Lucie, and Martin. The citrus fruits grown in the Indian River section have long enjoyed a reputation for superior quality, and the growers of and dealers in such fruits have acquired a valuable good will in the term "Indian River" as applied to such fruits.

Brandes & Lipschitz, Inc., in connection with its sale and distribution of citrus fruits in commerce as defined by the act, agreed it will cease and desist from the use, or placing in the hands of others for their use, of labels, brands, or other trade indicia bearing the words "Indian River," or words, phrases, statements, or representations of similar import as descriptive of citrus fruits not produced or grown in the Indian River region of Florida; and from the use of the words "Indian River" in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that the products so designated were grown or produced in the Indian River region of Florida, when such is not the fact. (Apr. 12, 1939.)

2450. "Fresh'nd Aire" Fans—Qualities.—Robert W. Devore, an individual trading as "Fresh'nd Aire Company," engaged in the business of assembling electrically driven fans equipped at the rear with a device intended to heat and vaporize two certain preparations, one a so-called deodorizer and purifier and the other a fragrance, such vapor being diffused by the action of the fan throughout the room wherein it is installed and operated, and selling 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.

Robert E. Devore, in connection with the advertisement, sale, or distribution of his "Fresh'nd Aire" fans in commerce as defined by the act, agreed to cease and desist from the use of the term "Air Conditioning" or of any other word or words of similar meaning or import, as descriptive of said fans whose operation does not result in humidifying or dehumidifying the room air, the mechanical cooling or heating of such air to specified temperatures, the mechanical delivery and circulation of fresh air, and the removal or filtering of dirt from the air, as the term "Air Conditioning" is generally understood and accepted to mean and imply to the trade and public. The said Robert W. Devore also agreed to cease and desist from stating or representing in his advertising or otherwise that the so-called deodorizing preparation used in connection with his fans will completely absorb and destroy all room odors or cause them to disappear within a few moments, when such is not the fact. (Apr. 13, 1939.)

2451. Candy—Lottery Scheme.—Fred E. Foos Candy Co., Inc., a corporation, engaged in the manufacture and packaging of various candy assortments and in the sale 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.

Fred E. Foos Candy Co., Inc., in connection with the offering for sale, sale, and distribution of its candy assortments in commerce as defined by the act, agreed it will cease and desist from selling and distributing directly to retail dealers or to jobbers or wholesale dealers for resale to the retail trade candy assortments so packaged and assembled that sales of such candy to the consuming public are to be made or may be made by means of a lottery, gaming device, or scheme of chance; supplying to or placing in the hands of others for resale packaged assortments of candy which are so arranged as to enable the same to be sold or disposed of by means of a lottery, gaming device or scheme of chance; supplying to or placing in the

hands of others for resale packaged assortments of candy together with any plan or plans involving the use of a lottery, gaming device, or scheme of chance which is to be or may be used in the sale or distribution of said candies. (Apr. 7, 1939.)

2452. **Insect Lanterns—Qualities.**—Jackman & Co., Inc., a corporation, engaged in the business of manufacturing alleged mosquito electrocutors and in the sale thereof under the trade designation "Death Ray Lantern," 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.

Jackman & Co., Inc., in connection with the offering for sale, sale and distribution of its lanterns in commerce as defined by the act, agreed it will cease and desist from the use in its advertisements and advertising matter or in any other way of statements or representations which directly assert or clearly import and imply that the light furnished by the lantern will attract mosquitoes and other flying insects to it in sufficient numbers to make said device of distinct value in the control of such insects; that mosquitoes and other flying insects which may be attracted by the light will all be electrocuted or killed upon contacting the electrically charged wires surrounding the lantern; that the destruction of mosquitoes or flying insects which may be attracted by the light is due solely to electrocution resulting from their contacting the charged wires surrounding the lantern, when such is not the fact. (Apr. 14, 1939.)

2453. **Casein Glue—Qualities.**—Perkins Glue Co., a corporation, engaged in the business of manufacturing a casein glue 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.

Perkins Glue Co., in connection with the sale and distribution of its casein glues in commerce as defined by the act, agreed to cease and desist from the use in its advertising matter or otherwise of the word "Waterproof" as descriptive of said products which are not, in fact, waterproof, and from the use of the word "Waterproof" in any way so as to import or imply that said products are impervious to water or its effect, when such is not the fact. (Apr. 14, 1939.)

2454. **Novelties and Push Cards—Free, Composition, Prices, Lottery Schemes and Devices and Earnings.**—Grund Art & Novelty Co., Inc., a corporation, engaged in sale and distribution of novelties and push cards 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.

Grund Art & Novelty Co., Inc., in connection with its sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) Representing that any article is given "Free" or without cost when receipt of such article is contingent upon any consideration, terms, or conditions, as payment of money, purchase of other articles, or rendering of services, not clearly and unequivocally disclosed in direct connection with the making of such representations.

(b) The use of the term "Genuine Pig Grained" or of words phrases, statements or representations of similar import as descriptive of a product not composed of pig skin; or the quoting of a fictitious price or figure as the alleged value of an article which is in excess of the price for which such article is available to the public in the due course of business.

(c) Supplying to, or placing in the hands of others, push or pull cards, punchboards or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

(d) Mailing, shipping, or transporting to agents or to distributors or members of the public push or pull cards, punchboards or other lottery devices so prepared or printed as to enable said persons to sell or distribute any merchandise by the use thereof.

(e) Selling or otherwise disposing of any merchandise by the use of push or pull cards, punchboards or other lottery devices.

(f) Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors, for any given period of time, which is not a true representation of the average earnings or profits consistently made by its active, full-time agents, salesmen, representatives or distributors in the ordinary course of business and under normal conditions and circumstances.

(g) Representing any specified sum of money as earnings or profits of any specified agent, salesman, representative or distributor, for any given period of time, which has not in fact been consistently earned by such agent, salesman, representative or distributor, in the ordinary course of business and under normal conditions and circumstances. (Apr. 17, 1939.)

2455. Wines—Business Status and Government Supervision.—Bonded Wineries, Inc., a corporation, engaged as wholesaler in sale and distribution of wines in interstate commerce, in competition with other corporations, individuals, firms, and partnership likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Under the Internal Revenue Laws the term "Bonded Wineries" means premises on which wines are produced or fermented before

payment of tax, with Government supervision over said premises to assure the collection of revenue. When the term "Bonded Wineries" is used as a trade name by a company not engaged as a producer or fermenter, it is misleading insofar as it creates or tends to create the impression in the minds of the public that the user thereof is a producer or fermenter of wines operating under Government supervision and endorsement.

Bonded Wineries, Inc., in connection with its sale and distribution of wines in commerce as defined by said act, agreed to cease and desist from the use of the words "Bonded Wineries" as the corporate or trade name under which it carries on its business, or from the use of the word "Bonded" or the word "Wineries" either together or independently, or words, phrases, statements, or representations of similar import as descriptive of its business; and from the use of these or any other statements the effect of which tends or may tend to convey the belief to the purchasing public that it is a producer or fermenter of wines operating under Government supervision and endorsement, or is a producer or fermenter of wines, at all, when such are not the facts. (Apr. 20, 1939.)

2456. **Baby Chicks—Unique Nature and Commission Approval.**—Harry E. Ohls and Charles Yeager, copartners trading under the name and style "Ohls Poultry Yards & Hatchery," engaged in the business of operating hatcheries at Marion and Mt. Vernon, Ohio, and at Marshall, Mo., and in the sale of baby chicks 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.

Harry E. Ohls and Charles Yeager, in connection with the advertisement, sale, and distribution of their White Leghorn baby chicks in commerce as defined by the act, agreed they will cease and desist from the use of the word "Giant" as descriptive of said chicks or the breed thereof, when in fact no such breed of White Leghorn chicks exists, and from the use of the word "Giant" either alone or in connection with any other word or words or in any way so as to import or imply that the said chicks are of a special breed or strain of White Leghorn chicks which, when raised by the ordinary purchaser, would be of giant or super size, when such is not the fact. The said copartners also agreed to cease and desist from the use in their advertising or other printed matter of statements or representations, the effect of which conveys or may tend to convey the belief to purchasers or prospective purchasers of said chicks that the Federal Trade Commission has either accepted or approved any of the statements made or contained in said advertising or printed matter. (Apr. 20, 1939.)

2457. **Neck Chains—Composition and Business Status.**—Frank A. Duke, a sole trader operating under the assumed name of Etna Chain Co., engaged in the assembly of neck chains fabricated from gold covered wire of the type known to the industry as rolled gold plate, and in the sale and distribution thereof in interstate commerce, in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

In the jewelry trade the mark "1/20-12 Kt." means and is understood to mean that 1/20 by weight of the entire article is 12 carat gold, or that, on a fractional basis, the gold content is 25/1000 fine gold. Allowing for a 10 percent tolerance, an article that is so marked will be deemed misbranded if it does not have a fine gold content of 22.5/1000. The term "Gold Filled," as established by the commercial standards set up by the Department of Commerce of the United States Government means and is understood to mean that the article so marked has a coating of gold of not less than 10 carat fineness and that the weight of such gold is not less than 1/20 the weight of the entire article.

The jewelry manufacturing industry in America is largely centered in the city of Providence, State of Rhode Island; and a manufacturer of jewelry whose address is Providence, R. I., has by reason thereof some degree of prestige in dealing with the jewelry trade.

Frank A. Duke, in connection with his sale and distribution of neck chains or other articles in commerce as defined by said Act, agreed to cease and desist from—

(a) Labeling, marking, stamping, or otherwise designating neck chains or other articles with the term "1/20-12 Kt.," either alone or in connection with the words "Gold Filled," or otherwise, when in fact the gold content of such mounting is other than 25/1000 gold or better; or the use of the words "Gold Filled" as applied to any article having a coat of gold of less than 10 carat fineness and when the weight of such gold is less than 1/20 the weight of the entire article.

(b) Designating himself as a "manufacturer of chains" when in fact he merely cuts up chains already manufactured by others and assembles them for the market; or, by direct statement or reasonable inference, representing that he operates a factory or plant in Providence, R. I., or that the chains which he sells are manufactured by him in Providence, R. I., or elsewhere, when such are not the facts. (Apr. 21, 1939.)

2458. **Pianos and Furniture—Free and Special Prices.**—Sterchi Brothers Stores, Inc., a corporation, engaged in the retail furniture busi-

ness in a number of cities in various southern States and in the sale and distribution of such furniture, 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 in commerce as set forth therein.

Sterchi Brothers Stores, Inc., in connection with its sale and distribution of pianos or other merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) Representing that any article is loaned, given, or delivered “free” or without cost when receipt of such article is contingent upon any consideration, terms, or conditions, as payment of money, purchase of other articles or rendering of services, not clearly and unequivocally disclosed in direct connection with the making of such representations.

(b) Representing that the prices quoted for any merchandise are at reduced figures, when such is not the fact; or that such prices are “Special” or “Extra Special,” when they are the usual and customary prices for which said merchandise is sold; or that they are an “Extra Special bargain” when such figures are equal to or in excess of those for which the same or similar merchandise is available to the public in the due course of business.

(c) The use of statements such as “Ordered Sold,” “Must be sold or moved to stop expense of storage,” or representations of similar import, with the capacity and tendency to convey the belief to purchasers that a particular sale of merchandise is due to unusual and necessitous circumstances or is being made at sacrifice prices, when such are not the facts.

(d) Representing that the purchaser can “save money” by buying direct from the warehouse when in fact the shipment advertised is all sold from the warehouse and no other prices are quoted. (Apr. 24, 1939.)

2459. Envelopes—Size of Business and Prices.—Continental Envelope Corp., a corporation, engaged in the business of manufacturing envelopes and in the sale thereof in interstate commerce, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Continental Envelope Corp., in connection with the sale and distribution of its products in commerce as defined by the act, agreed to cease and desist from stating or representing in its advertisements and advertising matter or otherwise that the said corporation produces over 1,000,000 envelopes a day or over 300,000,000 a year, when such is not the fact; and from the use of the aforesaid or any other statements concerning the production of products by the said cor-

poration which do not truthfully and accurately represent the actual output of products. The said corporation also agreed to cease and desist from stating or representing in its said advertising or in any other way that purchasers of its products "save up to 30 percent" so as to import or imply that the prices asked by said corporation for its products are up to 30 percent less than prevailing prices or the prices charged or the discounts allowed by competitors, when such is not the fact. (Apr. 24, 1939.)

2460. *Liquors—Source or Origin.*—Standard Distillers Products, Inc., engaged as a wholesaler of liquors 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.

Prior to the passage of the National Prohibition Act there had been on the market for many years a brand of rye whiskey put out by Winand Distilling Co. in Pikesville, Md., which was well and favorably known to the trade under the name "Pikesville." The enactment of the prohibition law resulted in the cessation of the business, the dismantling of the distillery at Pikesville, and the surrender of the corporate charter of its owner. The present owner of the trade mark "Pikesville" for whiskey or distilled spirits is The Maryland-Pikesville Distillery, Inc., which neither owns nor operates a distillery, but has granted exclusive license to Standard Distillers Products, Inc. for the use and enjoyment of the good will, trade-mark "Pikesville" throughout the United States.

Standard Distillers Products, Inc., in connection with its sale and distribution of whiskey products and distilled spirits in commerce as defined by the act, agreed it will cease and desist from the use on its labels, brands, or other trade indicia of the word "Pikesville" as a designation of or as applied to any whiskey or distilled spirit product which is not of the same type and quality as the product formerly made by Winand Distilling Co., known to the trade and to the public as "Pikesville"; labelling, branding, or otherwise designating a whiskey or distilled spirit product in any manner with the capacity or tendency to convey the belief to purchasers that such liquor was distilled or produced in Pikesville, Md., when such is not the fact. (Apr. 24, 1939.)

2461. *Watches, Jewelry, Etc.—Business Status, Prices and Time in Business.*—Caroline R. Macher, a sole trader operating as Wholesale Watch and Jewelry Co., whose husband is Robert J. Macher, actively engaged in conducting such business consisting of the sale and distribution in interstate commerce of jewelry, watches, novelties, and silverware, in competition with other individuals, firms, partner-

ships, 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 term "wholesale," as applied to commercial transactions, means and is understood to mean selling to the trade for resale, and seldom, if ever, to the purchasing public; and a wholesaler is a distributor whose principal business is selling to the retail dealer. It is the character of sales to the trade, that makes and distinguishes a wholesaler. It is a common practice for wholesalers to quote list prices for the items set forth in their catalogs which they distribute to the trade. These list prices correspond generally to the retail prices for which such articles are supposed to be sold to the public. The dealer in purchasing such items is allowed a trade discount whereby he is enabled to make his profit. Thus a discount of 50 percent and an additional cash discount of 10 percent makes a total discount from the list price of 55 percent, whereby the cost of an article to the retail dealer is but 45 percent of the retail price advertised to the public.

Caroline R. Macher and Robert J. Macher, and each of them agreed, that in connection with their sale and distribution of watches, jewelry, and other merchandise in commerce as defined by the act, they will cease and desist from the use of the word "wholesale" as a part of the trade name under which they carry on their industrial jobbing business, or the words "Wholesale" or "Wholesale's" in referring to their quoted prices, or any other word or words of like import, either alone or in connection with other words as descriptive of the business conducted by them, when in fact such business is not wholesale; and from the use of said words or either thereof, in any way so as to import or imply that the business conducted by them is that of a wholesaler, that is to say, consists of the sale of products to the trade for resale as distinguished from sale to the ultimate consumer, when such is not the fact; Representing in any way that they offer nationally advertised brands of silverware or other articles at "Wholesale prices" or "Wholesale's prices," when they do not in fact sell them at regular wholesale prices; The use in their advertising matter of purported "Retail prices" of products in connection with stated discounts to which said prices are allegedly subject so as to import or imply that the purchaser obtains said products at actual wholesale prices or that said discounted prices are wholesale prices or are other than the regular and customary prices for which the products are offered for sale and sold to the members of the consuming public in the usual course of business, when such is not the fact; Representing their business to be in its 56th year or in any other way that it has been in operation for a period of time that

antedates 1930; or that their said business is the successor to the Wholesale House of J. Macher, when such is not the fact. (Apr. 25, 1939.)

2462. **Candies—Lottery Scheme.**—Miss Saylor's Chocolates, Inc., a corporation, engaged in the business of manufacturing candies and in the sale thereof, chiefly to cigar and drug store dealers, 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.

Miss Saylor's Chocolates, Inc., in connection with the offering for sale, sale, and distribution of its candies in commerce as defined by the act, agreed it will cease and desist from supplying or placing in the hands of others punch boards or other lottery devices for the purpose of enabling such persons to dispose of or sell said merchandise by the use thereof; mailing, shipping or transporting to the retail or other trade or to members of the public punchboards or other lottery devices so prepared or printed as to enable said trade or persons to sell or distribute merchandise by the use thereof; advertising, selling, or otherwise disposing of merchandise by the use of punchboards or other lottery devices. (Apr. 25, 1939.)

2463. **"Hychex Jelly," Etc.—Business Status.**—Hychex Laboratories, Inc., a corporation, engaged in the sale and distribution in interstate commerce, of diaphragms, rings and a so-called "Hychex jelly," 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.

Hychex Laboratories, Inc., in connection with the offering for sale, sale, and distribution of its products in commerce as defined by the act, agreed it will forthwith cease and desist from the use in connection with or as a part of its corporate or the trade name under which it carries on its business of the word "Laboratories," and from the use of the said word "Laboratories" in any way in soliciting the sale of its products so as to import or imply that the said corporation owns and operates or controls a laboratory or laboratories, when such is not the fact. (May 3, 1939.)

2464. **Necklaces and Sales Cards or Boards—Lottery Schemes and Devices.**—Imperial Merchandise Co., Inc., a corporation, engaged, among other things, in the business of purchasing merchandise, consisting of necklaces and sales cards or boards, and in the sale thereof in interstate commerce, through its Secretary, Louis Bloom, under the registered trade name "Trans-Pacific Import Company," 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.

Imperial Merchandise Co., Inc., in connection with the offering for sale, sale, and distribution of its merchandise in commerce as defined by the act, agreed it will forthwith cease and desist from supplying or placing in the hands of others punchboards, push cards or other lottery devices for the purpose of enabling such persons to dispose of or sell said merchandise by the use thereof; mailing, shipping or transporting to the trade or to members of the public punchboards, push cards or other lottery devices so prepared or printed as to enable said trade or persons to sell or distribute merchandise by the use thereof; advertising, selling or otherwise disposing of merchandise by the use of punchboards, push cards or other lottery devices. (May 4, 1939.)

2465. Sponges, Etc.—Business Status.—Addison Sponge Co., Inc., a corporation, engaged in the business of selling sponges and chamois skins 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.

Addison Sponge Co., Inc., in connection with the offering for sale, and sale and distribution of its products in commerce as defined by the act, agreed it will forthwith cease and desist from the use in its advertisements and advertising matter or otherwise of statements or representations, the effect of which is to convey or tend to convey the belief to readers that the said Addison Sponge Co., Inc., actually owns and operates or controls a sponge packing house at Tarpon Springs, Fla., or elsewhere, or that the business which it purchased from The Jos. Niehaus Co. was that of a packer and producer of sponges and that it, the said Addison Sponge Co., Inc., succeeded to such business as a producer and packer of sponges; or cuts or pictorial representations of any building, marked or accompanied by words or statements so as to import or imply or which may cause readers to believe that the said Addison Sponge Co., Inc., uses or occupies the whole of said building in the conduct of its business, when such is not the fact. (May 8, 1939.)

2466. Hosiery—Nature of Manufacture and Source or Origin.—Blackstone Hosiery Mills, Inc., a corporation, engaged in the manufacture of hosiery and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

English Ribbed hose is a distinctive type and quality of hosiery originating in England, manufactured there under a patented process, and imported into the United States where it has long been favorably known and recognized by the trade and the purchasing public. Since 1930, licensees of the English manufacturer have in this country used a machine known to the trade as "Komet" to make ribbed hose similar to the original English rib. Another machine used in the United States for the manufacture of ribbed hose is known to the trade as "R. I." The R. I. machine differs, however, in certain material respects from the Komet and from machines used in England for the making of the English Ribbed type; and is not capable of turning out a hose of the type and quality known to the trade and the public as English Ribbed.

Blackstone Hosiery Mills, Inc., agreed, in connection with its sale and distribution of hosiery products in commerce as defined by the act, it will cease and desist from the use, on transfers, brands or other markings of said products, of the words "Made in English Fashion" as descriptive of hosiery which is not in fact so made; or representing or characterizing a product in any other way that may import or imply, or the effect of which may be to convey the belief that the same is either an English product or is of a style and quality known to the trade and to the public as English Ribbed hose, when such is not the fact. (May 9, 1939.)

2467. Hosiery—Nature of Manufacture and Source or Origin.—Waldensian Hosiery Mills, Inc., a corporation, engaged in the manufacture of hosiery and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

English Ribbed hose is a distinctive type and quality of hosiery originating in England, manufactured there under a patented process, and imported into the United States where it has long been favorably known and recognized by the trade and the purchasing public. Since 1930, licensees of the English manufacturer have in this country used a machine known to the trade as "Komet" to make ribbed hose similar to the original English rib. Another machine used in the United States for the manufacture of ribbed hose is known to the trade as "R. I." The R. I. machine differs, however, in certain material respects from the Komet and from machines used in England for the making of the English Ribbed type; and is not capable of turning out a hose of the type and quality known to the trade and the public as English Ribbed.

Waldensian Hosiery Mills, Inc., in connection with its sale and distribution of hosiery products in commerce as defined by said act, agreed

to cease and desist from the use, on transfers, brands or other markings of said products, of the words "Made in English Fashion" as descriptive of hosiery which is not in fact so made; or representing or characterizing a product in any other way that may import or imply, or the effect of which may tend to convey the belief that the same is either an English product or is of a style and quality known to the trade and to the public as English Ribbed hose, when such is not the fact. (May 11, 1939.)

2468. **Dresses—Composition.**—Joseph Levay, Inc., a corporation, engaged in the business of manufacturing women's dresses from materials purchased by it from the fabricators thereof and in the sale of said dresses under the designation "Renella Prints," in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Joseph Levay, Inc., in connection with the offering for sale, sale and distribution of products in commerce as defined by the act, agreed it will forthwith cease and desist from invoicing, branding, labeling, advertising, or otherwise representing any product containing rayon, in whole or in part, without making full, proper and nondeceptive disclosure of the fiber content thereof by stating the names of the fibers present in the order of their predominance by weight and by giving the percentages of any fibers which are or may be present in less than a substantial proportion. (May 12, 1939.)

2469. **Facsimile Autograph Stamps—Orders Not Conformed To.**—Bankers & Merchants Stamp Works, Inc., a corporation, engaged in the manufacture and in the sale and distribution in interstate commerce of signature stamps, numbering machines, time stamps, notary seals, and various other types of marking devices, 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 process employed in the production of signature stamps, until recently, required the making of a woodcut as the basis for the stamp, which involves a photographic process whereby the signature submitted is transferred by means of a stock-composing machine to a previously sensitized wood block. A skilled wood engraver then gouges around the copy to a shallow depth, after which the block is placed in a routing machine for completion. A clay mold is made from the woodcut and unvulcanized stamp gum is placed in the mold and submitted to hot pressure, resulting in a rubber duplicate of the woodcut.

A hand engraving process has been developed by The Autograph Engravers, of Chicago, Ill., for use in the manufacture of its "HE" rubber stamp signatures, whereby the signature submitted is traced by hand with the aid of a tracing paper and hectograph ink direct to the rubber pattern, thus leaving the facsimile standing. This obviates the intermediate steps of woodcut, clay mold and vulcanization.

Bankers & Merchants Stamp Works, Inc., in connection with its sale and distribution of facsimile autograph stamps in commerce as defined by the act, agreed it will cease and desist from distributing, or placing in the hands of others for their use, any advertising, order blanks, or other representations of whatever kind or character containing trade-marks, descriptions of, or references to certain designated products so as to import or imply that orders received as the result of such advertising or by the use of such order blanks will actually be filled with the product indicated, when such is not the fact; representing or causing others to represent its products in any way which tends or may tend to convey an erroneous belief to purchasers that said corporation will and does fill orders with the advertised product for which the orders have been received, when such is not the fact. (May 12, 1939.)

2470. **Colored Drawings or Pictures of Merchandise—Business Status.**—Max L. Hill, an individual trading as "The Journal Printing Company," engaged as a job printer in the business of color printing and in the sale in interstate commerce of colored drawings or pictures of merchandise to customers and which drawings or pictures such customers use in connection with the advertisement and sale by them of such merchandise; 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 L. Hill agreed that he will forthwith cease and desist from stating or representing in his advertisements and advertising matter or in any other way that either the photographing or the engraving involved in the production of the finished advertising offered for sale, sold, and distributed by him in commerce as defined by the act, is done in his own plant, or that a plant owned, operated, or controlled by him is equipped to do and does perform either the colored photography or the photoengraving work contemplated and required in the production of the said finished advertising, when such is not the fact. (May 15, 1939.)

2471. **Motor Oils, Greases, Etc.—Business Status.**—Penn-Crest Refining Co., Inc., a corporation, engaged in the blending of motor oils and the compounding of greases and other lubricants 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 in commerce as set forth therein.

Pennsylvania is a State famous in the oil industry, and Oil City is a famous address within that State for petroleum products produced and refined there which are well and favorably known to the public.

Penn-Crest Refining Co., Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from

(a) The use of the word "refining" as a part of or in connection or conjunction with the corporate or trade name under which it advertises, offers for sale or sells its preparations in interstate commerce; and from the use of the word "refining" or of any other word of similar meaning so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the preparations sold by it are made in an oil refinery which it owns and operates or directly and absolutely controls, when such is not the fact.

(b) The use of the address "Oil City, Pennsylvania" or of any other address in the State of Pennsylvania in any manner so as to import or imply or the effect of which may be to convey the belief to purchasers that said corporation has a place of business or conducts its operations in Oil City or elsewhere in Pennsylvania, when such is not the fact. (May 16, 1939.)

2472. **Hospital and Laboratory Supplies—Source or Origin.**—Hellige, Inc., a corporation, engaged in selling at wholesale various types of hospital and laboratory supplies, including cover glasses bearing the trade name "Checker Brand" 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 in commerce as set forth therein.

Hellige, Inc., in connection with the offering for sale, sale, and distribution of its products in commerce as defined by said act, agreed to cease and desist from the use in its price lists or on its labels affixed to the containers of its products or in any other way of the slogan "Made in U. S. A." or of any other word or words of similar inference so as to import or imply that the glass of which said products are composed is or that the products in their entirety are of domestic origin, when such is not the fact. (May 18, 1939.)

2473. **Sport Coats and Suits—Composition.**—Milshire Garment Co., Inc., is a corporation, engaged in the manufacture of sport coats and suits, principally of the camel hair type, and in the sale and distribu-

tion 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 in commerce as set forth therein.

Milshire Garment Co., Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from—

(a) Representing in, on, or in connection with its labels, brands, or other trade indicia, or in any way, either directly or by implication, by the use of words, pictures, deceptive type, or otherwise, that a garment so labeled or referred to is 100 percent camel's hair when the fiber content thereof is not in fact 100 percent camel's hair; or that the garment has any other content or composition of fiber which is not true in fact.

(b) Indicating directly or by implication or appearance of product the composition of a garment of mixed fibers without naming all such fibers, with equal conspicuousness, in the order of their predominance by weight; and giving the percentage of each such fiber present to such extent as is necessary in the respective circumstances to prevent confusion and misunderstanding or deception of the purchasing public as to the fiber content of such merchandise.

(c) The use, in, on, or in connection with its labels, brands, or other trade indicia of any pictures or depictions of a camel or other animal, or of any other depictions or pictorial representations, in a manner having the capacity, tendency, or effect of misleading or deceiving the purchasing public in respect to such merchandise.

(d) The use of the legend "100%" or of any representation of similar import, in, on or in connection with its labels, brands, or other trade indicia, as descriptive of merchandise in any manner which has or may have the capacity or tendency to confuse, mislead, or deceive the purchasing public as to the quality, composition, or character thereof. (May 19, 1939.)

2474. **Novelty Merchandise—Lottery Scheme and Devices.**—Jack Chertow, Mary Finkelson Fractor, and Louis Fractor, individuals, engaged for some time past under the firm name and style "American Premium House" in the business of selling novelty merchandise at wholesale and retail 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.

Jack Chertow, Mary Finkelson Fractor, and Louis Fractor, in connection with the sale and distribution of their merchandise in commerce as defined by said act, agreed, and each of them agreed to cease and desist from—

(a) Supplying to or placing in the hands of others, pull cards or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

(b) Mailing, shipping, or transporting to agents, distributors, or members of the public pull cards or other lottery devices so prepared or printed as to enable such persons to sell or distribute any merchandise by the use thereof.

(c) Selling or otherwise disposing of any merchandise by the use of pull cards or other lottery devices.

(d) The use of a scheme, plan, or method of sale or of promoting the sale of merchandise which involves or includes the use of any lottery, alleged gift enterprise, or scheme of chance whereby the identity of an article of merchandise to be purchased or the price to be paid therefor, or both the article and its price, is or are determined by lot or chance. (May 23, 1939.)

2475. **Card or Tag Products—Special Advantages.**—Photo-Markets, Inc., a corporation, engaged in the publication of a magazine entitled "Photo-Markets" the purpose of which being to avail its readers of information as to probable markets for their amateur photographic work, selling said magazines to dealers for resale and also direct to members of the reading public located in the District of Columbia and in various States. Incidental to the sale of the magazine, the said Photo-Markets, Inc., also engaged in the sale of so-called "press cards" and of so-called "press tags" designed for attachment to the license plates of automobiles, said cards being inscribed to the effect that the person whose name appears thereon is an "accredited press photographer" and that "all courtesies extended will be appreciated by the Affiliates Press," in competition with other corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the following alleged unfair methods of competition in commerce as set forth therein.

Photo-Markets, Inc., in connection with the offering for sale, sale, and distribution of its card or tag products in commerce as defined by the act, agreed that it will forthwith cease and desist from the use in its advertisements and advertising matter, on its said cards or tags, or in any other way, of the word "press" as descriptive, of said products or from in any other way stating or representing that the purchasers or holders of its said products will be granted or afforded exceptional privileges for photographic work or any other purpose by the authorities, as officers of the police or fire departments, of local cities or communities generally, when such is not the fact. (May 23, 1939.)

2476. **Sun Glasses—Qualities.**—American Spectacle Co., Inc., a corporation, engaged in sale and distribution of sun glasses 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 in commerce as set forth therein.

The term "glare," as applied to colored eye-protective glasses, signifies an unpleasant sensation and a temporary blurring of vision caused by a high luminosity of the field of view, either as a whole or in part.

American Spectacle Co., Inc., in connection with the sale and distribution of its sun glasses in commerce as defined by said act, agreed to cease and desist from representing in any way whatsoever, or from placing in the hands of others the means of representing that said sun glasses bar or exclude 94 percent of harmful glare, or any other percentage which exceed the actual glare excluding capabilities thereof. (May 22, 1939.)

2477. **Animal and Poultry Preparations—Qualities.**—Master Laboratories, Inc., a corporation, engaged in the manufacture or compounding of a line of animal and poultry preparations, one of such preparations being designated "Poultone" and another "Master Capsule," and in the sale of said preparations 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 in commerce as set forth therein.

Master Laboratories, Inc., in connection with the advertisements, offering for sale, sale, or distribution of its "Poultone" or "Master Capsule," or any other product containing substantially similar ingredients, whether under the same name or names or under any other name in interstate commerce or in the District of Columbia, agreed to cease and desist from stating or representing that the administration of such products, or of either thereof, to sick or ailing poultry will take care of or solve all the worm problems faced by the poultry raiser or will kill all worms or serve as a treatment and control of worms generally: *Provided, however,* If said products, or either thereof, possess medicinal properties or value which, when administered to poultry, will rid or cure such poultry of a particular type or kind of worm, and a representation is made to such effect, then in such case, the particular type or kind of worm referred to, shall be conspicuously and unequivocally disclosed in immediate connection with such representation. (May 25, 1939.)

2478. **Perfume Products—Source or Origin and Business Status.**—Gabilla, Inc., a corporation, engaged in the sale and distribution of perfume products, labeled under its own trade designations, 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 in commerce as set forth therein.

Perfumes imported from France are generally esteemed by the purchasing public for their superior quality, the French having developed this art through many years to a high degree; and perfumes manufactured in France and imported into the United States are preferred by a substantial portion of the purchasing public.

Gabilla, Inc., in connection with its sale and distribution of perfume products in commerce as defined by said act, agreed to cease and desist from—

(a) The use of the words "Paris" or "France" on its labels, containers, cartons, or otherwise in any way so as to import or imply or cause the belief that any product so marked is of French origin or was compounded or blended into its finished state at Paris, or in France; when such is not the fact.

(b) The use of the words "Bottled in U. S. A." or equivalent words, on or in connection with bottles containing products manufactured or processed within the United States, so as to import or imply, or the effect of which may be to cause the belief that the product within the bottle was imported in bulk into the United States and merely poured into the bottle from the bulk container; when such is not the fact.

(c) The use of any foreign address on its letterheads, on its products, in its trade literature, or otherwise, in any manner so as to import or imply, or the effect of which may be to cause the belief that said corporation has an office or place of business located at the address named in the foreign country indicated, when such is not the fact. (May 26, 1939.)

2479. **Fly Ribbons—Composition.**—Solo Chemical Works, Inc., a corporation, engaged in the business of manufacturing so-called tubular fly ribbons 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 in commerce as set forth therein.

Solo Chemical Works, Inc., in connection with the sale and distribution of its product in commerce as defined by said act, agreed to cease and desist from the use of the word "Honey" either alone or in connection or conjunction with the picturization of a beehive or in any other way as a brand name or otherwise to designate said product so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said product is

composed in substantial part of honey or has been substantially treated with honey, when such is not the fact. (May 26, 1939.)

2480. Reducing Preparation—Qualities.—Joseph E. Gessner, sole trader operating under the assumed name of Dr. Laun Sales Co., engaged in the sale and distribution of a preparation purported to reduce the weight and remove the fat of obese persons, which he has designated “Dr. Laun’s Reducing and Stimulating Balm,” in interstate commerce in competition with other individuals, corporations, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Joseph E. Gessner, in connection with the sale of or as a means to induce, directly or indirectly, the purchase of any medicinal or cosmetic product in commerce as defined by said act, agreed to cease and desist from disseminating or causing the dissemination through the United States mails or by other means, of advertisements or printed matter representing in any way whatsoever that the product designated “Dr. Laun’s Reducing and Stimulating Balm” or any similar preparation, either with or without the application of massage, will remove fat from the body or from any individual part of the body; or that said preparation or any ingredient thereof has any value whatsoever as a reducing agent. (May 24, 1939.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS ¹

02305. Food Supplement—Ailments, Qualities and Testimonials.—Milk Minerals Co., Inc., a corporation, 400 Rush Street, Chicago, Ill., vendor-advertiser, was engaged in selling a mineral food supplement designated Darical Wafers and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That very few foods supply calcium.

(b) That the use of Darical Wafers will safeguard the health of expectant and nursing mothers unless expressly limited to supplying calcium requirements.

(c) That nervousness, insomnia and "run down" condition will be treated effectively in any substantial proportion of cases by the administration of Darical Wafers, or that calcium deficiency is to any great extent responsible for such conditions.

The respondent further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 3, 1939.)

02306. Iron Rest—Opportunities, Earnings and Free Product.—The Neverlift Co., Inc., a corporation, 6903 Woodlawn Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling a device for easing the work of ironing, known as—Neverlift Iron Rest 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 Neverlift Iron Rest sells so easy on a one-minute demonstration that a sale is made on nearly every call.

(b) That distributors can make 150% profit, unless it is explained that the distributor must purchase this device in lots of 5,000 and sell them all at the retail price of 50 cents in order to make this profit.

(c) That the "Sample Offer Plan" is "free" so long as the recipient must purchase a given number of these devices in order to obtain the "free" sample. (Jan. 6, 1939.)

02307. Booklet re Alleged Treatment for Old Leg Sores—Nature and Qualities.—F. C. Rath, an individual, doing business under the trade

¹ The stipulations in question are those of the radio and periodical division with vendor-advertisers. Said division was created as of October 18, 1938 to carry on the functions and duties of the former special board of investigation. Period covered is that of this volume, namely, January 1, 1939, to May 31, 1939, inclusive. For digests of previous stipulations, see vols. 14 to 27 of Commission's decisions. The work in question as successively and currently carried on by the two units, above referred to, is dealt with in a summary way in the Commission's 1939 annual report at p. 135 et seq.

name of Plastex Co., 740 Rush Street, Chicago, Ill., vendor-advertiser, was engaged in selling a booklet entitled "The Technique of Leg Wrapping" and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing or otherwise:

(a) That the booklet advertised and sold by respondent contains instructions for suitable or efficacious treatment of serious disorders of the leg, such as old leg sores, etc.

(b) That the information, contained in the booklet advertised and sold by respondent, is based on intensive study by leg specialists.

(c) That the application of a cloth boot, or bandaging, is a competent remedy in the treatment of old leg sores and/or other disorders of the leg. (Jan. 7, 1939.)

202308. Medicinal Preparation—Qualities and Testimonials.—H. P. Clearwater, an individual, trading as Pope Laboratories, 20 F Street, Hallowell, Maine, vendor-advertiser, was engaged in selling a counterirritant ointment designated Joint-Ease 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 rheumatism or neuritis unless limited to its palliative local relief from the discomforts of these conditions.

(b) That respondent's product is a "new" remedy.

(c) That respondent's product will relieve joint "troubles" irrespective of location, or will relieve joint "ailments" in general.

(d) That relief is "sure" to follow the use of respondent's product.

The respondent further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 3, 1939.)

202309. Employment Information—Opportunities and Earnings.—Donald A. Thomas, an individual trading as Co-Operative Service, Room 210, 77 Swan Street, Buffalo, N. Y., vendor-advertiser, was engaged in selling a booklet entitled "How To Make Money," circulars 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 through the purchase of respondent's book one can secure employment, or that it will give a job to everybody or that jobs are waiting for the purchasers of respondent's books or services.

(b) That purchase of respondent's books or services will get dollars in the mail daily or at all, or that respondent will fill orders free.

(c) That respondent's plan is an all profit business plan.

(d) That millions want respondent's book.

(e) That respondent's service is worth a hundred dollars or any like amount.

(f) That respondent's booklet "How to Make Money" is filled with practical or job getting information or is the most complete of its kind.

(g) That respondent's "reward for promptness" is worth a dollar or other amount in excess of its real value.

(h) That respondent's plan enables one to make up to \$10.00 a week, or that one can earn up to \$25.00 weekly addressing envelopes.

(i) That persons who purchase respondent's services need carry no stock.

(j) That the financial position of the "Certi-Guarantee League" is as strong as Gibraltar or that such League offers adequate security to purchasers of respondent's services. (Jan. 4, 1939.)

02310. Medicinal Preparation—Qualities.—Allen S. Olmsted, an individual doing business as Mother Gray Co., Le Roy, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated "Mother Gray's Sweet Powders" 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 Mother Gray's Sweet Powders for children is beneficial to children suffering from teething.

(b) That Mother Gray's Sweet Powders for Children is a competent remedy in the treatment of stomach disorders, headache, feverishness, or colds.

(c) That Mother Gray's Sweet Powders for Children—

1. Tends to "check" colds;
2. Tends to "break up" colds; or
3. Acts as a vermifuge.

(d) That Mother Gray's Sweet Powders for Children is a competent remedy in the treatment of constipation unless the claim is limited to temporary constipation.

(e) That Mother Gray's Sweet Powders for Children tends to regulate the bowels, reduce fever, relieve headaches and/or relieve stomach disorders, unless such malady or ailment is caused by temporary constipation. (Jan. 4, 1939.)

02311. Cosmetics—Qualities and Source or Origin.—George A. Sakele, an individual trading as Monsieur Sakele, 101 West Forty-fourth Street, New York, N. Y., vendor-advertiser, was engaged in selling cosmetics designated Egyptian Sun Tan Creme and Egyptian Sun Tan Face 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 respondent's products are the result of 5000 years of experience, or that the business conducted by respondent represents 5000 years of experience.

(b) Unqualifiedly, that respondent's cream will prevent sunburn, freckles, or dry skin.

(c) That with the use of respondent's cream "one cannot burn."

(d) That respondent's cream will unqualifiedly prevent burning or freckles yet unqualifiedly promote tanning.

The respondent further agreed to cease and desist from representing, by any reference to Egypt in the trade name of his products, or in any other manner, that such products originated in Egypt when

such is not the fact, and from the use of the words "Egyptian Tan" in any other manner than to clearly and plainly refer to color. (Jan. 9, 1939.)

02312. Powdered Soft Drink Bases—Composition.—Perkins Products Co., a corporation, 5535 West Sixty-fifth Street, Chicago, Ill., vendor-advertiser, was engaged in selling flavored, powdered soft drink bases designated Kool-Aid and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) From using the words "grape," "cherry," "strawberry," or "raspberry" as descriptive of the flavors of those products which are synthetically flavored and do not contain flavoring made from the fruit or juice of the grape, cherry, strawberry or raspberry unless in each instance such word ("grape," "cherry," "strawberry," or "raspberry") is accompanied by a word or words, equally conspicuous with it in character or type, clearly indicating that such flavoring is synthetic or an imitation of the genuine fruit flavor.

(b) From using the terms "fruity" or "purest ingredient" as descriptive of any product that is synthetically flavored to imitate the flavor of a fruit. (Jan. 12, 1939.)

02313. Equipment and Supplies for Poultry Raisers—Opportunities, Free Offer, Prices and Earnings.—H. M. Sheer Co., a corporation, second and Hampshire Streets, Quincy, Ill., vendor-advertiser, was engaged in selling equipment and supplies for poultry raisers, including Brooders and Broiler Plants 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 "9 out of 10 make a big success" in the broiler business.

(b) That with an investment of \$33, or any other amount which is charged as an initial payment or deposit on equipment shipped to a purchaser or prospective purchaser, such purchaser may start a profitable poultry business.

(c) That any offer is a "free trial offer" so long as a cash deposit is required prior to the delivery of the equipment offered.

(d) That any prices regularly offered are "special" prices.

Respondent, in soliciting purchasers of its products in interstate commerce, agreed:

(e) Not to represent or hold out as maximum profits 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 users of respondent's products under normal conditions in the due course of business. (Jan. 12, 1939.)

02314. Reducing Device—Qualities, Safety, Etc.—Thermo Roller Corp., a corporation, 12 East Thirty-second Street, New York, N. Y., vendor-advertiser, was engaged in selling a device for reducing fat of obese people designated Thermo Roller 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 Thermo Roller—

1. Does wonders toward attaining slimness of contour;
2. Eliminates "excess weight;"
3. Melts fat and bulges like magic;
4. Reduces by merely rolling it over the part one desires to reduce or;
5. Melts the pounds away.

(b) That the use of Thermo Roller causes unnatural waistlines, fatty thighs and too large hips to disappear like magic.

(c) That Thermo Roller does more, in a few minutes, to remove fatty tissue than hours and hours of strenuous and laborious exercise.

(d) That, by the use of Thermo Roller, one can reduce the spots one wishes.

(e) That Thermo Roller removes wrinkles, double chins and other imperfections.

(f) That Thermo Roller—

1. Corrects double chins, wrinkles, crepey necks, flabby flesh and/or other facial imperfections.
2. Is used in "most" of America's exclusive beauty shops.

(g) That Thermo Roller is used successfully by physicians, nurses and a famous hospital clinic for the treatment of arthritis, lumbago, sciatica and rheumatism.

(h) That Thermo Roller is a competent remedy in the treatment of arthritis, lumbago, sciatica, rheumatism, constipation, and/or insomnia.

(i) That Thermo Roller—

1. Rolled up and down the spine for ten minutes will generally correct the worst cases of nervousness;
2. Is a scientifically designed instrument that "rids" one of excess fat, without diet or exercise.
3. Is the safest, simplest and easiest reducing method ever devised.

(j) That Thermo Roller—

1. Is a Beauty Miracle for the face;
2. Removes blemishes and blackheads;
3. Diminishes large pores;
4. Beautifies the hands;
5. Restores the contour; or
6. Banishes acne. (Jan. 13, 1939.)

02315. Electric Fence Equipment—Qualities, Safety, Etc.—The Prime Manufacturing Co., a corporation, 1669 South First Street, Milwaukee, Wis., vendor-advertiser, was engaged in selling Electric Fence Equipment 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 Electric Fence, comprising a controller and a single wire enclosure, or one wire plus a touch of electricity, holds live stock, unless it is explained in direct connection therewith that one wire is effective only for animals of approximately the same size.

(b) That sheep can be held or controlled by one wire unless it is explained in direct connection therewith that sheep must first be properly trained.

(c) That said fence "positively" or "at all times" holds live stock, inasmuch as the same may be rendered inoperative for various reasons.

(d) That respondent's equipment is the "only" safe or sure way to use electric current in fencing.

(e) That any fence that the neighbors agree upon constitutes a legal fence.

(f) That the respondent's method of fencing saves four dollars out of five, or any other definite amount or proportion in excess of the average savings effected as substantiated by reliable records.

(g) That by the use of respondent's equipment fencing can be installed for 4¢ per rod or any other amount less than the actual minimum cost, as substantiated by reliable records.

(h) That the labor required to fence any specified area is less than the average labor required for fencing similar areas by the use of electric fencing.

(i) That an insurance policy is issued to each purchaser of respondent's equipment unless in direct connection therewith the fact is stated that the protection is limited to the purchaser's family and live stock. (Jan. 13, 1939.)

02316. Medicinal Preparation—Qualities and Properties, Etc.—Banfi Products Corp., a corporation, 206 Spring Street, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Felsina Ramazzotti 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 there are no vegetable bitters other than Felsina Ramazzotti available to the public and sold in competition therewith.

(b) That Felsina Ramazzotti is a competent treatment or an effective remedy for heaviness of the stomach, unless expressly limited to flatulence or gas formation.

(c) That this preparation is a competent treatment or an effective remedy, or that it will be of value in preventing:

1. Colds,
2. Catarrh,
3. Influenza,
4. Bronchitis,
5. Pneumonia, or
6. Gastric acidity, or that it will enable one to resist weather inclemencies.

(d) That Felsina Ramazzotti will guard the health of the user.

(e) That Mahatma Gandhi has approved or expressed any opinion concerning this product.

(f) That this product is universally used in all parts of the world.

(g) That this preparation tones the stomach generally. (Jan. 16, 1939.)

02317. Automobile tires—Qualities and Safety.—The Seiberling Rubber Co., a corporation, 345 Fifteenth Street, Akron, Ohio, vendor-advertiser, was engaged in selling commercial automobile tires designated "Seiberling Two-Tread Air Cooled 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 Seiberling Two-Tread Air Cooled tires never wear smooth.

(b) That Seiberling Two-Tread Air Cooled tires are protected, safe, or proofed against blowouts.

(c) That Seiberling Two-Tread Air Cooled tires insure the safety of the user and give anti-skid protection to the final mile or during the entire life of the tires.

(d) That Seiberling Two-Tread Air Cooled tires give three times more mileage than other tires.

(e) That the use of Seiberling Two-Tread Air Cooled tires will enable the driver to stop promptly an automobile under all road conditions encountered, or insure him of having his car under proper control at all times.

(f) That Seiberling Two-Tread Air Cooled tires will stay cool. (Jan. 26, 1939.)

02318. Flea Powder—Qualities.—William Cooper & Nephews, Inc., a corporation, 1909 Clifton Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling a flea powder designated "Pulvex Flea Powder" and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

Publishing representations containing comparisons of the efficacy of its currently and previously manufactured products, unless it is clearly indicated in direct connection therewith that the comparisons refer to those products. (Feb. 3, 1939.)

02319. Hair Products—Qualities.—National Oil Products Co., Inc., a corporation, First and Essex Streets, Harrison, N. J., vendor-advertiser, was engaged in selling two shampoo preparations designated, respectively, Admiracion Olive Oil Shampoo and Admiracion Foamy Oil 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 the use of either Admiracion Olive Oil Shampoo or Admiracion Foamy Oil Shampoo will—

1. Revitalize the hair or scalp.
2. Renew hair health.
3. Produce younger or healthy hair.
4. Double the life of waves and curls; or "Rid" the hair of or "banish" any foreign substance.

(b) That either of said preparations—

1. Constitutes a competent treatment for excessive dryness, unless specifically limited to such temporary effect as is produced by cleansing the hair and scalp and by the traces of the shampoo which remain in contact after washing the hair; or
2. Has any effect upon excessive oiliness, except to remove accumulated oil from the hair and scalp.

(c) That National Oil Products Company's shampoo preparations outsell all competing products 2 to 1 in beauty shops.

(d) That National Oil Products Company's shampoos will do more than just clean the hair, unless specifically limited to such results as are actually obtained thereby.

(e) That no competing product achieves the same results as Admiracion Olive Oil Shampoo, or that this product is entirely different from all competing products.

(f) That results are obtained with "the first application" of National Oil Products Company's products, unless specifically limited to cleansing and softening the hair and to adding lustre and manageability thereto. (Feb. 10, 1939.)

02320. Feed Supplements—Qualities, Competitive Products, Etc.—Acme Feeds, Inc., a corporation, 7715 Van Buren Street, Forest Park, Ill., vendor-advertiser, was engaged in selling various feed supplements, designated, The Old Reliable Acme, Acme Big-9-Steer Feed, Acme Egg Mash, Acme Chick Starter, Acme Egg Balancer, Acme Dairy Cattle 9 Proteins and Acme Calf Meal 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 Old Reliable Acme, when used to balance a corn ration, will double the feeding value of corn so as to import or imply that it will do so in all cases.

(b) That the feeding of Acme Big-9-Steer Feed—

1. Constitutes a balanced ration when fed with corn.
2. Will result in steers grinding their feed better with "no whole corn passing through."
3. Will do more than aid in keeping cattle on a full and even appetite.
4. Will prevent scouring so as to import or imply that it will do so regardless of the cause.

(c) That 1 pound of Acme Big-9-Steer Feed is equal to 2 pounds of oil meal.

(d) That a combination of protein feeds twice as far as does a single source.

(e) That Molasses Dairy Feeds are only fillers, or that molasses feeds are partially composed of oat hulls and screenings, so as to import or imply that this is true of all Molasses Dairy Feeds, or all molasses feeds.

(f) That all commercial feeds are composed of inferior ingredients or ingredients of poor quality with but a small percentage of cottonseed meal, oil meal or tankage.

(g) That 150 pounds of Acme will supply more digestible protein than 300 pounds of any other protein supplement.

(h) That there is a universal agreement among authorities as to the right variety and amount of protein substances to be included in a protein mixture for milk production.

Acme Feeds, Inc. further agreed to cease and desist from representing directly or otherwise:

1. That the Old Reliable Acme plus grain is the best ration on earth at the least cost; or
2. That Acme, when fed young stock, will grow more bone and frame than any ration ever used, or
3. That Acme plus sow's milk and pasture will grow more bone and frame than any other ration; or
4. That Acme Calf Meal is the most perfect milk substitute on the market for the purpose intended; or
5. That Acme Egg Balancer added to grain will provide a mixture at less cost than any formula ever used; or
6. That Acme Egg Mash is the most palatable on the market; or

7. That Acme Chick Starter has the "highest raise the chick percentage"; or that it carries less fiber than any other ever made unless such fact is definitely established by reliable tests of all similar products offered for sale; or

8. That Acme balances corn better than any other kind or form of protein on the market as shown by scale tests or otherwise; or

9. That the Acme plant is the most modern in the world.

unless and until all such and similar statements are adequately substantiated and verified. (Feb. 13, 1939.)

02321. Soap—Qualities.—T. M. Sayman Products Co., a corporation, 2111-2137 Franklin Avenue, St. Louis, Mo., vendor-advertiser, was engaged in selling a detergent designated Sayman's Vegetable Wonder Soap 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 soap allays irritation of the scalp generally or affects the texture of the hair of the user.

(b) That this product will waste away more slowly than, or be affected in any other manner different from, competing soaps by immersion in water.

(c) That this soap is "the best" for use on infants.

(d) That the use of this soap will constitute a competent treatment or an effective remedy for pimples, blackheads, or skin blemishes, generally, or when caused by clogged pores.

(e) That the use of this soap insures unobstructed pores, or that it will assure a "normal" condition of the skin.

(f) That this product vastly differs from all other soaps.

(g) That soaps containing animal fats, fillers, or coloring matter are likely to obstruct pores or cause itching humors or torturing skin diseases.

(h) That this is the only soap which should be used by those who desire a healthy skin.

(i) That the use of this soap will help "clear" the skin.

(j) That the soap will stimulate circulation, unless limited to results obtained by the soap when applied with massage.

(k) That this soap cleans "way down into the pores", or any other representation to the effect that it acts deeply. (Feb. 13, 1939.)

02322. Tonic (Body Builder)—Qualities, Scientific Discovery, Etc.—Adjuvant Specialties Co., Inc., a corporation, 111 Academy Street, Jersey City, N. J., vendor-advertiser, was engaged in selling a tonic fortified by the addition of Vitamin B₁, designated "Belixol", 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 "Belixol" is a new way of mixing Vitamin B₁ in a liquid.

(b) That Belixol, as a way of putting Vitamin B₁ in a liquid, is a new scientific discovery.

(c) That the administration of "Belixol" will be effective in improving appetite in individuals, except in those cases where poor appetite has been caused by Vitamin B₁ deficiency.

(d) That as the result of the administration of "Belixol" children's appetites will become normal, their dispositions will improve, their growth will be

speeded up, or their weight will often increase, except in those cases where poor appetite, unpleasant dispositions and retarded growth have been caused by Vitamin B₁ deficiency.

(e) That it is "often advisable" to take Belixol, except in those cases where there has been an active Vitamin B₁ deficiency.

(f) That in a majority of cases, lack of normal appetite is caused by a deficiency of Vitamin B₁.

(g) That Belixol is not a medicine but essentially a food.

(h) That the administration of "Belixol", or of a preparation fortified by the addition of Vitamin B₁, will increase the quantity and improve the quality of milk for nursing mothers.

(i) That the administration of "Belixol" "gives" a vigorous, healthy appetite to individuals.

(j) That Vitamin B₁ is "Nature's own appetite builder".

(k) That authorities say most growing children need "Belixol" or the administration of a preparation fortified by Vitamin B₁.

(l) That many doctors have called or call B₁ "the key vitamin". (Feb. 14, 1939.)

02323. **Cooking Utensils—Professional Connections, Business Status, Qualities, Etc.**—Cookware Co. of America, a corporation, Hartford, Mich., vendor-advertiser, was engaged in selling cooking utensils, now designated "Vitamium Ware" but formerly advertised and marketed as "Dr. Burnette's Cookware Utensils," "Cookware Utensils," and "Cookware" 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 Wm. A. Burnette is a "Doctor" or a "Dr." (and from using either the word "Doctor" or the abbreviation "Dr." in front of the name Wm. A. Burnette), unless it is explained in that connection that Wm. A. Burnette's doctor's degree is an honorary degree, conferred by a college in recognition of his services to said college and that said degree or title does not denote any skill, learning or attainments in the field of medicine or any allied science.

(b) That the Cookware Co. of America maintains a "Health Department" that can, or does, render valuable or helpful service to the purchasers of Cookware Utensils; unless and until all information, advice, and data pertaining to diets and health, disseminated by that or a similar department, is accurate and authentic according to reliable medical and scientific authority.

(c) That the Cookware Co. of America is taking a great part in leading the way in the science of living by the use of proper food.

(d) That the Cookware Utensils are "health" utensils.

(e) That the Cookware Co. of America—

(1) Points the way to health to hundreds of thousands of people; or

(2) Maintains a "Health and Research Department" of recognized merit.

(f) That the "Health and Research Department" maintained by Cookware Co. of America carries on a continuous and ever-ready service for the friends of Cookware; unless and until the service rendered is, in fact, "continuous" and "ever-ready."

(g) That the Cookware Co. of America has, or makes available to its customers, authentic information on important subjects relating to cooking and eating

for health, until and unless such information is authentic in fact according to reliable medical and scientific opinion.

(h) That Cookware Co. of America's "new scientific C. C. A. Health Food" will aid regular food in more rapidly restoring the normal natural mineral balance to the body of a person showing a deficiency of one or more of the all-important elements.

(i) That the questionnaire, furnished by respondent, will enable or assist it's "Health and Research Department" to find the patient's deficiencies or prescribe an adequate course of treatment or diet.

(j) That Dr. H. M. Adolph is "Director of Health Department," or that he can, or does, render any beneficial service to the purchasers of respondent's utensils.

(k) That the "C. C. A. Health Food, especially prepared for tuberculosis," is an adequate remedy in the treatment of tuberculosis or has any beneficial effect on any one suffering from tuberculosis.

(l) That remarkable recovery from scores of ailments is readily obtained by the correct use of C. C. A. Health Foods.

(m) That C. C. A. Health Foods are effective in diseases and ailments such as constipation, hyperacidity, gastritis, and many and various other diseases, or that these diseases and ailments respond very readily to the most thorough, tried, and proven natural care and attention of respondent.

(n) That "waterless" cooking is made possible by the special construction of Cookware Utensils, or implying through the use of similar phraseology that the desirable results of so-called "waterless" cooking may be obtained only with Cookware Utensils.

(o) That Cookware Utensils make possible cooking under "scientific" conditions.

(p) That Cookware Utensils make possible cooking under "controlled" conditions, or implying by means of similar phraseology that the advantages of "controlled" cooking are obtainable only through the use of Cookware Utensils.

(q) That either Dr. H. M. Adolph, who is assisting "Dr." Burnette in preparing data for the proposed new book, "Cooking to Live 100 Years," or "Dr." Burnette, who is to be the author of said book, has any knowledge, skill, or training that would fit them for such work.

(r) That Dr. H. M. Adolph—

1. Is or, for years, has been an expert in dietary and in maintaining or building health through proper foods; or
2. Is master of the latest science of establishing causes of diseases and ailments.

(s) That with proper use of Cookware equipment one will—

1. Prevent vitamin and color loss through cross ventilation;
2. Conserve minerals by low temperature cookery;
3. Eliminate the excessive use of oils and fats in cooking; or
4. Save fuel through evenly diffused heat in the basic plate.

(t) That using Dr. Burnette's Cookware and following his suggestions in the "Voyage of Health" will better equip one, both physically and mentally, to cope with the problems of everyday life.

(u) That it is not hard to lose or gain weight or that to lose or gain weight only requires a little will power.

(v) That the right foods properly cooked "prevent" diabetes, tuberculosis, high blood pressure, stomach trouble, constipation, obesity, rickets, rheumatism, anemia.

(w) That foods cooked in Cookware Utensils will "correct" conditions arising from dietetic causes.

(x) That the "especially prepared" C. C. A. Health Foods—

1. Restore to the body elements it needs by addition of concentrated portions of the correct combination;
2. Are pure vegetable foods;
3. Are concentrated more than fifteen times; or
4. Assist in removing the dietetic cause of ill health.

(y) That C. C. A. Health Foods—

1. Are scientifically prepared by eminent nutritional experts;
2. Contain only pure vegetable foods; or
3. Are applicable, in certain combinations of formulas, to most all conditions of ill health.

(z) That C. C. A. Health Food Formula A—

1. Is a true food;
2. Adds nourishment, lubrication and resiliency to the intestinal tract; or
3. Helps to establish a normal, healthful elimination.

(aa) That C. C. A. Health Food Formula B—

1. Is a competent remedy in the treatment of nervousness, insomnia, neurasthenia, and so-called rundown conditions.

(bb) That C. C. A. Health Food Formula J—

1. Is a competent remedy in the treatment or prevention of colds, tonsillitis, bronchitis, asthma, or hay fever; or
2. Has been found particularly valuable to the respiratory system.

(cc) That C. C. A. Health Food Formula D is a competent remedy in the treatment of obesity, or that it has any beneficial effect in reducing the weight of obese persons, or that "over 90%" (or any other definite percentage) of cases of obesity will respond to its use.

(dd) That C. C. A. Health Food Formula F—

1. Is a competent remedy in the treatment of indigestion, heartburn, dyspepsia, excessive gas formation, or allied troubles; or
2. Assists in correcting the base of such troubles.

(ee) That C. C. A. Health Food Formula G—

1. Is a competent remedy in the treatment of muddy complexion, sluggish bowels, clay colored stools, biliousness, bad breath, sick headaches, or a constant tired feeling; or
2. Has been found valuable in helping keep down high blood pressure and associated conditions.

(ff) That C. C. A. Health Food Formula C—

1. Has proven beneficial to weak, undernourished and run-down people who lack iron and calcium in the proper proportions in their diet; or
2. Is beneficial to people with defective teeth.

(gg) That C. C. A. Health Food Formula H—

1. Is a competent remedy in the treatment of rheumatism, lumbago, sciatica, neuralgia, and similar complaints; or
2. Will assist in combating conditions caused by a deficient circulation of the blood or the formation of pus in the body.

(hh) That C. C. A. Health Food Formula E—

1. Is a competent remedy in the treatment of hyperacidity and the conditions resulting therefrom; or
2. Is a concentrated food high in the alkaline elements.

(ii) That C. C. A. Health Food Formula K—

1. Is a competent remedy in the treatment of kidney or urinary troubles; or
2. Assists nature in establishing better elimination through the urinary system.

(jj) That C. C. A. Health Food Formula L—

1. Is a competent remedy in the treatment or prevention of goitre; or
2. Supplies enough iodine to the system to care for the needs of the average adult.

(kk) That C. C. A. Health Food Formula M—

1. Is a competent remedy in the treatment of catarrh (either in the nasal passages or in the stomach and intestines), catarrhal indigestion, mucus colitis, and similar disorders; or
2. Will be found of great value in helping to clear the body of such harmful and annoying conditions as the formation of excessive amounts of mucus or pus.

(ll) That the Cookware Co. of America, Health Department, furnishes an "efficient" and "very valuable" dietetic service for purchasers of its utensils, unless and until all information, data and advice relating to diets and health, disseminated by that or a similar department is accurate and authentic according to reliable medical and scientific authority; or that any dietetic service is furnished "without extra charge," so long as this service is contingent upon the purchase of respondent's merchandise.

(mm) That "We are Selling HEALTH—NOT pots and pans."

(nn) That respondent is "not selling Cookware alone, but health."

(oo) That respondent is selling a complete health system for the entire family.

(pp) That the service of C. C. A. Health Department points the way to health or sends highly valuable health and diet information, "fitted to each case," to all purchasers of Cookware Utensils who apply for this service.

(qq) That the C. C. A. Health Department has a special service which makes it possible for any person suffering from any disease caused by a deficiency in the primal elements to regain a proper chemical balance and thus return to health.

(rr) That representatives of the Cookware Co. of America know that they are true emissaries of health.

(ss) That respondent's book, "Healthward," is sent "free" of charge to all purchasers of Cookware, so long as such offer is contingent upon the purchase of a stated amount of respondent's merchandise.

(tt) That Dr. H. M. Adolph, head of C. C. A. Health Department, is legally (or otherwise) qualified to render any service pertaining to health or diet.

(uu) That the twelve C. C. A. Health Foods, or any one of them, are effective in restoring deficient elements to the body, or in bringing about a healthy condition of the body.

(vv) That Cookware Co. of America—

1. Opens the "Avenue to Health" for every one;
2. Offers a "perfected" health system; or
3. Provides "health insurance."

(*wv*) That "Dr." Burnette's Cookware saves Health, Money, Time, Worry.

(*xx*) That the book, "Healthward"—

1. Possesses value and/or merit; or
2. Is "free of charge," so long as the recipient must purchase a definite amount of goods to obtain a copy.

(*yy*) That, with "Dr." Burnette's highly perfected cookware, anyone can avoid having burned food, scorched food, or foods that stick.

(*zz*) That the "exclusive adjustable ventilators" with which Cookware Utensils are equipped permit undesirable odors in cooking to escape without notice (or renders the odors less undesirable or less noticeable than if the odors escaped through some other kind of orifice) and/or allow needed fresh air to reach the food as it cooks.

(*aaa*) That a set of Cookware Utensils—

1. Means far more to you and your loved ones than any life insurance policy as large as any one could obtain; or
2. Are a protection against the hazards of life.

(*bbb*) That Cookware Utensils—

1. Are the latest, most efficient and easiest to use health utensils that have been designed.
2. Will automatically save the health-giving elements of natural foods.
3. Have been developed to a point where it is a rare thing to burn any food.

(*ccc*) That recognized authorities have accepted these new cooking utensils as the most economical and the most efficient ever offered.

(*ddd*) That cooking without water, with "Dr." Burnette's Cookware Utensils, makes food more tasty, tender, and healthful than food cooked in other ways or is more efficient in saving needed elements; or implying through the use of similar representations that these results or the advantages of "waterless" cooking are exclusive with Cookware Utensils or can be obtained only through the use of Cookware Utensils.

(*eee*) That cooking without grease, with "Dr." Burnette's Cookware Utensils, saves the digestive system and/or eliminates stomach ailments.

(*fff*) That one may cook with more accuracy with "Dr." Burnette's Cookware Utensils than with other utensils,

(*ggg*) That by cooking with "Dr." Burnette's Cookware Utensils one may save money because—

1. There is very slight food shrinkage.
2. One may save on greases.
3. Foods do not stick or burn.
4. Cheaper cuts of meat may be used; or implying through similar phraseology that these savings may be accomplished only when the respondent's utensils are employed.

(*hhh*) That "Dr." Burnette's Cookware Utensils enable one to cook with less fuel.

The respondent also agreed in soliciting the sale of its products in interstate commerce:

(*iii*) Not to include under the caption "Exclusive Advantages of Cookware", or any other heading of similar import, the heat indicator or the "air-tight,

water-seal rim," or to represent in any other manner that these features are exclusive with Cookware Utensils; and

(jij) Not to represent in any manner as "exclusive" any feature or attribute of its utensils, unless the same is, in fact, exclusive and not found in any other make of utensils. (Feb. 15, 1939.)

02324. Radio sets and Wrist Watches—Qualities and Prices.—Louis J. Thomas, an individual, trading as American Leader Products Co., 1606 West Seventy-eighth Street, Chicago, Ill., vendor-advertiser, was engaged in selling radio sets, designated, American Leader Pocket Radio and Philmore Model PBM-10, and wrist watches, designated, No. V-315 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 American Leader Pocket Radio is new and sensational so as to import or imply that said radio embodies new principles of construction or operation, or is essentially different from other sets of its type.

(b) That the American Leader Pocket Radio gives beautiful tone or clear reception, so as to import or imply that such is generally true.

(c) That any of respondent's radios can be used in autos, beds, offices, camps, hotels, on vacations or anywhere, or that same work immediately or can be used at once, unless, where antenna or ground or other connections are necessary, such fact be also stated with equal conspicuousness and in direct connection therewith.

Louis J. Thomas further agreed in selling and soliciting the sale of any of his products in interstate commerce to cease and desist from advertising or marketing the same with false, fictitious, or exaggerated prices in excess of the usual or customary price at which such products are sold. (Feb. 17, 1939.)

02325. Hand Cultivator (Gardening Tool)—Qualities, Opportunities, Earnings, Etc.—Wonder Manufacturing Co., a corporation, 620 North Michigan Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling a hand cultivator and gardening tool designated Wonder 10-in-1 Cultivator 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 product handles every job easier, better, quicker or at lower cost than other tools.

(b) That inexperienced agents or other salesmen report phenomenal sales everywhere the product is introduced.

(c) That it will guarantee profits to salesmen.

(d) That its product is used by the United States Government and other organizations unless such is a fact at the time the statement is published.

(e) That its product does more work easier, faster or better than ten or any similar number of ordinary tools.

(f) That its product takes the drudgery out of gardening or cultivating.

(g) That the use of the Wonder tool is the easiest, simplest or least expensive way of handling any definite or large number of jobs in farming, gardening or landscaping.

- (h) That without its tool, gardening is needlessly slow, tiresome or expensive.
- (i) That with its product one can weed or mulch any definite number of times as fast as with other tools.
- (j) That one man using its product can do the work of five men with hoes or shovels, or that its product does the work of or replaces ten or any definite number of ordinary tools.
- (k) That its product eliminates gripping of the handle, sore backs, blistered hands, nervous tension or hard labor or pushes away work or banishes backaches or blisters.
- (l) That working with its product never becomes tiresome.
- (m) That it is the most amazing scientifically designed modern or practical of all garden implements.
- (n) That it offers free samples to salesmen.
- (o) That its product sells on sight in all cases, or that every prospect will order.
- (p) That a child can make money through the sale of its product or that no experience is needed in selling.

The Wonder Manufacturing Co., 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 its active full-time salespersons or dealers achieved under normal conditions in the due course of business.
- (b) Not to represent that such salespersons or dealers will have the chance or opportunity of earning any amount which is in excess of amounts theretofore actually earned by one or more of its 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 its 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. (Feb. 18, 1939.)

02326. Medicinal Preparation—Qualities.—John B. Daniel, Inc., a corporation trading as Regens Laboratory, 76 Central Avenue, SW., Atlanta, Ga., vendor-advertiser, was engaged in selling a nerve preparation designated "Regens" 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 afford relief from all forms of nervousness.
- (b) That the product will "control" nervousness.
- (c) That the product will cause natural rest or sleep.
- (d) That hysteria and overwrought nerves will "yield" to the product.
- (e) That the product is the last or most effective preparation of its type. (Feb. 20, 1939.)

02327. Men's Clothing—Composition, Business Status, Source or Origin, Free Products, Etc.—J. A. Rosenthal, an individual, doing business

under the trade name of Jay Rose & Co., 330 South Wells Street, Chicago, Ill., vendor-advertiser, was engaged in selling men's clothing and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Designating, describing or representing as "wool," "all wool," or "woolen" the fabrics used in the manufacture of his clothing (except linings and fittings) when such fabrics are not composed wholly of wool.

(b) Designating, describing or representing as "wool," "all wool," or "woolen," any fabric made partly of wool and partly of cotton, rayon, silk, linen, or any other fiber, unless the same is designated, described or represented as "wool and cotton," "wool and rayon," "wool and silk," etc. in the order of the predominating fiber content.

(c) Representing that he sells direct from the factory.

(d) Representing that he eliminates the usual middleman's profits.

(e) Using the word "Belgium" to describe or designate the kind of canvas used in his garments, unless and until said canvas has been imported from Belgium.

(f) Representing that he gives certain of his suits and gifts FREE to his salespersons or agents, when such purported gifts are in fact bought and paid for by the services performed by said salespersons or agents in the sale of merchandise for him.

(g) Designating or representing that the linings used in his garments are "silk celanese," when in truth and in fact said linings are composed entirely of celanese, a rayon fabric, and contain no fibers of silk, the product of the cocoon of the silkworm.

(h) Representing that "hundreds" of men are making a big success with the Jay Rose Line.

(i) Representing that he is in the wholesale business. (Feb. 24, 1939.)

02328. Hair Preparation—Qualities.—The S & S Hair Tonic Co., a corporation, Lexington, Ky., vendor-advertiser, was engaged in selling a preparation for use on the hair and head designated S & S Hair tonic and Color Restorer and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

That the use of said product will bring about a change of color to ones hair other than by dyeing or covering the hair shaft.

That said product feeds the roots of the hair or is of value in promoting a healthy condition of the hair and scalp.

That said product is of value in the treatment of dandruff or other scalp disorders or is a hair tonic. (Feb. 24, 1939.)

02329. Syrup (Milk Supplement and Flavor)—Qualities, Nature, Indorsement, Etc.—Wallerstein Co., Inc., a corporation, 180 Madison Avenue, New York, N. Y., vendor-advertiser, was engaged in selling a syrup to be used as a milk supplement and as a flavor, designated as "Bosco" 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 all persons need the iron or copper content of Bosco, or that a spoonful of said product as now constituted will triple the iron content of a glass of milk.

(b) That said product is a body builder, a stimulant for the appetite, or will give one strength, energy or red blood, or enable one to resist colds or other ills, or build up vitality or weight.

(c) That said product has been approved by the American Medical Association or that its use will make milk a perfect food.

(d) That said product will enable one to maintain the health evidenced by summer tan or sunburn.

(e) That the drinking glass given with the purchase of a jar of said product is the first sanitary drinking glass.

(f) That said product is a chocolate syrup or chocolate Milk Amplifier, or with milk makes a chocolate drink or in any other way representing that said product is chocolate. (Feb. 24, 1939.)

02330. Men's Clothing—Composition and Source or Origin.—K & M Tailoring Co., a corporation, also trading under the names of Edgewood Tailors and Mutual Tailoring Co., 2300 Armitage Avenue, Chicago, Ill., was engaged in selling men's clothing and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Designating, describing, labeling or representing as "all wool" or "woolen" the fabrics used in the manufacture of its clothing (except linings and fittings) when such fabrics are not composed wholly of wool.

(b) Designating, describing, labeling or representing as "all wool" or "woolen" any fabric made partly of wool and partly of cotton, silk, rayon or any other fiber, unless the same is designated, described or represented as "wool and cotton," "wool and silk," "wool and rayon," etc., in the order of the predominating fiber content.

(c) Designating, describing, labeling or representing fabrics manufactured in the United States as and for fabrics imported from or manufactured abroad.

The said K & M Tailoring Co. agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Feb. 14, 1939.)

02331. Paint or Varnish Product—Qualities.—Acme White Lead and Color Works, a corporation, Detroit, Mich., vendor-advertiser, was engaged in selling a paint or varnish product known as "Lin-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 hot or cold liquids will have no effect on a Lin-Xed surface, unless it is explained that no permanent effect is meant.

(b) That weather will not faze Lin-X.

(c) That Lin-X stands the rain, sun, and wind, unless it is explained that the average life of the ordinary spar varnish is meant.

(d) That no rings from wet glasses will be left on a Lin-Xed surface, unless it is explained that only temporary rings may be left if the wet glasses are left upon the Lin-Xed surface for several hours.

(e) That Lin-X makes old linoleum "act like new." (Feb. 25, 1939.)

02332. **Money Making Plan—Opportunities and Earnings.**—Charles C. Howell, an individual, doing business under the trade name The Direct Mail System, P. O. Box No. 344, Summit, N. J., vendor-advertiser, was engaged in selling a plan for making money designated, Prosperity Scheme 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 plan or scheme—

1. Means dollars to anyone answering the advertisement;
2. Will enable anyone to earn money fast;
3. Is a sure way of making money;
4. Enables one to start a profitable business on less than three dollars capital;
5. Offers an immediate opportunity to earn money; or
6. Will lay the foundation for a nice, profitable business.

(b) That this proposition is suitable for any person, regardless of age, educational or business qualifications, or environment.

(c) That any one, or all of the books, of "The Hostess Library", is a fast selling item, regardless of the manner in which one chooses to sell them.

The said Charles C. Howell in soliciting salespersons or dealers in aid of the sales of such "Prosperity Scheme" agreed:

(d) Not to make unmodified representations or claims of earnings in excess of the average earnings of his active full-time salespersons or dealers achieved under normal conditions in due course of business.

(e) Not to represent that such salespersons or dealers will have the chance or opportunity of earning any amount which is in excess of amounts theretofore actually earned by one or more of his salespersons, or dealers, under normal conditions in the due course of business.

(f) 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 his salespersons or dealers under normal conditions in the due course of business.

(g) 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. (Feb. 25, 1939.)

02333. **Money-Making Plan—Opportunities and Earnings.**—A. Peris, an individual, trading as Peris, East Rochester, N. Y., vendor-advertiser, was engaged in selling a Money-Making 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 there have been no salted peanuts in the shell since the advertiser retired and that there is no competition in the sale thereof or from otherwise representing or implying that the only products of such type on the market are those manufactured by using the advertiser's plan.

(b) That the advertiser's plan will enable one to make a fortune without capital.

The advertiser further agreed:

(a) Not to make unmodified representations or claims of earnings in excess of the average earnings of active full-time purchasers of his plan achieved under normal conditions in the due course of business;

(b) Not to represent that such purchasers will have the chance or opportunity of earning any amount which is in excess of amounts theretofore actually earned by one or more purchasers 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 purchasers 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 type used in printing such statement or representation of earnings. (Feb. 8, 1939.)

02334. Poultry Supplies, Products and Remedies—Opportunities, Qualities, Results, Etc.—Brower Manufacturing Co., a corporation, 209-215 North Third Street, Quincy, Ill., vendor-advertiser, was engaged in selling poultry supplies, poultry products and poultry 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 Brower's Battery is the only one that has all the features that make the raising of broilers successful; that no other system offers such money making possibilities or that no other business offers such quick profits.

(b) That by the use of the Brower system mortality or labor is "greatly" reduced, or that "growth is quicker."

(c) That any of its preparations contains ingredients which birds do not get in ordinary feed, or that should go into all home-made or mill-mixed products.

(d) That any of said preparations:

1. Builds strong frames;
2. Makes stronger shells;
3. "Prevents" shell-less eggs, leg weakness, rickets, or soft bones; or
4. Aids in the elimination of waste matter or in keeping the intestinal tract open;

(e) That any of said preparations keeps confined layers in condition, helps to shorten molt, increases production, or helps to produce—

1. Sturdier or faster growing chicks.
2. Better layers.
3. "Earlier" laying pullets.
4. More virile breeders.
5. Quicker marketing cockerels.

(f) That any of said preparations is an adequate relief for bronchial ailments or irritations in fowls, influenza, chicken pox, diarrhea, or other infections or contagions, or would assist in preventing colds, brooder pneumonia or diphtheria.

(g) That any of said preparations will "drive" lice from nests, "banish" moths from clothing, is a "sure," and "easy," or the "best" way to kill or eliminate lice or mites, or is effective against roaches, ants, flies, fleas, waterbugs, beetles, cutworms, or blackheads.

(h) That any of said preparations "heals" or is an antiseptic, a germicide, a "tonic," or a blood builder.

(i) That any of said preparations would be of material benefit to growing chicks, ducklings, goslings, or poult, or to poultry in low vitality or a run-down condition.

(j) That any of said preparations "kill" gophers or rodents other than rats, that every "nibble" is "sure" death, or that live rats leave the premises when others get sick.

(k) That any of said preparations "gets" round worms or tape worms, "expels" large round worms, "desegments" large tape worms, or produces the "best" results against common worms infesting poultry.

(l) That any of said preparations is "guaranteed" or is under Government license.

(m) That any of said products will produce any given results "quickly" or within any definite or specified time. (Mar. 1, 1939.)

02335. Hair Rinse (Bleach)—Qualities, Guarantee, Etc.—The Charles Marchand Co., a corporation, 521 West 23rd Street, New York, N. Y., vendor-advertiser, was engaged in selling a rinse for bleaching hair designated Marchand's Golden Hair 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 only Marchand's Golden Hair Wash can enable one to restore and retain the beauty of blonde hair.

(b) That this product will keep the hair healthy.

(c) That this product can be used by brunettes without lightening the color of the hair.

(d) That this preparation is guaranteed, unless the statement clearly explains that the guarantee is limited to a refund of the purchase price and the conditions under which such refund is made are clearly set forth.

(e) That this product "restores" any natural characteristic or quality to the hair or will enable every user to be a "natural" blonde.

(f) That 60% of all women were born blonde, or any other percentage, unless it has been established by competent scientific authority. (Mar. 1, 1939.)

02336. Food Concentrates—Opportunities, Qualities, Ailments, Trade Name, Etc.—Carlyle Swearingen, an individual trading as Gardena Metabolic Institute and Gardena Metabolic System, Drawer 128, Station S, Los Angeles, Calif., vendor-advertiser, was engaged in selling products designated food 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 success of others engaged in the same business is indicative of the results to be achieved by the advertiser's customers, or that there is a "great demand" for more "Health Food" stores, or from otherwise representing or implying that the opportunities in the field are greater than the actual possibilities.

(b) That the powdered okra Concentrate is a competent treatment, or an effective remedy, for ulcers, inflammation, hyperacidity, etc., or that it will prevent acid or food roughage irritation.

(c) That the garlic tablet will rid the colon of parasites, etc.

(d) That the calcium phosphorus product is a competent remedy or effective treatment for ailments of the nervous system.

(e) That the wheat germ oil (Vitamin E) product is a competent treatment or an effective remedy for male or female sterility.

(f) That present-day refinements or processes of cooking have caused basic or material deficiencies in the mineral or vitamin food value of staple food products.

(g) That the hospitalization of any number of people for any general or specific period of time is due to a deficiency in the diet, when such statement is not supported by the facts.

(h) That constipation, headaches, colds, rheumatism, lumbago, Bright's disease, heart trouble, catarrh, mental diseases, cancer, anemia, tuberculosis, nervous diseases, neuritis, diabetes, paralysis, apoplexy, stomach diseases, liver diseases, lung diseases, intestinal diseases, ulcers, other "dire" diseases, etc., are due to vitamin and mineral deficiency, or that the advertiser's products are effective in the treatment of such conditions, or from otherwise making exaggerated statements concerning the occurrence of mineral and vitamin deficiencies in the diet, or concerning the importance of said deficiencies as a cause of the disease.

(i) That vegetables other than as sold in the form of concentrates—

1. Cannot be sufficiently masticated for assimilation.

2. Pass through the body without sufficient minerals and vitamins being released for the blood stream.

(j) That it is impossible for one to eat a sufficient or "needed" amount of natural cooked vegetables to overcome a vitamin or mineral shortage, or to regain health.

The advertiser further agreed to cease and desist from use of the word "Institute," or any word of similar import or meaning in his trade name.

The advertiser further agreed to cease and desist from representing or implying, through the use of the words, "Everything Furnished," or any other words of similar import or meaning in contact advertisements, or otherwise that any article is furnished without condition, when the fulfillment of any obligation other than that published in the advertisement is necessary before delivery of the article referred to. (Mar. 2, 1939.)

02337. Toilet Preparations—Nature, Qualities, Business Status, Composition, Etc.—W. S. Cannon, Jr., an individual trading as Cannon Cosmetics Co., Box 1501, Atlanta, Ga., vendor-advertiser, was engaged in selling various preparations designated Cannolene Hair Grower; Cannolene Tar Shampoo; Stay Sweet; Complexion Powder; Talcum, Perfumes; Tetter Salve; Cocoanut Oil Shampoo and Touch Down 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 he has put any chemical training into the formulae or in the making of his products.

(b) That his products act quicker or are in any way superior to numerous similar products on the market or that the prices asked for them are less than others.

(c) That he has a laboratory or that he has prepared or tested the formulae used in compounding his products.

(d) That the materials used are the finest materials on earth or anything but the ordinary commercial materials sold in the open American market.

(e) That he has or has had two hundred thousand users or any other number of users not supported by the facts.

(f) That he is winning the confidence of women on the merits of said products or by truthful advertising.

(g) That his products sold under the name of hair growers or any other preparation of the same or similar composition will grow or promote the growth of hair.

(h) That such products or any products of similar composition are superior to other products on the market that are made of the same or similar ingredients.

(i) That such products penetrate to the hair roots; stimulate the hair roots or tone the scalp.

(j) That Cannolene Tar Shampoo is healing, cleans the hair root channels, has a direct influence on the cause of dandruff or is worth more for removing dandruff than the price at which it is sold or that it has no equal in the treatment of falling hair or itching scalp.

(k) That Stay Sweet will prevent perspiration odor, or that it will keep one fresh and sweet for days, or that each application lasts longer than any other deodorant cream now sold.

(l) That his Complexion Powder contains only the purest ingredients in perfect balance, or that it is perfumed with a rare French fragrance.

(m) That his Talcum is imported, air-floated or double refined.

(n) That his Talcum is comparable to talcum that costs \$1.00, or that it is superior to other talcums that sell for the same and similar prices.

(o) That his perfumes are of French type or famous for sweetness or lasting fragrance, or composed of the odors of forty flowers, or that they or any one of them is a ten-dollar perfume.

(p) That his Tetter Salve is a healing ointment or a competent treatment for tetter, eczema or humors of the scalp or that its use will prevent baldness.

(q) That Touch Down is America's Greatest Hair Dressing or that it is unequalled by or made better than other hair dressing on the market.

(r) That his coconut oil shampoo is made of coconut oil. (Mar. 3, 1939.)

02338. Cosmetics—Qualities, Composition, Etc.—Frances Denney, a Pennsylvania corporation, and Anthony deP. Denney, John D. Denney, Anne Denney Fleming, and William F. Denney, Jr., copartners doing business under the firm name of Denney & Denney, 1700 Chestnut Street, Philadelphia, Pa., vendor-advertisers, were engaged in the business of manufacturing and labelling various cosmetic preparations designated Eye Cream, Herbal Throat and Neck Blend, Herbal Oil Blend, Herbal Cleansing Cream, Tissue Cream, Anti-wrinkle Cream, Pore Refiner, and Face Cream, Acne Cream, Acne Lotion, and Special Bleach 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 any of the products advertised and sold by the advertising sellers will eliminate or prevent crowsfeet, lines, wrinkles or crepey throat, regardless of the cause thereof.

(b) That any of the aforesaid products supplies oils naturally present in the skin, or that such products will nourish the skin.

(c) That any of the aforesaid products will have any substantial effect upon the muscles, or upon the tissue unless limited to skin tissues.

(d) That any of the above products constitutes a competent treatment for acne generally, or in any way which imports or implies that the effect of the preparation extends beyond the palliation of the local symptoms of acne.

(e) That as to healing, the above products will do more than to help, aid or assist nature.

(f) That any of the aforesaid products restores the "firm roundness of youth."

(g) That any of the aforesaid products corrects enlarged pores or has any other permanent effect upon the pores.

(h) That in the treatment of oily skin any of the above products will do more than remove accumulated oil from the surface of the skin.

The advertising sellers further agreed to cease and desist from the use of the word "herbal" as a part of the trade name for any of their products, or from otherwise representing that such products are herbal, unless in fact said products are composed entirely of ingredients obtained from vegetable sources; or unless the advertising sellers state clearly in immediate connection with the reference to herbal that the preparation also contains ingredients which are not obtained from vegetable sources.

The advertising sellers further agreed to cease and desist from the use of the following terminology in the trade name of any of their products, "Anti-Wrinkle"; "Pore Refiner"; or the unqualified use of the word "Acne," unless in immediate connection therewith it is explained that the value of the product is limited to the treatment of Acne due to or symptomatic of local as opposed to systemic conditions. (Mar. 6, 1939.)

02339. **Hair Preparations—Qualities and Nature.**—Frank Kalen, an individual trading as Gray Drug Store, 1658 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling hair dressing preparations designated Gray's Original Mul-Leves For The Hair, formerly designated Gray's Tincture of Mullein Leaves, Gray's Mullein Leaves Shampoo, Gray's Mullein Leaves Pomade and Gray's Eyelash Grower 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 Mul-Leves For The Hair will stimulate new hair growth, will grow new hair or stop falling hair.

(b) That Mul-Leves For The Hair will eliminate, stop, correct or protect against dandruff, or is an effective remedy for dandruff, unless limited to removing the scales of dandruff.

(c) That Mul-Leves For The Hair is a competent remedy for falling hair or baldness.

(d) That said Mul-Leves For The Hair will grow full heads of hair, do things that nothing else will do, or succeed where all others fail.

(e) That said Mul-Leves For The Hair is the secret of any body's perpetual youth.

(f) That respondent's Mul-Leves For The Hair stimulates the hair roots or feeds the follicles.

(g) That respondent's Mul-Leves For The Hair corrects scalp eruptions.

(h) That respondent's product designated Gray's Eyelash Grower will grow long or luxurious lashes, or supply nourishment to stimulate the roots of the lashes.

(i) That respondent's Pomade corrects or eradicates dandruff or eczema or relieves itching scalp; or that it is a competent or effective treatment for falling hair or baldness.

(j) That the use of respondent's Shampoo will assure a healthy or free-from-dandruff scalp.

(k) That respondent's store is the most famous drug store in the world.

Frank Kalen further agreed to cease and desist from the use of the name "Eyelash Grower" for the product now so designated. (Mar. 6, 1939.)

0510.¹ Jewelry, Medicinal Preparations and Cosmetics—Qualities, Earnings, Nature, Composition, Etc.—M. G. Neuman, an individual trading as Valmor Products Co. and Famous Products Co., 5249 Cottage Grove Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling jewelry, medicinal preparations and cosmetics designated Skin Bleach, Lucky Brown Double Quick Skin Lightener, Lucky Brown Lemon Vanishing Cream, Lucky Brown One Minute Hair Tonic, Madam Jones Female Tablets, Earrings, Triple Action Hair Strength, Sweet Georgia Brown Bleach Cream, Sweet Georgia Brown Magic Lovin' Cream, Sweet Georgia Brown Skin Bleach Cream, Sweet Georgia Brown Rolling Massage Cream, Sweet Georgia Brown No-Odor Liquid, Brown Skin Beauty Cucumber Lotion, Lucky Mojo Perfume, Paris Girl DeLuxe Perfumes, Valmor Corn Knocker, and Valmor Red Clover 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 he manufactures five hundred or any number of products in excess of those actually manufactured in his plant.

(b) That his bleaches are safe or enable the user to have soft, smooth skin or eliminate complexion worries.

(c) That his skin lightener is double quick or gives double quick action or gives the user a new complexion.

(d) That his Lemon Vanishing Cream gives the user a lighter skin.

(e) That his salesmen can earn \$600 or any certain amount except that the publication of actual earnings with statements of true circumstances is not prohibited by this provision; or that his offer to salesmen is the biggest money-making offer ever made.

(f) That the ingredients of his "One Minute Hair Tonic" get into the scalp or penetrate the scalp to do their work.

¹ Supplemental.

(g) That his "Madam Jones Female Tablets" give quick relief or prevent monthly pain.

(h) That his earrings are engraved or that any of the jewelry sold by him is engraved unless the cutting process is used in making the designs.

(i) That the set of the rings distributed with his "Sweet Georgia Brown" agent's outfit is a white stone.

(j) That his "Rolling Massage Cream" corrects, eliminates or is an effective treatment for blackheads, enlarged pores, wrinkles, age lines, bumps, pimples or blotches or does more than cleanse the skin.

(k) That his "Magic Pink Lovin' Cream" brightens the skin in one minute or at all.

(l) That his "No-Odor Liquid" gets rid of body odor.

(m) That his Lucky Mojo Perfume will enable the user to surround herself with love or win friends.

(n) That his perfume is triple strength.

(o) That through the use of his "Corn Knocker" corns may be lifted out or that it stops pains or enables one to dance and walk without pain.

(p) That his Red Clover Compound helps the whole system or keeps the blood in better condition.

(q) That any of his perfumes is a "French Creation" or of French origin.

The said M. G. Neuman further agreed to cease and desist from the use of the trade name "Triple Action Hair Strength" and "Jickee La France" for the products now so designated, and to cease and desist from designating his lotion as "Cucumber Lotion" unless and until said lotion contains a substantial amount of cucumber juice or extract. (Mar. 7, 1939.)

02340. *Cosmetics—Qualities, Nature, Etc.*—Marie Earle, Inc., a corporation, 714 Fifth Avenue, New York, N. Y., vendor-advertiser, was engaged in selling a number of cosmetic products including Marie Earle Perfection Elixir (Liquid Bleach), Marie Earle Essential Cream, Marie Earle Perfection Acne Lotion, Marie Earle Cucumber Emulsion, Marie Earle Stimulating Oil, Marie Earle Perfection Special Lotion, Marie Earle Astringent Throat Cream, Marie Earle Marrow Cream, Marie Earle Ointment Pour Les Cils, Marie Earle Eye Cream, Marie Earle Strong Astringent, Marie Earle Perfection Extra Strong Bleach (Powder), and Marie Earle Extra Strong Bleach (Liquid), 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 product herein designated as Essential Cream:

1. Will purify the skin generally or of any specific substance,
2. Removes deeply imbedded grime, or that grime is deeply imbedded, or that this product will cleanse more than the surface of the skin,
3. Will refresh the pores of the skin, or that such pores become tired,
4. Replaces or replenishes the natural oils of the skin, or that such results may be obtained by any external application,
5. Will keep the skin young, or
6. Is enriching or will enrich the skin.

(b) That the use of soap and water is inefficient or is detrimental to the skin, that harmful alkali is present in the finest soaps, or that soap or water or both are too drying for use on the skin.

(c) That the products advertised and sold by Marie Earle, Inc., or any of them, have any effect upon the muscles or upon the facial contour.

(d) That the product designated herein as "Perfection Acne Lotion" or any other preparation of the same or similar composition, is a competent treatment for acne due to systemic conditions, noninflammatory blemishes or blackhead conditions, or that it is a competent treatment for general oiliness of the skin or blemishes due to clogged pores, or that such a product will affect the functioning of the oil glands or dissolve secretions embedded in the pores.

(e) That any of the products advertised and sold by Marie Earle, Inc., used either alone or in combination, will nourish the skin or tissues or have any beneficial effect at all upon the underlying tissues.

(f) That any of the products advertised and sold by Marie Earle, Inc., is rejuvenating or will rejuvenate the skin.

(g) That the product herein designated as Stimulating Oil is a competent treatment or an effective remedy for an oily skin or for an anemic skin.

(h) That the Perfection Special Lotion will without qualification heal inflammatory conditions, skin eruptions, pimples, blotches, cold sores, insect bites or similar conditions of the skin.

(i) That the product hereinabove designated as Astringent Throat Cream, or any other preparation of the same or similar composition, is an astringent or will prevent or counteract crepey or sagging conditions or lines.

(j) That the product designated Marrow Cream will provide nourishment for the skin or tissues or will overcome or be of any value in the treatment of scrawniness, stringiness, bagginess, over-thinness, or any of its manifestations, or that its use will develop the face, neck, shoulders, back, bust, or any other portion of the human anatomy.

(k) That Onguent pour les Cils, or any other of the products advertised and sold by Marie Earle, Inc., will promote the growth of eye lashes or eye brows or overcome or improve thin lashes.

(l) That the product designated Eye Cream is a competent treatment for lines or wrinkles, regardless of the cause thereof.

(m) That the product hereinabove designated Strong Astringent, or any other of similar composition, will effectively remedy an oily skin condition, regulate or have any other effect upon the oil glands, tone the skin generally or give the skin a fine soft texture.

(n) That the product hereinabove designated Perfection Elixir (Liquid Bleach) will "clear" the skin.

Marie Earle, Inc. further agreed to cease and desist from the use of the word "Acne" as a part of the trade name for the product hereinbefore designated "Acne Lotion," or any other product of the same or similar composition, unless in direct connection therewith and in equally conspicuous type the product is limited to the treatment of superficial conditions only.

Marie Earle, Inc. further agreed to cease and desist from designating as "astringent," either by the wording of the trade name or otherwise, the product hereinbefore referred to as "Astringent Throat Cream," or any other preparation of the same or similar composition.

Marie Earle, Inc. further agreed to cease and desist from designating or otherwise advertising the product hereinbefore referred to as "Strong Astringent," in any way which states, imports or implies that the astringent properties of this preparation are strong so long as they are in fact extremely mild.

Marie Earle, Inc. further agreed to cease and desist from designating as a bleach the preparations herein referred to as "Perfection Elixir (Liquid Bleach)" and "Perfection Extra Strong Bleach (Liquid)," unless the products are accompanied by a warning to the effect that the container thereof must be kept tightly closed in order to retain the effectiveness of the respective product, and that even when kept tightly closed the bleaching power of the product cannot be relied upon for more than a limited period of time.

Marie Earle, Inc. represents and asserts that the sale of the product hereinbefore designated as Stimulating Oil has been discontinued and that the sale of this product or any other of the same or similar composition will not be resumed.

Marie Earle, Inc. further represents and asserts that the sale of the product referred to as Perfection Extra Strong Bleach (Powder) in the foregoing has been discontinued and that the sale of this product or any other of the same or similar composition will not be resumed. (Mar. 8, 1939.)

02341. Dietary Supplement—Qualities.—The Bayer Co., Inc., a corporation, 170 Varick Street, New York, N. Y., vendor-advertiser, was engaged in selling a dietary supplement designated "Calirad Wafers," and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise.

(a) That the product in connection with a program of diet or exercise will cause one to have normal weight or enable one to lose any desired amount of superfluous weight or to control one's weight, or to get rid of flesh.

(b) That the advertised method of weight reduction is a natural method or that it assures health.

(c) That "every" human being is born calcium poor or that a great majority of people are deficient in calcium and phosphorus.

(d) That by using the advertised method of weight reduction one cannot fail to improve the figure where such improvement is desired. (Mar. 9, 1939.)

02342. Cattle and Poultry Feeds.—Qualities and Composition.—Alma B. Dannen, Dwight L. Dannen, Arline Mannschreck, and H. L. Dannen, Dannen, partners trading as Dannen Grain and Milling Co., 412 Street, St. Joseph, Mo., vendor-advertisers, were engaged in selling cattle feeds designated Big Dee Dairy Feed and Little Dee Dairy Feed and poultry feeds designated Big Dee Chick Starter, Big Dee Laying Mash and Green Top Egg Mash 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 minerals in their dairy feed are proportioned to give "unexcelled" milk production or are perfectly balanced.

(b) That their dairy feed is the "ideal" ration for dairy cows before freshening or "insures" the health of the cow and calf.

(c) That the Vitamin E in their poultry feed controls range paralysis or that a deficiency of Vitamin E will cause range paralysis.

(d) That the Vitamin F in their poultry feeds will build feathers or help digestion or that a deficiency of Vitamin F will cause dull feathers or unthrifty birds.

(e) That the Vitamin G in their products will ward off or guard against intestinal disturbances; or that a deficiency of this vitamin causes digestive upsets, nervousness or sore mouth or inflammation of the tongue.

(f) That the Potassium Iodide in their feed controls or regulates the beating of the heart.

(g) That the iodine in their feeds aids in the feathering of poultry unless limited to expediting "moulting" or that the use of iodine in their feeds results in a saving of foods.

(h) That the Bone Meal in their feeds aids or prevents diarrhea.

(i) That their Chick Starter will raise chicks when others fail.

(j) That the use of their Chick Starter is the surest, safest, or simplest method of raising baby chicks or that it enables one to market broilers "earlier" or makes them weigh heavier.

(k) That their feeds are "doubly fortified" with vitamins or contain an "excess" of vitamins.

(l) That their feeds increase egg production, improve shell texture, reduce blood spots, increase fertility, improve hatchability, produce stronger chicks, reduce mortality, give better moults, or protect against disease unless limited to their use in flocks which have been previously fed on an improperly balanced or unbalanced diet.

(m) That their Chick Starter "insures" 2-pound broilers in record time or will "insure" more vitality, fewer cripples, or better feathered, earlier, heavier fliers.

(n) That most poultry feeds are deficient in minerals or that ordinary corn meal does not contain the corn germ or the most valuable elements of the whole grain.

(o) That their Chick Starter supplies nutrition with greatest economy of feed. (Mar. 9, 1939.)

02343. Men's Clothing—Composition and Free Products.—Franklin Tailoring Co., a corporation, also doing business as Jackson Tailoring Co., 330 South Franklin Street, Chicago, Ill., vendor-advertiser, was engaged in selling Men's Clothing and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Designating, describing or representing as "Wool," "All Wool," or "Woolen" the fabrics used in the manufacture of its clothing (except linings and fittings) when such fabrics are not composed wholly of wool.

(b) Designating, describing or representing as "Wool," "All Wool," or "Woolen" any fabric made partly of wool and partly of cotton, silk, rayon, linen, or any other fiber, unless the same is designated, described or represented as "Wool and Cotton," "Wool and Silk," "Wool and Rayon," etc. in the order of the predominating fiber content.

(c) Representing that certain of its suits are free to its salespersons or agents when such suits are in fact bought and paid for by services performed by said salespersons or agents in the sale of merchandise. (Mar. 14, 1939.)

02344. Gasoline Saving Device—Qualities, Indorsement, Etc.—Akron Lamp and Manufacturing Co., a corporation trading as Diamond Fuelizer, 369 Steese Building, Akron, Ohio, vendor-advertiser, was engaged in selling a device designed to save gasoline and designated Diamond Fuelizer 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 Diamond Fuelizer when used with Colgra Super Film as a cylinder spray or otherwise:

1. Will give the average motorist one gallon of gas in every five for one cent; or
2. Will greatly increase gasoline mileage; or
3. Will keep repair and fuel expenses at a minimum; or
4. Will prevent overheating unless qualified to state that such is accomplished by helping to keep the motor cooler; or
5. Will reduce pre-ignition unless qualified to state that such is accomplished by a reduction of carbon formation.

(b) That said device will, by leaning the fuel mixture, save gasoline or result in better mileage unless expressly limited to cases where the carburetor is improperly adjusted so as to allow too rich a mixture for maximum efficiency.

(c) That said device saves \$30 to \$50 worth of gasoline during the year on an average car.

(d) That any designated amount of Colgra is "free" when supplied with the Diamond Fuelizer unless such is actually the case.

(e) That 450 miles may be obtained from one gallon of gasoline unless the explanation to the effect that some person has claimed that such is merely potential energy is printed so as to be equally conspicuous.

The said Akron Lamp and Manufacturing Co. further agreed, in promoting the sale of the Diamond Fuelizer, to cease and desist from the use of any so-called "Certificate of Merit" or "Seal of Approval," awarded by the Automotive Test Laboratories of America, or from any representation to the effect that this device has been tested and/or approved by any laboratory, unless such product has been approved or accepted by an accredited testing laboratory. (Mar. 16, 1939.)

02345. Lubricant—Qualities, Etc.—Akron Lamp and Manufacturing Co., a corporation, 369 Steese Building, Akron, Ohio, vendor-advertiser, was engaged in selling a lubricant to be added to gasoline and oil and designated Colgra Super Film, 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 Colgra Super Film, a definite reduction in motor friction will result unless, where such reduction was obtained in tests conducted under abnormal operating conditions or where such reduction may be expected

only under abnormal operating conditions, such conditions are clearly indicated.

(b) That the addition of Colgra Super Film to oils and greases will cause such oils and greases to last two or three times longer. (Mar. 16, 1939.)

02346. Correspondence Course—Qualities, Nature, Trade Name, Etc.—John Kegell and Jessie Kegell, copartners, doing business under the trade name The Healing Ministry, P. O. Box 2020, Asheville, N. Car., vendor-advertisers, were engaged in selling a correspondence course of instruction designated The Christly Method of Healing, 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 they possess or can impart to others the knowledge, training, and power to heal and cure disease or injury, give immunity to bad luck, avoid damage to crops, or give special or "inside information" with regard to any of such matters.

(b) That the course of instruction by them offered for sale and sold imparts to others the knowledge, training, or power to heal the sick.

(c) That they or either of them have had or now have authority to issue or award diplomas, titles, or degrees.

(d) That the number of courses of instruction by them sold is limited to twelve or any other number per month unless such is a fact.

(e) That they or either of them possess or can teach others the art of divine healing.

(f) That either of them have extraordinary or unusual qualifications, authority, or power such as to enable them to prevent bad luck, protect from all forms of evil, to protect crops, or that they are enabled to teach others to do so, or that they have any "inside information" relating to mental, spiritual, or divine healing.

(g) That their course of instruction of itself is an aid to the retention of youth or health.

(h) That they can teach the purchasers of their course of instruction to perform miracles.

The said John Kegell and Jessie Kegell further agreed that they would cease and desist from using the words "Healing Ministry" as a trade name in connection with the offering for sale and sale of their said course of instruction. (Mar. 8, 1939.)

02347. Electric Razor—Qualities, Prices, Business Status, Earnings, Lottery Schemes, Etc.—Electric Razor Products, Inc., a corporation trading as General Devices Co., 6537 Russell Street, Detroit, Mich., vendor-advertiser, was engaged in selling an electric razor designated Cadillac Electric Dry Shaver 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 device is of standard type.

(b) That said razor is the only one of its type in direct selling or that can be sold for less than \$10.00.

(c) That said razor is of any definite value in excess of the price at which it is sold or intended to be sold.

(d) That said razor is the lowest priced or of higher quality than other makes of similar type.

(e) That General Devices Company is a \$25,000,000 industry.

(f) That success or an income to salespersons or agents is guaranteed.

(g) That any razor is free to a salesperson or agent so long as the price thereof is included in other articles which he is required to pay for.

(h) That said razor gives smoother, faster, or closer shaving, that it sharpens itself or improves with age or that it is automatic.

(i) That any offer made in connection with the sale of its razors which is open to any person who may answer its advertisement and not limited with respect to time is a special offer.

The said Electric Razor Products, Inc., in soliciting salespersons or dealers in aid of the sales of such merchandise, further agreed:

(j) 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.

(k) Not to represent that such salespersons or dealers will have the chance or opportunity of earning any amount which is in excess of amounts theretofore actually earned by one or more of respondent's salespersons or dealers under normal conditions in the due course of business.

(l) Not to represent or hold out as maximum earnings by the use of such expressions as "up to," "as high as" or any equivalent 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.

The said Electric Razor Products, Inc., further agreed to cease and desist from distributing to agents, salespersons, or prospective purchasers any scheme, plan, or device which is designed for or may be used in conducting a lottery. (Mar. 16, 1939.)

02348. Medicinal Preparation—Qualities, Composition and Manufacturer.—Biovegetin Products, Inc., a corporation, operating under the trade name of V. M. Products, 510 North Dearborn St., Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated Vi-Donna Capsules and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That scientists agree that a few capsules of the product are sufficient to supply the body's need for vitamin E.

(b) That the product is the "life giver" or "the best".

(c) That the product will prevent sterility and incapacity for reproduction.

(d) That the product will prevent atrophy or degeneration of the testes, or that it "preserves" vital tissues.

(e) That the product is of value in the prevention of abortion, miscarriage or still birth, or that in this connection it will do more than build up resistance against a predisposition thereto due to a deficiency of vitamin E.

(f) That the product is "certified" to contain "the fullest" amount of vitamin E.

(g) That the product is manufactured by the advertiser, unless and until the advertiser owns, maintains, or operates a factory wherein the product is manufactured. (Mar. 17, 1939.)

02349. Correspondence Course—Qualities, Opportunities, Guarantee, Earnings, Etc.—American Landscape School, a corporation, 6015 Grand Avenue, Des Moines, Iowa, vendor-advertiser, was engaged in selling a correspondence course in Landscape Architecture 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 course:

1. Can be mastered by anyone or that any part thereof can be mastered by anyone or that ability to read and write is all that is necessary; or
2. Is the most complete, or the most authoritative or the most readable course on the subject; or
3. Is the most thorough or most practical or most easily mastered course in landscape gardening; or
4. Is the most complete or most thorough or most understandable home study course in landscape gardening; or
5. Is, through its manner of presentation or otherwise, the shortest and surest way to success.

(b) That students of said course:

1. Will, generally or in any or all cases, receive personal or individual criticism and aid from any person or persons in its organization unless and until such is actually the case; or
2. Will, after completing the course, be able to start in the landscape business as seasoned professionals; or
3. Will "positively" be a success; or
4. Will, after completing the course, be able to start in the landscape business without capital; or
5. Can, after completing the course, be placed in positions, so as to import or imply that such is true in every case;
6. Take no risk in enrolling; or
7. Are assured of learning the landscape gardening business and are assured of getting into the "big money earning class";
8. Are assured that said course is all the instruction necessary for entering upon a successful career in the landscaping business; or
9. Will soon be in the "big money class";
10. Are assured opportunities for employment so as to import or imply that such is true in every case.

(c) That any offers are special or for a limited time or that such offers will end on a certain date unless such is actually the case.

(d) That business cards and drawing instruments furnished by it are free or that registration in the employment bureau or that the privilege of consultation with the service department is free.

(e) That there is a big demand for landscape trained men and women, unless and until such is actually the case.

(f) That the standards of the American Landscape School are accredited by authorities as the highest in the world.

(g) That it offers the most liberal terms ever offered on nationally recognized training in landscape architecture or otherwise.

(h) That it guarantees that one can learn the landscape business by taking its course or guarantees that one, after completing said course, can get into the big money earning class, or guarantees that said course is all the instruction necessary to help one enter upon a successful career in the landscape business.

(i) That its graduates earn any designated amounts as landscape architects so as to import or imply that such sum represents the average income of its graduates from this source when such is not the fact.

(j) That graduates of its course will be enabled to earn fees of up to \$100 per week. (Mar. 17, 1939.)

02350. Herb Compound—Qualities, Ailments and Nature.—Shirley L. DeArmond, an individual trading as B. & N. Remedy Co., 124 South Central Street, Knoxville, Tenn., vendor-advertiser, was engaged in selling a laxated herb compound, designated B & N Tonic and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That B & N Tonic is a competent treatment for:

1. Dizzy spells,
2. Stomach disorders,
3. Nervous dyspepsia,
4. Bad blood,
5. Disorders of the blood,
6. Indigestion,
7. Disorders of elimination,
8. Rundown conditions of the system,
9. Lost vitality,
10. Nervousness,
11. Sluggishness,
12. Sleeplessness,
13. Tiredness,
14. Stomach pains,
15. Lack of vitality,
16. Conditions caused by improper functioning of the digestive organs.

(b) That B & N Tonic will:

1. Tone up weakened systems; or
2. Guard or maintain health; or
3. Regulate the system; or
4. Enable one to regain lost health, vigor or energy; or
5. Restore normal health; or
6. Build resistance; or
7. Act as health insurance; or
8. Put one on the road to health.

(c) That most cases of weakness, dull-tired feeling, bad complexion and "numerous other ailments" can be traced to the digestive organs.

(d) That said product is efficacious in the treatment of constipation unless limited to temporary relief of that condition.

(e) That said product is Nature's Remedy or is an herb compound.

(f) That said product is a tonic. (Mar. 17, 1939.)

02351. Cosmetics—Qualities, Etc.—Lovely Lady, Inc., a corporation, 333 No. Michigan Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling cosmetic preparations designated Lovely Lady Face Powder and Lovely Lady Face 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 its product, Lovely Lady Face Cream will:

1. Penetrate the skin
2. Remove "under-skin dirt"
3. Flush out the pores
4. Deeply cleanse the pores
5. "Revitalize" the skin
6. Produce a younger complexion
7. Sink into sluggish sub-tissues
8. Penetrate under-skin tissues
9. Lubricate the skin with oils that nature is not supplying
10. Assure one the natural loveliness of a healthy skin
11. Rid the complexion of blemishes, enlarged pores or under-skin bumpiness.

(b) That the use of Lovely Lady Face Cream will prevent sagging tissues, wax parched pores, wrinkles and blackheads.

(c) That the use of its product, Lovely Lady Face Powder will:

1. Eliminate shine or stay on from 3 to 5 hours longer than any other face powders, or for any other definite length of time
2. End "false face" powdery look
3. Cause women to look years younger
4. Protect pores and delicate surface skin from the ravages of grime and soot.

(d) That Lovely Lady Face Powder contains nothing to clog the pores of the skin.

(e) That "Balmite" is new, scientific, or the base of Lovely Lady Face Powder. (Mar. 18, 1939.)

02352. *Cosmetic—History.*—Clark-Millner Co., a corporation, 450 West Superior Street, Chicago, Ill., vendor-advertiser, was engaged in selling a blemish cream designated Hide-It and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

That said product, Hide-It, is the original waterproof blemish cream. (Mar. 20, 1939.)

02353. *Poultry Preparations—Indorsements, Qualities and Composition.*—Chas. L. Huisking & Co., Inc., a corporation, 155 Varick Street, New York, N. Y., vendor-advertiser, was engaged in selling cod liver oil, designated Vitamine Brand Cod Liver Oil High Hatchability Special and Vitamine Brand Cod Liver Oil Natural and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That its products have been endorsed by universities and agricultural experiment stations.

2. That it is imperative to feed cod liver oil to chickens, or that to do so will guarantee well-developed chicks, healthy layers, or layers capable of producing hard-shelled, full-sized eggs or eggs of the highest percentage of hatchability, or more livable chicks.

3. That its product, Cod Liver Oil Natural, will give complete protection against rickets, promote general health, the production of eggs of higher food value, or will prevent stunted growth or nutritional roup.

4. By the use of a trade name or otherwise that its product heretofore designated Cod Liver Oil High Hatchability Special does not contain ingredients other than cod liver oil. (Mar. 20, 1939.)

02354. Medicinal Preparation—Nature, Qualities, Composition and Safety.—H. C. Elliotte, an individual operating under the trade name of Herbtex Co., Wheeling, W. Va., vendor-advertiser, was engaged in selling a medicinal preparation designated Herbtex and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Herbtex is compounded according to a doctor's prescription, or is world-famous.

(b) That Herbtex will cleanse, or make strong and active, the—

1. Stomach,
2. Liver,
3. Kidneys,
4. Bladder,
5. Blood, or
6. Bowels;

(c) That this preparation is a competent treatment or an effective remedy for—

1. Constipation,
2. Headaches,
3. Stomach pains,
4. Gas,
5. Billousness,
6. Acid stomach,
7. Sleeplessness,
8. Loss of appetite,
9. Tired, run-down conditions,
10. Nervousness,
11. Crankiness,
12. Painful piles,
13. Sluggish kidneys,
14. Backache, or
15. Rheumatism;

unless specifically limited to the temporary relief of such conditions when due to functional constipation; or that the product is of any benefit in treating any condition unless clearly limited to its effects as a laxative and a stomachic.

(d) That Herbtex is recommended for "ailing" men and women or will bring back health, or will make the user feel 100 % better.

(e) That Herbtex is not a drug, or does not contain drugs, or that it contains rare ingredients, or that it is a "natural" product, or is not a medicine, or is not an ordinary laxative.

(f) That this preparation will keep the digestive tract sweet and clean or free from acidity and sourness.

(g) That Herbtex promotes normal liver functioning or has any other effect directly upon the liver or upon the "system."

(h) That Herbtex "rids" the digestive system of impurities, or "banishes" any specified condition.

- (i) That rheumatism is caused by uric acid.
- (j) That Herbtex will cleanse the bowels as they were never cleansed before.
- (k) That Herbtex enriches or builds up the blood.
- (l) That Herbtex is a competent treatment for coughs or colds, or prevents complications which may follow a cold.
- (m) That this preparation is of any value in the treatment of acidosis.
- (n) That Herbtex will increase the flow of bile.

The respondent further agreed to cease and desist from representing that this product is safe, or is not drastic or severe, or has no harmful resultants, and also agreed that all advertising published in the future relating to this product will contain a warning to the effect that this preparation is in certain cases harmful in that it may aggravate the conditions of those individuals who are sensitive to iodides or afflicted with tuberculosis or toxic goiter. (Mar. 16, 1939.)

02355. Men's Clothing—Composition and Wholesaler.—Homeland Tailors, Inc., a corporation, 2500 East Ashland Avenue, Baltimore, Md., vendor-advertiser, was engaged in selling men's clothing and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) Designating, describing, or representing as "wool" or "worsted" the fabrics used in the manufacture of its clothing (except linings and fittings) when such fabrics are not wholly composed of wool; and

(b) Designating, describing, or representing as "wool" or "worsted" any fabric made partly of wool and partly of cotton, silk, rayon, linen, or other fiber, unless the same is designated, described, or represented as "wool and cotton," "wool and silk," "wool and rayon," etc. in the order of the predominating fiber content;

(c) Representing that respondent is a "wholesale" tailoring shop. (Mar. 21, 1939.)

02356. Cosmetic Preparations—Qualities and Composition.—Varady, Inc., a corporation, 427 West Randolph Street, Chicago, Ill., vendor-advertiser, was engaged in selling cosmetic preparations designated Varady Oil of Youth, Varady Face Cream and Varady Face Powder and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That any of the products hereinbefore referred to will—

1. Constitute a "cure" for dry skin;
2. "Correct," "banish" or "end" dry skin;
3. Permanently supply the skin with missing elements;
4. Be completely absorbed by dry skin cells;

or any other claim to the effect that its products will have any permanent effect upon dry skin unless the application of such products be continued;

(b) That any of the products hereinbefore referred to eliminate or prevent wrinkles, regardless of cause, or that such products will keep the skin young or cause the skin to regain youthfulness.

(c) That the said Varady Face Cream is wax-free, or contains no wax, that no competing creams liquefy when in contact with the face, or that all competing products contain wax.

(d) That the pores of the skin are "deep," or that said products sink deep into the pores or will penetrate below or through the pores.

(e) That the said Varady's cream removes twice as much dirt as do all competing products or removes materials from the pores, unless limited to the softening and removal of such materials by rubbing and massage.

(f) That any of the said Varady, Inc., products are radically new or differ radically from all competing products.

(g) That any of the said Varady, Inc., products has any appreciable effect upon the muscles unless expressly limited to its value as a lubricant for massage, rubbing or patting.

(h) That the said Varady's face powder never lets that oil of the skin come through or never becomes transparent on the face, or that all competing products cause the skin to shine, or from implying that the said Varady's face powder reflects less light than all other competing products. (Mar. 21, 1939.)

02357. **Cosmetics—Qualities, Guarantee, Trade Names and Testimonials.**—Richard Hudnut, a corporation, 113 West Eighteenth Street, New York City, vendor-advertiser, was engaged in selling cosmetic preparations designated DuBarry Tissue Cream, DuBarry Derma-Sec Formula, DuBarry Contour Cream, DuBarry Special Skin Cream, DuBarry Moulding Oil, DuBarry Special Preparation for Blackheads, DuBarry Eye Cream, DuBarry Rose Cream Mask, and DuBarry Stimulating Cream and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That any product sold by this advertiser will of itself affect the shape of the facial contour.

(b) That any product sold by this advertiser will prevent or eliminate lines, wrinkles, signs of age or a withered throat, regardless of cause.

(c) That the DuBarry Derma-Sec Formula will preserve a youthful throatline.

(d) That any substantial results are achieved by a single application of the aforementioned products.

(e) That any product or products sold by this advertiser will permanently correct or remedy dry or parched skin.

(f) That every woman requires a Derma-Sec Formula.

(g) That any product sold by this advertiser is a skin food or will nourish the skin.

(h) That the product heretofore designated DuBarry Special Preparation for Blackheads "frees" the skin of blackheads.

(i) That DuBarry Rose Cream Mask "clarifies" the complexion.

(j) That the use of products sold by this advertiser as a home treatment duplicates the exact methods and results of salon treatments.

(k) That the use of any products sold by this advertiser will "banish" fatigue or any other condition.

(l) That the application of the principles involved in the "Beauty Angle Treatment" recommended by this advertiser will:

1. Restore vitality to the skin,
2. Eliminate sallowness, bumps or blotches, or
3. Constitute the natural way to achieve any given results, or that it is the only treatment by which the circulation is stimulated naturally;

(m) That products sold by this advertiser cause the skin to look young.

(n) That any products are guaranteed unless essential conditions and limitations of such guarantee are clearly explained in direct connection therewith.

Richard Hudnut further agreed to cease and desist from the use, without proper qualification in terms of equal conspicuity, of the trade names "DuBarry Tissue Cream," "DuBarry Contour Cream," "DuBarry Moulding Oil," and "DuBarry Special Preparation for Blackheads."

The said Richard Hudnut further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 21, 1939.)

02358. Caustic—Qualities and Safety.—Pennsylvania Salt Manufacturing Co., a corporation, 1000 Widener Building, Philadelphia, Pa., vendor-advertiser, was engaged in selling a flake or powder caustic designated "Lewis' Lye" 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 Lewis' Lye is "unequaled" as a drain pipe opener, for cleaning garbage pails, soap-making, disinfecting, or that it "is the highest test lye possible for trained chemists to produce."

(b) That Lewis' Lye is "kind to your hands" and/or "safe for the most delicate fabrics."

(c) That Lewis' Lye can "always" be relied upon for satisfactory results.

(d) That Lewis' Lye will kill or destroy roundworm eggs, unless used with hot water as directed.

(e) That Lewis' Lye—

1. Kills worm eggs;
2. Kills germs;
3. Makes milking machines germ-free, or sterilizes such machines; or
4. Kills bacteria, except the vegetative form.

(f) That Lewis' Lye—

1. Helps prevent bovine abortion, unless it is explained that this statement is not true under all conditions;
2. "Destroys" roundworm eggs;
3. Prevents roundworm and disease; or
4. "Controls" roundworms or tapeworms.

(g) That Lewis' Lye—

1. Is a "general conditioner," when fed to hogs; or
2. "Controls" hog mange and/or dog mange.

(h) That Lewis' Lye, fed to hogs—

1. Produces bigger gains on less feed;
2. Makes the feed more digestible, unless limited to specific feeds;
3. Neutralizes harmful acids, unless limited to slop or swill;
4. Helps make hulls more digestible, unless limited to specific hulls;
5. Provides the alkaline condition necessary for the quick and proper "assimilation" of food;
6. Makes the hogs bring a higher market price;
7. Fattens hogs quicker;
8. Puts a finer finish on the hogs; or
9. Keeps them healthy.

(i) That Lewis' Lye fed hogs seldom have roundworms;

(j) That Lewis' Lye—

1. Will "rid" the premises of Bang's disease;
2. Produces better poultry; or "rids" poultry houses of lice, mites, roundworms and/or disease germs.

(k) That Lewis' Lye is more than six times as strong as carbolic acid.

(l) That Lewis' Lye is the "original economical" water softener.

(m) That Lewis' Lye "destroys" bad odors, unless it is explained that it must reach the cause of such odors.

(n) That Lewis' Lye will "keep down" flies in outdoor toilets or similar places.

(o) That "it pays" to feed Lewis' Lye to hogs. (Mar. 22, 1939.)

02359. **Stock and Poultry Feed—Qualities and Testimonials.**—Ralston Purina Co., a corporation trading as Purina Mills, St. Louis, Mo., vendor-advertiser, was engaged in selling a cow feed designated Purina Cow Chow, a hog feed designated Purina Sow and Pig Checkers, and a chicken feed designated Purina Chick Startena and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That by feeding Purina Sow and Pig Checkers one will obtain more pigs per litter, when farrowed, will have more pigs living at weaning time or pigs that will weigh more at any time; unless such representation is limited to those cases where an unbalanced or deficient ration has theretofore been fed or that by the use of said feed one may in all cases be assured of any definite number of pigs or pigs of any definite weight or definite increase in weight within any specific time.

(b) That by feeding Purina Chick Startena one may be assured of healthy chicks, or chicks weighing more than if they had been fed other feeds unless such claims are limited to those cases where failure to get optimum results are due to improper feeding, or that when said product is fed the chance of failure in the poultry business is eliminated and profit assured or that when fed with other of its products is the only way one may be assured of eggs when prices are high.

(c) That the government has established a standard weight for chicks.

(d) That by feeding Purina Cow Chows one may put new life into a dairy cow unless such claims are limited to those cases where failure to get optimum results theretofore was due to improper feeding or that one may in all cases be assured of a cow with an udder free from congestion at freshening time, calving within any definite time or a calf able to stand within any definite time or a cow in a healthy condition.

(e) That by feeding Purina Cow Chows one may under all conditions obtain more milk from dairy cows or be assured of any definite increase in milk production.

The said Ralston Purina Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 29, 1939.)

02360. Poultry Feed—Qualities and Nature.—Standard Chemical Manufacturing Co., a corporation, 703-711 South Forty-second Street, Omaha, Nebr., vendor-advertiser, was engaged in selling a certain chicken feed designated Egg O Day, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That feeding chickens its product Egg O Day will have any effect on egg production.

(b) That feeding chickens its product Egg O Day will build health or vitality, stimulate egg glands, prolong productive life or make better hatching eggs.

(c) That its product Egg O Day is a tonic or has tonic effects.

(d) That \$2 worth of extra eggs, or any other quantity, can be obtained from a package of Egg O Day.

(e) That its product Egg O Day supplies any extra or necessary elements of food to the diet of birds which are properly fed. (Mar. 30, 1939.)

02361. Money Making Plans—Opportunities and Earnings.—G. R. Nagel, trading as Universal Supply Co., P. O. Box 1461, San Antonio, Tex., vendor-advertiser, was engaged in selling Money Making Plans including a plan for selling advertising space on laundry cards and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That no capital is necessary.

(b) That said plan is new or that a big demand exists for services rendered in connection therewith.

(c) That said plan is a complete working plan.

The said G. R. Nagel further agreed in connection with the sale of any of his Money Making Plans:

1. That he will not represent or hold out as maximum earnings by the use of such expressions as "up to", "as high as", or any equivalent expression, any amount in excess of that which has actually been earned under normal conditions in the due course of business by one or more persons operating the plan or plans sold by him.

2. That he will not make unmodified representations or claims of earnings in excess of the average amount earned under normal conditions in the due course of business by persons operating the plan or plans sold by him.

3. That he will not represent that purchasers of his Money Making Plans will have the chance or opportunity of earning any amount which is in excess of amounts theretofore actually earned under normal conditions in the due course of business by one or more persons operating the plan or plans sold by him. (Mar. 31, 1939.)

02362. **Wearing Apparel—Qualities.**—The Hawk and Buck Co., a corporation, 801 West Vickery Street, Fort Worth, Tex., vendor-advertiser, was engaged in selling certain wearing apparel, designated Hawk Brand Dubl-Proof Khakis and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

That its wearing apparel is shrinkproof, non-shrinkable, will not shrink, or by the unqualified use of the words "preshrunk" or "shrunk," or by the use of a word, term, mark, label or representation of like effect or similar import as descriptive of such goods, when the same are not in fact shrink-proof or non-shrinkable, or have not in fact been sufficiently shrunk or preshrunk to the extent that no remaining shrinkage is left in such goods.

That its wearing apparel is advertised by means of all advertising mediums in the Southwest or in any other section or part of the United States.

The respondent further agreed not to use the term "Dubl-Proof" in connection with a representation that its wearing apparel will not shrink or is shrinkproof or any other term or word of similar import or in such manner or form as to indicate that its wearing apparel is shrinkproof or is proof against shrinkage and will not shrink, when in fact said wearing apparel does contain a residual shrinkage. (Apr. 7, 1939.)

02363. **Cosmetic Preparations—Qualities and Testimonials.**—Dermetics, Inc., a corporation, Rockefeller Center, 630 Fifth Avenue, New York City, vendor-advertiser, was engaged in selling cosmetic preparations designated Dermetics and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Dermetics, Inc., has developed a preparation which will waken vasomotor or sensory nerves, or that such nerves are inactive in most people.

(b) That the use of products sold by Dermetics, Inc. will make one young, or that they assure natural functions of the nerves, cells, pores or blood stream.

(c) That competing cleansing creams force foreign matter into the pores of the skin, cause the pores to become obstipated or clogged, or the skin's functions to become impaired.

(d) That powder sold by Dermetics, Inc. is absolutely moistureproof, or that it is compounded so as to absolutely prevent caking or streaking.

(e) That the use of any product or products sold by Dermetics, Inc. will of themselves cause the hair to grow thicker, darker or more abundant.

(f) That the use of products sold by Dermetics, Inc. will of themselves assure lustrous, luxuriant hair or hair with a natural sheen.

The said Dermetics, Inc. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 3, 1939.)

02364. **Food Concentrates—Qualities, Composition, Trade Names, and Testimonials.**—Walter C. LaBerge, an individual trading as Health

and Strength Club, 277 Seventh Avenue, San Francisco, Calif., vendor-advertiser, was engaged in selling food concentrates designated "Body Building Food", "Laxative Food", "Glandular Food", and "Formula 116" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That mineral salts and vitamins are usually lacking, or from otherwise representing or implying that the majority of diets are lacking in such substances or that the "Body Building" food will supply such deficiencies of those substances as may exist.

(b) That the "Laxative" food is a competent treatment or effective remedy for constipation or that it will "correct" that condition.

(c) That the "Glandular" food increases vigor or pep or from otherwise representing or implying that it is a competent treatment or effective remedy for sterility.

(d) That Formula 116 alone or in connection with a diet is a competent treatment or an effective remedy for eczema.

(e) That Formula 116 contains "Vitamin F" or from otherwise making any untrue or misleading statement regarding the formula of any of his products.

The advertiser further agreed to cease and desist from using the terms "Body Building," "Glandular" and "Laxative" or any other terms or words of similar import or meaning as parts of the trade names of the products heretofore so designated.

The said Walter C. LaBerge further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 10, 1939.)

02365. Medicinal Preparation—Qualities and Testimonials.—The Gordshell Chemical Co., a corporation, 5 Hopkins Place, Baltimore, Md., vendor-advertiser, was engaged in selling a medicinal preparation designated Dr. Gordshell's Salve and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication

(a) That this salve is a competent or complete remedy for:

1. Burns,
2. Cuts,
3. Scalds,
4. Skin irritations,
5. Piles,
6. Ivy poisoning,
7. Oak poisoning,
8. Insect bites,
9. Frost-bites,
10. Chilblains,
11. Acne,
12. Old sores, or
13. Eruptions of the skin.

(b) That this salve is of any substantial value in the treatment of:

1. The bite of a black widow spider,
2. Athlete's foot,
3. Pimples,
4. Blackheads,
5. Carbuncles,
6. Soft corns,
7. Ringworm, or
8. Abscess.

(c) That the said product will remove splinters.

(d) That this preparation will of itself heal the skin, or that its use will prevent scars following carbuncles, burns or any other condition.

(e) That there is no better treatment for boils than this preparation.

The said The Gordshell Chemical Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 13, 1939.)

02366. Correspondence Club—Nature, Testimonials, Etc.—Lois L. Reeder, doing business as an individual and as the Star Correspondence Club, Box 549, Palestine, Tex., vendor-advertiser, was engaged in selling a list of names of persons desiring to enter into correspondence with the view of matrimony and to become a member of her club and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication

(a) That said enterprise is of service generally to one who is lonesome or wants a wife, husband, or sweetheart;

(b) That said enterprise is not a general advertising concern or a matrimonial agency, or that it is different from others;

(c) That she is not in this business for money only or that she is in the business to help single lone people; that she would do the work free or as a pastime if she had a godmother to pay the bills; or that the fee charged is only a proportionate share of the expense;

(d) That said enterprise is a "Standard" Correspondence Club or that its members are "outstanding."

The said Lois L. Reeder further agreed to cease and desist from making any claims with reference to the financial standing, character, education, or social position of any person listed with her unless and until such claims are in accordance with the known facts, or unless in direct connection therewith the source of her information is set forth.

The said Lois L. Reeder agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 14, 1939.)

0892.¹ Soap and Ointment—Qualities and Testimonials.—Potter Drug and Chemical Corp., 123 Medford St., Malden, Mass., vendor-advertiser, was engaged in selling a soap designated Cuticura Soap and an

¹ Supplemental.

ointment designated Cuticura Ointment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

A. That Cuticura soap and Cuticura ointment will, when used separately or in conjunction with each other:

1. Help promote lustrous hair growth quickly; or
2. Aid in normalizing oily skin; or
3. Aid in correcting dry skin; or
4. Aid in refining skin texture; or
5. Remove or aid in clearing blemishes unless limited to blemishes that are externally caused; or
6. Aid in imparting new firmness to the skin.

B. That Cuticura soap cleanses the pores deeply or thoroughly or eliminates coarse pores.

The said Potter Drug & Chemical Corp. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 17, 1939.)

02367. Medicinal Preparation—Qualities, Ailments, Testimonials, Etc.—Benedict Lust, an individual trading as Original Health Food Store, 343 Lexington Avenue, New York City, vendor-advertiser, was engaged in selling a medicinal preparation designated "Kneipp's Laxative Herbs #3" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the use of Kneipp's Laxative Herbs #3 will:

1. Correct internal uncleanness or restore internal cleanliness; or
2. End or eliminate constipation; or
3. Overcome sluggishness or faulty elimination; or
4. Result in complete internal cleanliness; or
5. Overcome ailments associated with constipation; or
6. Stimulate or correct metabolism; or
7. Tone up the entire system; or
8. Provide, in cases of constipation, therapeutic benefit other than temporary relief.

(b) Without qualification, that Kneipp's Laxative Herbs #3 are free from all injurious aperients or that they may be taken for years or permanently without injury or that they are absolutely non-irritating, with the capacity to import or imply thereby that said product is in all cases and under all conditions of use entirely without any irritating or deleterious effect.

(c) That Kneipp's Laxative Herbs #3 are "universally considered the best for keeping the bowels open without weakening the stomach."

(d) That constipation is a contributory cause of all disease.

(e) That most of man's ailments originate in the digestive tract.

(f) That faulty elimination is responsible for most aches and pains.

(g) That, "there is every reason to believe that man could live to be twice his present average age if he kept himself internally clean."

(h) That the formula for said preparation was personally or directly given to respondent by the originator.

(i) That the use of Kneipp's Laxative Herbs #3:

1. Will enable one to have glowing, vibrant health; or unlimited health, or unlimited energy; or
2. Will enable one to overcome every despair and misfortune; or
3. Will add years to one's life or bring one buoyancy, light heartedness or a clear brain; or
4. Is capable of making life joyous and healthful at every age; or
5. Will enable one to have a lovely skin or skin free from blemishes; or
6. Will enable the body to function as nature intended.

(j) By inference or otherwise that Kneipp's Laxative Herbs #3 constitute a preventive or a competent remedy for headaches, stomach disorders, skin eruptions, rheumatism, congested liver, nervousness, insomnia, kidney trouble, heart disease, eczema, catarrh, tonsillitis, boils, gas pains, stomach pains, backache or any other pathological condition, or that said preparation will do more than alleviate such conditions when affected by or associated with constipation or an insufficient flow of urine.

The said Benedict Lust agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 17, 1939.)

02368. **Hair Preparation—Qualities, Source or Origin, Nature, Composition and Testimonials.**—Anne Kesler, an individual formerly trading as Dermo-Cosmetic Products Co., and Joseph Kesler, her agent and present owner of Dermo-Cosmetic Products Co., 1465 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a hair preparation designated "Grey-X" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That by using the product gray hair permanently disappears or that the product will permanently restore gray, faded, or streaked hair to its natural or original color or shade, or from otherwise representing or implying that the product will have more than a temporary effect.

(b) That the product keeps the scalp healthy or that it eradicates or permanently dissolves dandruff or promotes the growth of hair.

(c) That the product is a French discovery or from otherwise representing or implying that it is of French origin or has French characteristics.

(d) That the product is not a dye or that it does not work like standard hair dyes.

(e) That the product does not contain any ingredient which is contained therein at the time such claim is made or from otherwise making any misleading or untrue statement as to its composition.

The said Anne Kesler and Joseph Kesler further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing. (Apr. 17, 1939.)

02369. **Cosmetics—Qualities and Testimonials.**—Plough, Inc., a corporation, Plough Building, Memphis, Tenn., vendor-advertiser, was engaged in selling cosmetics designated Black and White Skin Soap,

Black and White Ointment, Black and White Bleaching Cream, Black and White Lemon Bleach Cream, Black and White Skin Whitener, Black and White Cleansing Cream, Black and White Cold (Tissue) Cream, Black and White Glossine, Black and White Quinine Pomade, and Black and White Hair Dressing and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Black and White Ointment and Black and White Skin Soap together or separately will drive out itch or give quick relief from itch or skin irritations, pimples, bumps, rashes, or blemishes, or be of value in treating said ailments except to act as a germicide or afford palliative relief, or will give one a smooth or healthy skin.

(b) That Black and White Ointment and Black and White Skin Soap together or separately will cause one's skin to change immediately or will clear up blotches, bumps, or other discolorations, or will give one skin health or blessed relief from skin troubles.

(c) That Black and White Ointment and Black and White Skin Soap together or separately will free one's pores of dust and dirt or have a magical way of producing desired results.

(d) That Black and White Ointment and Black and White Skin Soap together or separately are a sure treatment or the "old reliable treatment."

(e) That by the use of Black and White Ointment and Black and White Skin Soap, separately or in combination, one may easily or quickly banish the mask of pimples or other skin troubles or that people depend upon this combination treatment to keep their skin bright and free of pimples and blemishes, or that either of said products will dry up or relieve pimples, rashes, or other skin blemishes.

(f) That Black and White Ointment will clear up athlete's foot or relieve stubborn ringworm infection.

(g) That Black and White Bleaching Cream is a tonic bleach cream or skin purifier, or will remove pimples or blackheads, tone the skin texture or cause one's skin to become fairer the first night or will cause one's skin to look like new.

(h) That Black and White Bleaching Cream fades out dark spots quickly, or better than other creams, or clears up pimples, bumps, blackheads, or erases muddiness, sallowness, and moth patches.

(i) That Black and White Bleaching Cream lightens dark, ugly skin to almost unbelievable fairness, or that by its use one's skin may hold any desired shade.

(j) That Black and White Bleaching Cream is the world's most effective skin lightener or magic cream or that a person who wants a clear, light, bright skin should use Black and White Bleaching Cream.

(k) That sallow, muddy, and dark complexions, redness, and other skin blemishes are only a mask which may be easily removed with Black and White Bleaching Cream or that Black and White Bleaching Cream penetrates to the skin's fourth layer where coloring is regulated, or that by its use dark skin will be flaked off, or that the same lightens complexions in half the time of ordinary bleaches.

(l) That by the use of Black and White Bleaching Cream one may be rid of large pores or free from blackheads, pimples, and blemishes, or that the same aids in giving one a skin that is fair, smooth, soft, finely textured, or like new.

(m) That Black and White Lemon Bleach Cream is made from a secret formula or that the same keeps one's skin radiantly clear or will reduce enlarged pores.

(n) That Black and White Skin Whitener will clear one's skin.

(o) That Black and White Cleansing Cream penetrates down to the bottom of the pores or absorbs all impurities and allows the pores to shrink back to normal, or that the same accomplishes deeper pore cleansing than any other cream.

(p) That Black and White Cleansing Cream will give one's skin a new clearness, or a clear, vivid, and healthy skin, or a freshness and fine texture with every particle of dust, dirt and make-up removed from the pores.

(q) That Black and White Cleansing Cream removes, or aids in removing, imbedded impurities or hardened secretions, prevents blackheads, pimples, and other skin troubles, or will give one a clear, radiant, flawless skin.

(r) That Black and White Cold (Tissue) Cream is a tonic or food for the skin or is rich and nourishing, or will replace the oils in the skin, erase wrinkles or lines from the face, strengthen sagging muscles, correct dropping chin lines, plump out hollows in the neck or cheeks, keep one's skin firm or youthful, or will be absorbed by the skin.

(s) That Black and White Glossine stops itching scalp.

(t) That Black and White Quinine Pomade ends dandruff, stops itching scalp, restores the circulation to the scalp or causes more nourishment to be brought to the roots of the hair.

(u) That Black and White Quinine Pomade will cause each strand of hair to become soft and smooth and stay exactly in the position combed, or will promote hair growth and the health of both hair and scalp.

(v) That all movie and stage stars use Black and White Hair Dressing or that the same will release the twist and curl of every strand of hair.

(w) That Black and White Peroxide Vanishing Cream will protect the skin against darkening or coarsening or will keep one's skin healthy, fair, and light, or will provide a film which will lock in skin beauty and seal out the damaging effects of wind and weather.

(x) That Black and White Mogro will promote a full, luxuriant growth of hair or will grow hair.

(y) That Black and White Mogro goes into the scalp or will nourish the scalp or glands or that the same contains double acting oils.

(z) That Black and White Mogro will give one an even growth of hair or is the secret for growing long hair or is a rapid grower, or in any other way represent that the same will aid in growing hair.

The said Plough, Inc., further agreed not to publish, or cause to be published, any testimonial containing any representations contrary to the foregoing agreement. (Apr. 18, 1939.)

02370. Table Salt—Qualities and Testimonials.—General Foods Corp., a corporation, 250 Park Avenue, New York, N. Y., vendor-advertiser, was engaged in selling a table salt designated Diamond Crystal Salt (Plain) and Diamond Crystal Salt (Iodized) and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Diamond Crystal Salt is the only salt that brings out flavors in food, that all other salts have a bitter taste, or that its use eliminates the danger of oversalting or insures best results.

That Diamond Crystal Salt will in all cases prevent clogging or caking in salt cellars.

That Diamond Crystal Salt insures the production of better butter or the production of butter with less work or that when used to preserve meat, it insures that every particle of meat will be permeated and preserved firm with good color and no spoilage.

The said General Foods Corp. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 19, 1939.)

02371. Jewelry—Free Product, Special Offers, Nature, Guarantees, Source or Origin, Testimonials, Etc.—Myer D. Field, an individual doing business under the trade name Field's Diamond Co., 510 South Hill Street, Los Angeles, Calif., vendor-advertiser, was engaged in selling various articles of jewelry such as rings, watches, "diamonds," and other articles of jewelry and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That the imitation stones are "mounted in solid gold effect".
- (b) That any article is given "free," so long as the recipient is required to perform services or make purchases of other merchandise in order to get such article, or so long as the cost of the article is included in the price charged for other merchandise.
- (c) That the "free advertising offer" or the "reward coupon offer," or any other such offer is limited as to time of acceptance or is a special offer, unless the time limit is strictly adhered to and unless the prices quoted are less than those regularly charged.
- (d) That the imitation diamonds sold by respondent match genuine diamonds in cut, brilliancy and fire.
- (e) That Myer D. Field, or any company operated by him, is the "exclusive" distributor of any merchandise he offers for sale.
- (f) That any article is "engraved" unless the design thereof is actually produced by cutting or carving.
- (g) That imitation diamonds sold by respondent look like, pass for, or cannot be distinguished from genuine diamonds.
- (h) That said imitation diamonds are reproductions.
- (i) That either or any of the watches offered for sale—

1. Is guaranteed for accuracy by a 100 year old factory or by a million dollar factory.
2. Is thoroughly dependable.
3. Is accurate as it is beautiful.
4. Is a perfect time keeper.
5. Will be taken by friends of the wearer for a \$50 watch.
6. Or has a fully guaranteed movement.

Myer D. Field further agreed, in soliciting the sale of said imitation diamonds, to cease and desist from using the word "diamond" alone or in combination with any other word to designate or describe such articles unless the term is modified by the word "imitation" or a true synonym thereof printed in direct connection with the word "diamond" and in equally conspicuous type.

Myer D. Field further agreed to cease and desist, by the use of foreign names or otherwise, from representing that any product sold by him originated in or was imported from a foreign country, when in fact such article did not originate in and was not imported from a foreign country.

Myer D. Field further agreed, in soliciting the sale of his products, to cease and desist from using the word "Diamond" as a part of his trade name until such time as he actually deals in genuine diamonds.

The said Myer D. Field agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Apr. 19, 1939.)

02372. Key Check Outfit, Clipping Bureau Outfit, Mail Order Plan and Embossing Ink—Free Products, Opportunities, Earnings, Special Offers, Testimonials, Etc.—William H. Bohn, an individual trading as William H. Bohn Co., Post Office Box 86, Wilkes-Barre, Pa., vendor-advertiser, was engaged in selling a Key Check Outfit, an outfit for operating a clipping bureau, Mail Order schemes, and Rotex-Process Embossing Ink and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication

(a) That he furnishes outfits for making key checks, unless it be clearly indicated that said outfits are not furnished free of charge.

(b) That the making of key checks with his outfit brings big profits.

(c) That there is no competition in the key check business.

(d) That any offer is a special offer, unless it offers inducements not regularly made and is available for a limited time only.

(e) That his outfit for operating a clipping bureau will result in profit to the purchasers thereof.

(f) That his Rotex-Process Embossing Ink will enable one to "engrave" his personal handwriting.

(g) That his mail order plan—

1. Will enable one to make extra profits.

2. Offers 300 ways of making money.

3. Contains "profitable" tested mail order plans.

4. Contains confidential business secrets.

5. Contains practical tested formulas.

6. Contains successful honest schemes.

7. Has enabled men to establish successful business with nominal capital.

8. Is offered to the purchaser at a special introductory price when in truth and in fact the price at which said mail order plan is offered is the regular sales price thereof.

The said William H. Bohn in soliciting salespersons and agents, in the sale of Key Check Outfit, outfit for operating a clipping bureau, Mail Order Schemes, and Rotex-Process Embossing Ink, agreed:

(h) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of his salespersons or agents under normal conditions in the due course of business;

(i) Not to represent or hold out as maximum earnings by the use of such expressions as "up to," "as high as," or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of his salespersons or agents under normal conditions in due course of business; and

(j) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally conspicuous with as to form, and at least one-fourth the size of the type used in printing such statement or representation of earnings.

The said William H. Bohn agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Apr. 21, 1939.)

02373. Poultry Preparation—Qualities, Guarantee, Testimonials, Etc.—M. Sullivan, an individual trading as More Egg Co., 333 North Fifteenth Street, Philadelphia, Pa., vendor-advertiser, was engaged in selling a poultry preparation designated More Egg Tonic and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication

(a) That the product will cause any definite results within any definite period of time.

(b) That use of the product will enable one to "keep hens laying all winter" or to "get eggs all winter" or to double egg production or that it "makes hens work all the time" or that it makes layers out of loafers.

(c) That the product is an egg producer or that it is of any value in increasing egg production unless limited to its aid in supplying calcium to diets deficient in that ingredient.

(d) That the advertiser guarantees "results" or that every package is guaranteed, unless stated in direct connection therewith that the guarantee pertains only to a return of the purchase price if a purchaser is not satisfied and requests return of the purchase price within thirty days from the date of such purchase.

(e) That the product "revitalizes" the flock.

(f) That the advertiser is a poultry "expert."

The said M. Sullivan further agreed to cease and desist from using the words "More Egg Tonic" or any other words of similar import or meaning as a trade name for the product.

The said M. Sullivan further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 25, 1939.)

02374. Cord Set—Opportunities, Earnings, Guarantee, Testimonials, Etc.—Grover B. Higgins, an individual trading as The Neverknot Co., 4525 Ravenswood Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a cord set designated the DeLuxe Neverknot Cord Set and agreed in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication

(a) That one "just can't help" making money with his plan or that one is "bound to succeed", or that any number or percentage of persons will always buy the products.

- (b) That he guarantees:
1. One's success or a profit.
 2. Sales, or that one will sell his product.
- (c) That his guarantee is "unconditional".

Grover B. Higgins further agreed to cease and desist from publishing the terms of any guarantee unless all of the terms thereof are stated in direct connection therewith.

Grover B. Higgins further agreed to cease and desist from representing or implying through use of the words "samples furnished," or any other words of similar import or meaning, in contact advertisements, or otherwise, that any article is furnished without condition when the fulfillment of any obligation other than that published in the advertisement is necessary before delivery of the article referred to.

The said Grover B. Higgins further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 26, 1939.)

02375. Soap—Qualities and Testimonials.—The Procter & Gamble Co., a corporation, Cincinnati, Ohio, vendor-advertiser, was engaged in selling a detergent designated Camay Soap and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication

- (a) That the use of Camay Soap will keep the skin young.
- (b) That the use of Camay Soap will keep the skin clear or smooth or remove the cause of most skin blemishes or ailments in any way which would include cases where such results will not be achieved by cleansing the skin.
- (c) That no other soap can compare with Camay for cleansing the skin, or that it cleanses the skin in any place not reached by other soaps, or that only Camay can cleanse the skin so as to retain a fresh appearance, or that it stimulates the skin as does no other soap, or that no other soap works the way Camay does.
- (d) That the use of Camay will insure the skin against roughness, blemishes or premature aging.
- (e) That Camay Soap "reaches down to the pores" or any other claim implying that the pores have any substantial depth.

While not abandoning its right to claim that Camay Soap may be used safely upon sensitive skins generally, The Procter & Gamble Co. agreed that it will forthwith cease and desist from representing directly or by implication that Camay Soap "can't irritate the most sensitive skin", or any other claim which may import or imply that it is nonallergic.

The said The Procter & Gamble Co. agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 1, 1939.)

02376. Laundering Preparation—Composition, Qualities and Testimonials.—General Foods Corp., a corporation, 250 Park Avenue, New

York, N. Y., vendor-advertiser, was engaged in selling a laundering product designated La France and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication

(a) That La France contains or constitutes any cleansing agent superior to or different from pure soap or that it enables one to use less soap except to the extent that La France itself supplies the required *pure soap* content of a laundry solution, or that the addition of La France to a solution containing an adequate amount of pure soap makes that soap cleanse more efficiently.

(b) That if one uses La France, clothes will not require any rubbing or scrubbing.

The said General Foods Corp. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 4, 1939.)

02377. Poultry Remedy—Qualities and Testimonials.—Tim Lake Laboratories, Inc., a corporation, Des Moines, Iowa, vendor-advertiser, was engaged in selling a poultry remedy designated "Jermite" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Jermite "guarantees":

1. Reduced chick loss;
2. Rapid chick growth;
3. Riddance of disease germs;
4. Prevention of coccidiosis;
5. Elimination of worm hazard; or
6. Control of simple diarrhea.

(b) That Jermite acts 4 ways:

1. Antiseptic.
2. Appetizer.
3. Intestinal cleanser.
4. Bone builder.

(c) That Jermite:

1. Increases vitality of entire flock;
2. Increases egg production;
3. Increases hatchability of eggs;
4. Supplies the mineral not found in most feeds;
5. Is a bowel regulator;
6. Aids the bowels to function normally; or
7. Is a liquid poultry tonic.

(d) That Jermite contains:

1. Iron Sulphate, a blood builder and tonic;
2. Copper Sulphate, a muscle builder;
3. Sulphate of Soda, a bowel regulator;
4. Salicylic Acid, an intestinal antiseptic; or
5. Oil of Anise, a digester and appetizer.

(e) That Jermite:

1. Will "control" and "relieve" simple diarrhea, bowel trouble, coccidiosis, and other intestinal ailments; or
2. Acts as a bowel regulator or an intestinal cleanser.

- (f) That Jermite has a similar action on hogs.
- (g) That one gallon of Jermite:
1. Will antisepticize and germitize 250 gallons of drinking water;
 2. Will germitize 32 sacks of feed when fed according to directions;
 3. Will make 7 boxes of average poultry tablets sold under other trade names, usually selling at \$1 per box;
 4. Will take care of 300 baby chicks for 90 days when used in the drinking water and feed;
 5. Will take care of 150 hens for 90 days when used in drinking water and feed;
 6. Will take care of 150 turkey poults or hens for 90 days when used in drinking water and feed; or
 7. Will take care of 30 hogs for 77 days when used in slop feed.

The said Tim Lake Laboratories, Inc. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 5, 1939.)

02378. Sign Letters—Composition, Opportunities, Earnings and Testimonials.—Fred M. Cole, an individual trading as Neonite, Akron, Ohio, vendor-advertiser, was engaged in selling Sign Letters and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) From the use in his advertisements and advertising matter of the words "gold" or "silver" 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 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 said Fred M. Cole further agreed—

(b) Not to make unmodified representations or claims of earnings in excess of the average earnings of active full-time purchasers of advertiser's products, achieved under normal conditions in the due course of business.

(c) Not to represent that such purchasers will have the chance or opportunity of earning any amount which is in excess of amounts theretofore actually earned by one or more purchasers of advertiser's products under normal conditions in the due course of business.

(d) 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 purchasers of advertiser's products under normal conditions in the due course of business; and

(e) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally conspicuous with, as to form, and at least one-fourth the size of the type used in printing such statement or representation of earnings.

The said Fred M. Cole agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (May 12, 1939.)

02379. **Fog Light—Qualities and Testimonials.**—The Kristee Products Co., a corporation, Akron, Ohio, vendor-advertiser, was engaged in selling a product designated Kristee Fog-Lite and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That amber beam generally, or that the amber beam resulting from use of the advertiser's product, has a greater degree of penetration, or from otherwise representing or implying that it provides a clearer, or better, or a more lengthy vision than ordinary beams.

The said The Kristee Products Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 15, 1939.)

02380. **Household Merchandise—Opportunities, Earnings, Free Products and Testimonials.**—Vera P. Williams, proprietor, and L. O. Williams, attorney in fact for Vera P. Williams, doing business as The C. I. Togstad Co., Togstad Building, Kokomo, Ind., vendor-advertiser, was engaged in selling Household Merchandise and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That agents or salespersons, regardless of age, residence, experience, or business qualifications, "make big money" or "earn steady incomes," or "get into a business of their own."

(b) That "\$8.00 free sample display" or "free sample display" is furnished agents so long as the agent or salesperson is required to make a cash deposit in order to secure such outfit.

(c) That C. I. Togstad Company's "free premium" plan enables agents or salespersons to make quick, easy sales.

(d) That agents earn or receive any money for merely taking orders unless in equally conspicuous words in direct connection therewith, it is clearly stated they must pay for and deliver the goods ordered and collect therefor to earn anything for taking the orders.

(e) That any sum of money is paid to any person for just serving 100 neighborhood families with Togstad's household necessities.

(f) That \$500.00 cash bonus, besides \$2,000.00 yearly earnings (or \$40.00 every week) will be paid to agents or salespersons "just for serving 100 neighborhood families with Togstad's Famous 400 Household Necessities."

(g) That any agent is assured a splendid income or that such agent can quickly line up 100 regular users of C. I. Togstad Company's merchandise, or that it is certain that he can make money the first day.

(h) That anything is free that requires time, service, or money as a condition precedent to receiving it.

(i) That any article is free when the cost of it has been considered and included in the selling price of some other article.

The said Vera P. Williams, proprietor, and L. O. Williams, attorney in fact for Vera P. Williams, in soliciting salespersons, agents, or dealers in aid of the sales of such merchandise, further agreed:

(j) Not to make unmodified representations or claims of earnings in excess of the average earnings of The C. I. Togstad Company's active full-time sales-

persons, agents, or dealers achieved under normal conditions in the due course of business.

(k) Not to represent that such salespersons, agents, or dealers will have the chance or opportunity of earning any amount which is in excess of amounts theretofore actually earned by one or more of The C. I. Togstad Company's salespersons, agents or dealers under normal conditions in the due course of business.

(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.

The said Vera P. Williams, proprietor, and L. O. Williams, attorney in fact for Vera P. Williams, agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 16, 1939.)

02381. Shoes, Foot Comfort Appliances and Remedies—Ailments, Qualities and Testimonials.—The Scholl Manufacturing Co., Inc., a corporation, 211-213 West Schiller St., Chicago, Ill., vendor-advertiser, was engaged in selling arch supports designated Dr. Scholl's Scientific Arch Supports, shoes designated Dr. Scholl's Scientific Shoes, and various foot comfort appliances and remedies and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That arthritic or rheumatic-like foot and leg pains, callouses, fatigue, sore heels and tired feet are always signs or symptoms of weak or fallen arches.

(b) That Dr. Scholl's Arch Supports—

1. Will instantly relieve foot pains and physical disturbances, or will quickly relieve all foot pains and physical disturbances; or
2. Will relieve foot strain, weak feet, flat feet, tired, aching feet, cramped toes, foot or leg pain, and fatigue without expressly limiting such claims to those conditions when due to lack of proper support to the arches of the feet; or
3. Will alone assure the wearer of correction of weak or fallen arches without massage or exercise, or that they will alone restore the arch to normal.

(c) That so-called Arch Support Shoes or appliances of one standard elevation to fit all feet and of non-adjustable construction, are valueless.

(d) That Dr. Scholl's Scientific Shoes—

1. Will "eliminate" the possibility of fatigue whether caused by improper fitting shoes or otherwise, or will "eliminate" the possibility of strain on muscles, nerves, and ligaments; or
2. Will result in new foot health, or in new youthfulness, or new vitality.

(e) That by wearing Dr. Scholl's Scientific Shoes any kind of comfort or health is insured.

(f) That Dr. Scholl is the World's leading foot authority.

(g) That persons wearing Dr. Scholl shoes will have no foot troubles.

(h) By the unqualified use of words and phrases such as, "end foot troubles," "afford relief from any foot trouble, foot ailment, or foot pain," or "assure quick relief from every common foot trouble," or in any other manner, that the various Dr. Scholl foot remedies and appliances will end or relieve all foot troubles without exception or qualification or will assure quick relief from every common foot trouble.

The Scholl Manufacturing Co., Inc. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 22, 1939.)

02382. Medicinal Preparation—Qualities, Results, Safety and Testimonials.—Ring-Rout, Inc., a corporation, 710 Queen and Crescent Building, P. O. Box 208, New Orleans, La., vendor-advertiser, was engaged in selling a medicinal product known as "Ring-Rout" which is alleged to be a cure for tinea trichophyton, hereinafter referred to as "Ringworm," "Foot Itch," and/or "Athlete's Foot" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Ring-Rout will accomplish results which other preparations are not capable of accomplishing, or that it has special inherent qualities and/or properties which are not possessed by other preparations when such other preparations are composed of substantially the same ingredients and compounded for the same purpose.

(b) That treatment with Ring-Rout will kill the fungi of Athlete's Foot, in actual cases of infection, without an appreciable length of time lapsing between its application to the infected area and the killing of such fungi; or that it will kill the fungi encountered in actual cases of the said infection within any definite period of time.

(c) That Ring-Rout may be used with the expectancy of obtaining a complete and absolute purge of the fungi of Athlete's Foot unless such representations are qualified to indicate that many cases of the said infection are extremely rebellious to treatment, that successful therapy depends upon many factors such as guarding against reinfection and that no one preparation has yet been discovered which will, in all instances, be an effective treatment for the said infection throughout its various stages.

(d) That the results accomplished in laboratory tests indicate that Ring-Rout is effective in completely destroying the fungi of Athlete's Foot encountered in actual cases of the infection.

(e) That Ring-Rout is the result of any specialized or professional research or that it has been formulated by a great specialist.

(f) That Ring-Rout has proven effective for treatment in 95% of cases of the said infection in clinical tests conducted by doctors, unless such representations are qualified to indicate that such tests constitute only an extremely small minority of all cases subjected to clinical study and that the data therein compiled are not correct when applied to average, general conditions which prevail with respect to curing Athlete's Foot;

(g) That the action of Ring-Rout in removing the outer layers of the skin is nonirritating and harmless.

The said Ring-Rout, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 22, 1939.)

02383. Seeds—Opportunities and Earnings.—A. Otis Arnold, an individual trading and doing business as American Seed and Plant Co., Quincy, Ill., vendor-advertiser, was engaged in selling plant seeds designated Golden Seal Seed and Ginseng Seed and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That any one can grow Ginseng or Golden Seal or that to cultivate the same is easy or in all instances profitable.

(b) That Golden Seal and Ginseng prices have increased in recent years.

(c) That one may easily produce \$1,000 worth of roots on a small plot of ground, or that the returns from any plot of ground will average any definite sum or that one may expect big returns or any specified profit from raising Golden Seal or Ginseng.

(d) That the supply of Golden Seal Seed and Ginseng Seed is limited or is likely to be exhausted by the buyer demand. (May 24, 1939.)

02384. Skin and Scalp Remedies and Shampoo—Qualities.—Mentos Products, Inc., a corporation, 1469 North Hirst Street, Philadelphia, Pa., vendor-advertiser, was engaged in selling a hair shampoo designated Mentos Shampoo and skin and scalp remedies designated Mentos and Mentos Face and Skin Remedy and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the use of Mentos will promote the growth of hair.

(b) That Mentos or Mentos Shampoo is capable of cleansing below the pore openings.

(c) That Mentos or any of its ingredients penetrates into the depths of the follicles or will "medicate the glands."

(d) That Mentos is efficacious in "building the resistance of the skin and scalp."

(e) That the use of Mentos will result in a permanent cessation of falling hair or scalp itching or "sores between toes".

(f) That the use of Mentos will cure eczema or ringworm or psoriasis or scalp irritations or scaly scalp conditions or dandruff conditions.

(g) That the use of Mentos will clear the skin of lesions of eczema or of ringworm or of psoriasis.

(h) That the use of Mentos will clear dandruff unless limited to the removal of loose scales of dandruff.

(i) That the quality of the hair is improved in proportion to the quantity of Mentos used.

(j) That Mentos Face and Skin Remedy is good for all skin irritations.

(k) That Mentos Face and Skin Remedy "purifies" or beautifies the skin.

(l) That Mentos Face and Skin Remedy clears rash.

(m) That Mentos Face and Skin Remedy is of therapeutic value in cases of ingrown hair or of sunburn or of mosquito bites.

(n) That the use of Mentos Face and Skin Remedy is of any therapeutic value in cases of eczema or psoriasis or ringworm unless it is expressly stated in direct connection therewith that its value in these conditions is limited to temporary palliative relief and that such palliative relief may be obtained in only some cases of eczema, ringworm, and psoriasis.

(o) That the use of Mentos Face and Skin Remedy is of value in all cases of pimples or acne.

(p) That the use of Mentos Shampoo will promote the growth of hair or will result in permanent cessation of falling hair.

(q) That Mentos Shampoo is a competent treatment in the relief of eczema of psoriasis or ringworm. (May 26, 1939.)

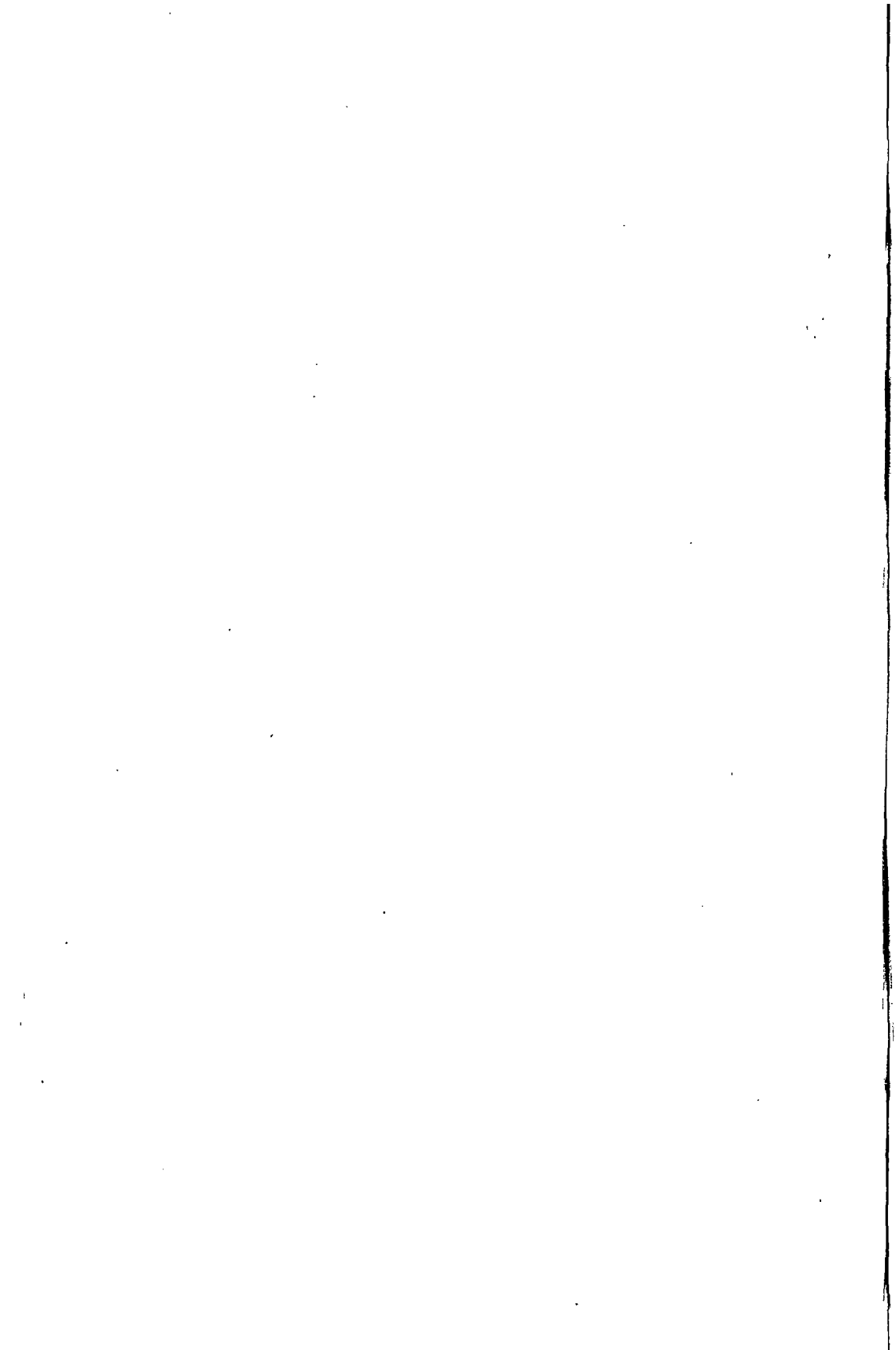
02385. Information—Employment.—Clifford W. Wells, an individual, 109 North Front Street, Baltimore, Md., vendor-advertiser, was engaged in selling “information” on how to obtain employment in the American Merchant Marine and how to become a sailor and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That an inexperienced individual or individuals can find employment in the Merchant Marine or elsewhere, where employees are known as seamen, by following out his “Instructions.”

(b) That he has knowledge of any specific available job or jobs in the Merchant Marine or elsewhere, where employees are known as seamen, by publishing or causing to be published the words “How To Obtain A Job In The American Merchant Marine” or “Become a Seaman—Sail The Seven Seas on Tramp Steamers” or any other words of like import in classified advertisement columns or elsewhere entitled “Instructions” or otherwise.

(c) That his “Instructions” will assist an individual in obtaining employment in the Merchant Marine or elsewhere, where employees are known as seamen, unless such representations are qualified to indicate that such “Instructions” pertain only to routine matters such as living conditions on the water front, methods of registering for employment, kinds of clothing to provide one’s self with, classifications and rates of pay relative to seamen’s jobs, the slang phraseology which is used aboard ship, and the other general information which is actually imparted by the said Clifford W. Wells to his subscribers.

(d) That any individual may sail to any port of his own choice as an employee of a vessel bound thereto simply by waiting for that particular vessel to embark therefor. (May 26, 1939.)



DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION¹

IRA W. MINTER AND CLAYTON A. MINTER, INDIVIDUALLY AND AS COPARTNERS DOING BUSINESS UNDER THE FIRM NAMES AND STYLES OF MINTER BROTHERS AND DOUGLASS CANDY COMPANY *v.* FEDERAL TRADE COMMISSION²

No. 6795

(Circuit Court of Appeals, Third Circuit. February 14, 1939)

CEASE AND DESIST ORDERS—LOTTERY MERCHANDISING—"BREAK AND TAKE" CANDY SELLING—WHERE TO CHILDREN—IF WHOLE INDUSTRY "INFECTED."

The Federal Trade Commission had statutory power to enter a cease and desist order against the "break and take" method of selling candy to children, as against contention that power did not exist because the whole candy manufacturing business was infected with the "break and take" virus.

CEASE AND DESIST ORDERS—WHERE SUPPORTING EVIDENCE.

An order of Federal Trade Commission supported by evidence is conclusive.

TRADE ACTS AND PRACTICES—LOTTERY MERCHANDISING.

Although wagering contracts were valid at common law, in modern times, in both England and most of the states of the United States, gambling transactions are unenforceable and only the loser has recourse to the courts.

CEASE AND DESIST ORDERS—LOTTERY MERCHANDISING—"BREAK AND TAKE" CANDY SELLING—WHETHER CHILDREN VENDEE CONSUMERS.

Petition to review order of Federal Trade Commission that candy manufacturers cease and desist from disposing of candy by means of the "break and take" method on ground that candy did not reach children was dismissed.

The "break and take" method is the sale of merchandise or amusement as in the case of motion picture bank nights, by the inducement of a "lottery." The customer does not buy only a chance represented by a ticket, he pays for a chattel and a chance for another unpaid for chattel, the ticket being the opportunity for fortuitous selection of a differentiated article.

(The syllabus, with substituted captions, is taken from 102 F.

(2d) 69)

¹ Including the period covered by this volume, or through May 31, 1939, three injunctive orders or decrees have been entered under the provisions of Section 13 of the Federal Trade Commission Act, which was among those added to the original law by the Wheeler-Lea Act, approved March 21, 1938. First of such orders or decrees was that in case of *F. T. C. v. Hartman Wholesale Drug Co., Inc., et al.*, D. C. for N. D. of Ill., September 16, 1938, 27 F. T. C. 1693, and the other two, entered prior to June 1, 1939, were in the cases of *F. T. C. v. Western Chemicals, Inc., et al.*, D. C. for W. D. of Wash., March 27, 1939, and *F. T. C. v. Lewyn Drug, Inc.*, D. C. for S. D. of Cal., Central Division, April 7, 1939, reported in this volume, *infra*, at pages 1939 and 1951, respectively.

² Reported in 102 F. (2d) 69. The case before the Commission is reported in 26 F. T. C. 904.

On petition for review from order of Commission, petition dismissed.

Mr. David H. Kinley, of Philadelphia, Pa., for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. James W. Nichol*, special attorney, all of Washington, D. C., for respondent.

Before BIGGS, CLARK, and BUFFINGTON, Circuit Judges.

CLARK, *Circuit Judge*:

This case seems to us a futile continuation of earlier litigation. The trade practices of these petitioners have already been expressly condemned in a unanimous opinion of the United States Supreme Court, *Federal Trade Commission v. Keppel & Bro.*, 291 U. S. 304, February 5, 1934. As the high court there adopted, or rather amplified, the view of the then minority of this court, we can be supposed to be thoroughly familiar with the holding.

The particular practice whose ceasing and desisting was there and here ordered is known in the marts of commerce as selling by "break and take" (pick and take, draw deals, punch cards and punchboards) rather than by "straight goods" packages. The nomenclature furnishes a clue to the disapproval both of the judicial bodies and encouragingly, of the "better element" of the trade itself.

The "break and take" method is the sale of merchandise (or amusement as in the case of motion picture bank nights, 12 Wisconsin Law Review 251, 17 Boston University Law Review 238), by the inducement of a lottery. The customer does not buy only a chance represented by a ticket, he pays for a chattel and a chance for another unpaid for chattel, the ticket being the opportunity for fortuitous selection of a differentiated article. It is, so to speak, a lottery with trimmings, and one might observe that a lottery by any other name will smell as bad.

This selling by lottery seems to have prevailed largely where it least should have prevailed, namely, in the sale of penny candy to little children. The Federal Trade Commission's brief cites 18 of these candy cases initiated by it and sustained by the Circuit Courts of Appeal and the United States Supreme Court since the decision of the *Keppel* case above cited. These cases are collected in the notes to section 45 of title 15 U. S. C. A. on pages 66-75 of the supplement, and see note 5 of 43 Yale Law Journal 1339. See also In the matter of *Boyd Houser Candy Co.* and In the matter of *The Newton Products Com[70]pany*, Vol. 4 Federal Register No. 27, p. 607. It has not always been so limited. As long ago as 1918 we find the Federal Trade Commission prohibiting the sale of tea and coffee with coupons for prizes concealed in certain packages, *Buddha Tea Co.*, 1 F. T. C. 159 (1918), *Everybody Mercantile Co.*, 3 F. T. C. 60 (1920), and only recently the commission was

sustained in its objection to the sale of silk stockings by punch cards, *Chicago Silk Co. v. Federal Trade Commission*, 90 F. (2d) 689 (C. C. A. 1937), cert. den. 302 U. S. 753 (1938). And see also as to the sale of gas and oil an injunction by competitor, *Jones v. Smith Oil & Refining Co.*, 15 N. E. (2d) 42 (1938), 29 Journal of Criminal Law and Criminology 598.

The petitioners and the other practitioners of this type of merchandising have followed that ancient precept of the sea, "women and children first," except that they pervert instead of protect weakness. Taking candy from children has never been highly regarded. Forcing it upon them through their possession of an instinct that the adult world recognizes and has always recognized as at the bottom of many of its troubles, seems to us shameful. We have rarely seen of a more unpleasant example of commercial cynicism than is disclosed by the testimony of the petitioners' president, Ira W. Minter:

Q. In your opinion, Mr. Minter, is this form of advertising injurious to the public?

A. The public benefits by it.

Q. In what way would you say the public benefits by it?

A. By getting additional value for the purchase of the particular goods that it is being offered with. (Record, p. 148.)

The "benefit" and "additional value" so euphemistically referred to, is our old friend "something for nothing," the consequences of too enthusiastic pursuit of which are known to judges in their official capacities.

In view of the controlling decision of the Supreme Court in *Federal Trade Commission v. Keppel & Bro.*, above cited, any extended discussion of the law is inappropriate. Petitioners attempt three distinctions. Two of them touch upon the judicial history of its interpretation. They say, first, that the Federal Trade Commission has no statutory power because the whole candy manufacturing business is infected with the "break and take" virus. In the light of the sentiments we have just expressed, we should be loath to believe this of any body of business men. Happily we do not have to. First, the witnesses making this depressing assertion, Minter and Coughlin, the president and candy broker of the petitioners are somewhat interested. Second, it is flatly contradicted by two other candy manufacturers called by the Commission, Voneiff, p. 39 and Roskamm, p. 102. Although the latter's business reformation was not altogether voluntary (cease and desist order), he did not limit himself to his own business but referred to earlier and, to him, more Halcyon days in the trade generally, saying:

In the days when break and take were so actively sold in a much larger volume than they are today, we used to receive constant requests from our

salesmen, wanting to know why, if other firms could make these packages, we would not make them, and advised us that in many instances their customers were buying a general line of merchandise such as ours, from sources who could supply them with break and take, and vigorously demanded therefore that we also give them a similar assortment to do business with so that they can get their normal share of the distribution and earn their pro rata commission. (Record, p. 102.)

The Commission's finding, paragraph 6, Record pp. 200-201 is supported by evidence and is by well-settled law conclusive, *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73 (January 8, 1934), *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 117 (November 8, 1937).

Even if this had not been so and if the entire penny candy trade, had indulged in the practice alleged to be obnoxious, we believe the present trend of decision under section 45, title 15, U. S. C. A. supports the order. That trend is away from the requirement of injury to a particular competitor and toward the protection of the general consumer.

The direction of that judicial current depends, of course, upon the construction of a very general word "competition." The issue is whether it may be construed to include situations where the practices to be struck down are rife in an entire industry, Jurisdiction of Federal Trade Commission Over False Advertising, 31 Col. Law Rev. 527, or whether the Commission can only intervene when one honest competitor enters the field, Scope of the Jurisdiction of the Federal Trade Commission over False and Misleading Advertising, 40 Yale Law [71] Journal 617 (comment), The Meaning of Methods of Competition in Commerce, 31 Michigan Law Review 808.

Light has, very properly, been sought in the halls of Congress. An entire article has been devoted to a collection of excerpts from the debates in the Senate, Unfair Methods of Competition, 25 Yale Law Journal 20, and further references to the Congressional debates are collected in note 18 on page 532 of Mr. Handler's (a leading authority on the subject) article in 31 Col. Law Review 534, above cited. A perusal of these debates leaves us with the impression that general words were employed to make possible the meeting of future contingencies. We say this although we recognize the danger voiced by Mr. Justice Cardozo in repeating the words of Professor Gray in his lectures on the Nature and Sources of the Law:

that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present. (Cardozo, The Nature of the Judicial Process, p. 15.)

Surely emasculation of the Commission in proportion to the prevalence of the roguery involved would be a failure to recognize such contingency. The contrary or strict construction by some of the courts arises, as we think, from too long judicial considerations of the technical difficulties in the enforcement of common law private and public sanctions against dishonest trade practices, *Handler, False and Misleading Advertising*, 39 *Yale Law Journal* 22, *The Meaning of Methods of Competition in Commerce*, 31 *Michigan Law Review* 808, above cited, *Handler, Jurisdiction of Federal Trade Commission over False Advertising*, 31 *Col. Law Review* 527, above cited, *Scope of the Jurisdiction of the Federal Trade Commission over False and Misleading Advertising*, 40 *Yale Law Journal* 617 (comment), above cited.

It is not unreasonable to suppose that the very purpose of the legislative body, here as often, was to stop the gaps of judge made law. If we can indulge in a priori reasoning, we might note the addition by Congress on June 23, 1938 of the phrase "unfair or deceptive acts in commerce" to the former "unfair methods of competition in commerce," 52 *Stat.* 1028.

Petitioners' second ground for distinguishing the *Keppel* case opens up another vista of interpretation as to the meaning of another general word—this time the word "unfair." Here again and again naturally the effort is toward limitation. The rugged individual wishes to continue in his ruggedness and wishes to correspondingly narrow the scope of interference by a bureaucratic and possibly slightly more ethical government. The courts have not agreed with their rugged view, however, and have gradually widened that scope. They have brought their standard of fairness even closer to an ever, we think, higher conception of business ethics. That process of widening is discussed in the law review articles above cited, 39 *Yale Law Journal* 22, 31 *Michigan Law Review* 808, 31 *Col. Law Review* 527, 40 *Yale Law Journal* 617. See also *The Legal Phases of Advertising* by Francis Finkelhor, 1938.

The distinction attempted is based on a difference of fact. In the *Keppel* case the candy of the break and take package was of inferior quality to that of the straight goods. Here it is not. The argument seems to be derived from the attempt of the dissenting opinion of this court, *Keppel & Bro. v. Federal Trade Commission*, 63 *F. (2d)* 81, 85, to bring the practice within the conception of "deception."

The learned judge of this court writing that opinion concludes that driving the nongambling packages from the shelves forced cheating of the consuming children. This stretching of logic was, we surmise, occasioned by a desire to bring the case within the established precedents which stressed deception.

The Supreme Court, as is its special privilege, rejected this, shall we say, rather tortured construction of the practice and placed its decision on a more satisfactory legal and a more fundamental ethical ground. If you cheat people, you affect their pocketbook; if you encourage them to gamble, you affect their character. Mr. Justice Stone said:

But here the competitive method is shown to exploit consumers, children, who are unable to protect themselves. It employs a device whereby the amount of the return they receive from the expenditure of money is made to depend upon chance. Such devices have met with condemnation throughout the community. Without inquiring whether, as respondent [72] contends, the criminal statutes imposing penalties on gambling, lotteries and the like, fail to reach this particular practice in most or any of the States, it is clear that the practice is of the sort which the common law and criminal statutes have long deemed contrary to public policy. For these reasons a large share of the industry holds out against the device, despite ensuing loss in trade, or bows reluctantly to what it brands unscrupulous. It would seem a gross perversion of the normal meaning of the word, which is the first criterion of statutory construction, to hold that the method is not "unfair." *Federal Trade Commission v. Keppel & Bro.*, 291 U. S. 304, 313.

The writer of a note in the Yale Law Journal has commented on this opinion, saying:

Granting that those practices which business men "should not adopt" constitute unfair methods of competition, the question still remains as to why, in the face of a diversion of trade which might otherwise be retained, they should refuse to use the method involved in the principal case. The reason is found in the injury which its use will entail to the public. In the advertising cases, that injury consists of deception with the resultant purchase of a different and usually inferior article than is represented. In the case under consideration, while the deception element was lacking, still the consumers of the product were induced by the gaming device to purchase a product inferior to that which they might otherwise procure for the same price. But in the eyes of the Court the financial injury was subordinate to the moral one, which consisted of a tendency to encourage gambling, a form of conduct that it deemed subversive of general morality and so contrary to public policy as frequently to have been an object of statutory prohibition. Powers of the Federal Trade Commission in Prohibiting Unfair Methods of Competition, 43 Yale Law Journal 1338, 1340 (note).

See also 10 N. Y. U. Law Quarterly Rev. 11, 82 U. Pa. Law Rev. 664, 665. It is interesting to record that the business men responsible for the publication of that most excellent book, Public Regulation of Competitive Practices, had anticipated the sentiments of the learned Justice and the learned author. We quote:

As a method of sales promotion, lotteries are so unusual as to warrant but passing notice. They are unusual because they were well known to be opposed to public policy even prior to the enactment of the regulatory legislation of 1914, and in some States they have been made penal offenses by statute. The reasons for this general condemnation of lotteries are primarily ethical and

not economic. It is regarded as contrary to sound morality that men should be encouraged to seek "something for nothing"—or for a trifle. At the same time it is recognized that there are economic objections to a scheme which extracts small contributions from many, without compensation, for the benefit of the chance recipient of an unearned prize. P. 138-139.

In other words an honest lottery as a method of promoting sales was held to constitute an unfair method of competition. This appears to be sound doctrine. If it is unfair competition to tempt buyers by misrepresentations of the quality of goods, it may be regarded as likewise unfair to tempt them to buy goods not upon their merits but upon the chance of securing something for nothing. P. 140.

As the United States Supreme Court in the *Keppel* case has rejected the petitioners' officers' tolerance toward children's lotteries, it is perhaps impertinent to indulge in any homily on the economics and ethics of gambling. The temptation and its cause have been eloquently described by Lecky in his *Democracy and Liberty*.

The foregoing remarks will show the great difficulty and complexity of these questions about the connection between legislation and morals. Perhaps the most important and most difficult is the attitude the law should assume towards voluntary habits which are the cause of great and widespread misery in the community. One of the most conspicuous of these is gambling. * * * Yet no one will doubt that gambling may easily become a passion scarcely less irresistible and less injurious than drink, and it is a passion which is common to all latitudes and to all stages of civilization. Probably its chief root is that craving for excitement to which I have just referred as one of the deepest and strongest springs of human action. Man is so constituted that tranquil pleasure rarely suffices him. There are chords in his being which must be touched in another way, and he imperiously needs the thrill of intense emotion, even when that emotion is far from being exclusively pleasurable. P. 107, vol. 2.

Hastings, *Encyclopedia of Religion and Ethics*, vol. 3, p. 584, *Encyclopedia of the Social Sciences*, vol. 6, p. 555, Keynes, *Treatise on Probability*, p. 20, p. 320.

The particular form of gambling in question here, the lottery, has come in for particular attention. Because of the ease of and profit in its operation, the lottery has had a long and international history and has been utilized for the support of the revenue and other beneficent purposes, Channing, *History of the United States*, vol. 4, pp. 24-27, vol. 5, pp. 197-200, the Reference Shelf, Muller, *Lotteries*, vol. 10, No. 2. Its evil has been thus described:

The real objection to lotteries is that most of their patrons are poor people, who can ill afford the sums they spend. Their dreams of success, of sudden unearned riches, are the unhealthy dreams of the escapist who finds the burden of his normal existence almost insupportable. The lottery, in short, has the same weakness as the sales tax; it is a levy on those who can least afford it: it reduces the purchasing power of the poor, and the revenues that might be derived from it by the Government would help reduce the tax burden on the rich. The Reference Shelf, Muller, *Lotteries*, vol. 10, No. 2, pp. 103-104.

and it is accurate, we think, to say that the number of lotteries and of those approving them in the world are on the decline. The Reference Shelf, Muller, Lotteries, vol. 2, No. 2, Negative Discussion, p. 103.

However that may be, there is no doubt about the current attitude of our people, at least so far as it is reflected in their institutions, if not in their habits. Four States forbid all forms of gambling, Index Digest of State Constitutions, The New York State Constitutional Convention Commission, 1915, p. 702, and 33 States forbid it in the form of lotteries, Index Digest of State Constitutions, above cited, p. 977. All attempts to repeal these provisions have failed, Proceedings of the New York State Constitutional Convention, 1938, vol. 6, p. 200. The United States (sections 191, 336, 387, title 18, U. S. C. A., sections 135, 136, title 19, U. S. C. A.) and all 48 States have signified their legislative abhorrence of gambling by lottery, 38 C. J. 303.

More germane to the principal case is the position of our courts. We say more germane because we cannot overlook (as some people did in 1919) the difficulties inherent in the enforcement of sumptuary legislation.

It is necessary to lay the foundation of the public administration in the affections of the people. George Washington, Richardson, Messages and Papers of the Presidents (1789-1897) vol. VI, p. 10.

and see Lecky, above cited, pp. 106, 107. There is no such difficulty in the negative act of failing to give effect to transactions deemed to be contrary to public policy. Although wagering contracts were valid at common law, in modern times, in both England and most of the States of the United States, gambling transactions are "unenforceable" and only the loser has recourse to the courts, 27 C. J. 1048, 1080.

In our opinion, the requirement that the trader cease and desist from making a profit out of a lottery is more analogous to this abstention of the courts than it is to positive punishment of the habits of a people. As a matter of fact, even a nation of adult bingo players (cf. testimony of petitioners' candy broker, Record p. 179) would acquiesce in the prevention of pandering to the same instinct in their young.

Such, at any rate, has been the attitude of the law makers from earliest times. So we find the Pandect providing:

It is determined that no one that has given money on loan to a *filiusfamilias*, to be paid even after the death of the parent in whose power he is, shall be given any action or claim, that so these money-lenders of the worst sort may know that no *filiusfamilias* can contract a debt that will be good in the event of his father's death. D. 14, 6, 1.

This enactment "derived its name either from Macedo, a well-known usurer; or from Macedo, a young debauchee, whose crimes had drawn the attention of the Senate to the perils arising from spendthrift children," Tacitus, Ann. 11, 13, Suetonius, Vesp. 11. In England in 1541 an act prohibited lotteries because the young men spent their time gambling instead of practising archery, 29 Journal of Criminal Law and Criminology 598, above cited. Many States attach special criminal significance to the encouragement of gambling by minors, Cent. 21, Gaming 203, Cyc. 20, 909. This ancient and modern legislation is but the reflection of a general opinion. The editors of The School Review related it to the particular practices of the case at bar:

Children as well as adults are today constantly being exposed to the lure of various types of gambling schemes. These are rapidly increasing in number. One can hardly drop into the corner store or stop on the road while driving without running into slot machines, punchboards, and pin-ball games. And how appealing to the eye and imagination the manufacturers have made these devices!

The situation has reached such proportions that serious consideration must be given to an intelligent attack on the problem. The soundest protection of the individual against the gambling evil would seem to be found in an intelligent understanding of the truth. Children cannot be protected from the various gambling schemes so common today by merely allowing them to grow up in ignorance of the facts, in the hope that they will never come into contact with them. The truth of the matter is that they come into contact with them at an early age and learn about them through very undesirable experiences. Various gambling schemes are used at American Legion carnivals and even church bazaars. As if the end justified the means!

In order to find out what proportion of our children had some experience with slot machines and punchboards, we checked the children in the eighth grade. We found that 93 pupils or 78 percent of the class had played slot machines and 64 pupils or 52 percent had played punchboards. With such proportions at the elementary-school level, what can we expect later on?

The experiences of children with such devices are usually very inadequate and misleading. The unfortunate thing about gambling is the fact that people tend to forget their losses but always remember their "winnings." The thrill of winning makes a strong impression on the individual, and it remains in his memory. Then too it inflates his "ego" to win, and he constantly reminds others of his "good judgment." The losses are not as clearly appreciated because usually no account is kept of the nickels or quarters squandered on the machines from time to time. The "winnings," however, always come in one larger payment and greatly impress the individual. Have you ever heard people tell about their great losses? But you have heard them tell about their "winnings." As a result the impression grows that certain people are always lucky. Individuals themselves develop the attitude that they are just naturally lucky and can get something for nothing. This impression is particularly effective with children. An Instance of Realistic Civil Education, The School Review, February 1938, pp. 92, 93.

See also Evans, Are We Teaching Our Children to Gamble?, Parents Magazine, March 1937, p. 24; Hauser, A Short Course in Gambling, Parents Magazine, June 1938, p. 31.

Petitioners seem to have had some realization of the reaction we have just been discussing. Their third ground of distinction from *Federal Trade Commission v. Keppel & Bro.* above cited, is the pretense that the candy does not reach the mouths of children. This assertion almost calls for the application of the Physical Facts Rule discussed in two recent opinions of this court. "The manufacturer puts up candy for sale to jobbers who sell to small neighborhood stores, particularly those adjacent to schools," Witness, Roskamm, p. 98. Does petitioners' president envisage many of his grown-up friends and acquaintances gorging themselves on penny candy? If he does, we do not.

The petition for review is dismissed.

**HELEN ARDELLE, INC., BROWN & HALEY, CANTERBURY
CANDY MAKERS, INC., IMPERIAL CANDY COMPANY,
AND ROGERS CANDY COMPANY v. FEDERAL TRADE
COMMISSION¹**

No. 8842

(Circuit Court of Appeals, Ninth Circuit. February 14, 1939)

**TRADE ACTS AND PRACTICES—LOTTERY MERCHANDISING—PUNCHBOARD SELLING—
WHERE LAST AND CHANCE PUNCHES WINNERS.**

Punchboard for privilege of punching which retail candy dealer received from customers 5 cents a punch, where customer purchasing last punch received box of candy regardless of number drawn by him, whereas other boxes were awarded only to customers drawing certain lucky numbers constituted a "lottery" or "gambling device."

CEASE AND DESIST ORDERS—LOTTERY MERCHANDISING—PUNCHBOARD SELLING.

A punchboard method of selling candy by candy manufacturers by a lottery or gambling device constituted "unfair competition" within Federal Trade Commission Act and justified cease and desist order (Federal Trade Commission Act, sec. 5, 15 U. S. C. A. Sec. 45).

**TRADE ACTS AND PRACTICES—LOTTERY MERCHANDISING—PUNCHBOARD SELLING—
FAIRNESS OR UNFAIRNESS OF—DETERMINATION OF AS LAW OR FACT.**

Whether candy manufacturers' method of competition which involved use of a lottery or gambling device was fair or unfair was a question of law to be determined by courts, and not a question of fact to be determined by testimony.

¹ Reported in 101 F. (2d) 718. The cases before the Commission are reported in 25 F. T. C. 361, 370, 434, 481 and 527, respectively.

CEASE AND DESIST ORDERS—LOTTERY MERCHANDISING—PUNCHBOARD SELLING—
ORDER'S SCOPE—PROHIBITION OF ASSORTMENTS WHICH "MAY BE" SOLD BY
LOTTERY, ETC.

Where Federal Trade Commission found that candy manufacturers using punchboard method of selling candy were guilty of unfair competition, cease and desist order which would prevent manufacturers from selling any candy which any person might thereafter sell by means of a lottery was too broad.

(The syllabus, with substituted captions, is taken from 101 F. (2d)
718)

On petition to review orders of Commission, orders modified and, as modified, affirmed.

Flood, Lenihan & Ivers, of Seattle, Wash., for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. P. C. Kolinski*, *Mr. James W. Nichol*, and *Mr. Daniel J. Murphy*, special attorneys, all of the Federal Trade Commission, all of Washington, D. C., for respondent.

Before DENMAN, MATHEWS, and HEALY, Circuit Judges.

MATHEWS, *Circuit Judge*:

Five Washington corporations—Helen Ardelle, Inc., Brown & Haley, Canterbury Candy Makers, Inc., Imperial Candy Co., and Rogers Candy Co.—have petitioned this court to review and set aside orders of the Federal Trade Commission requiring them to cease and desist from certain practices which, the Commission holds, constitute an unfair method of competition in commerce, within the meaning of § 5 of the Federal Trade Commission Act, 38 Stat. 719, 15 U. S. C. A. § 45.

Facts found by the Commission and not disputed by petitioners are as follows:

Petitioners are engaged in the manufacture of candy in the State of Washington and in the sale and distribution thereof in interstate commerce. They have many competitors similarly engaged. Petitioners sell and distribute to retail dealers, and to wholesale dealers who sell and distribute to retail dealers, assortments of candy, called "draw" or "deal" assortments, each containing several boxes of candy, and, with each assortment, a device called a punchboard, by means of which the retail dealer sells and distributes such candy to the general public.

This punchboard is, as its name indicates, a board designed to be punched. For the privilege of punching it, the retail dealer receives from his customers 5 cents a punch. Each punch of the board discloses a number which, until then, is concealed. The numbers are not arranged in numerical sequence. Thus, each customer

punching the board "draws" a number. The customer purchasing the last punch on the board receives, regardless of the number drawn by him, one of the boxes of candy in the assortment accompanying the board. The other boxes of candy are awarded to customers drawing certain lucky numbers. These are designated on a legend or statement attached to the board. All other numbers are, in effect, blanks. Customers drawing them receive nothing. The blanks are many, the lucky numbers few. Each box of candy is worth more than 5 cents. Thus, an occasional customer gets, for 5 cents, a box of candy, worth considerably more. Others get nothing except the privilege of punching the board.

This, obviously, is a lottery or gambling device.

All sales of candy by petitioners, whether to wholesale or to retail dealers, are outright sales, petitioners retaining no control over such candy after delivering it to the dealer. Petitioners, however, in making such sales, know that the candy will be, and intend that it shall be, sold to the public by means of punchboards, as above described. They accordingly pack and assemble the candy in "draw" or "deal" assortments, so that it may be so sold without alteration or rearrangement. They also furnish with each assortment a punchboard and, attached to it, a legend or statement explaining its use. Thus, knowingly and purposely, petitioners cause and procure their candy to be sold and distributed to the public by means of a lottery or gambling device.

Petitioners have many competitors who will not and do not use, or cause or procure others to use, any lottery or gambling device. The Commission found, upon ample evidence, that such competitors are placed at a disadvantage in competing with petitioners, in that, because of the element of chance involved, many customers are attracted by the punchboard method of selling candy and are thereby induced to purchase petitioners', instead of their competitors' candy. Thus, by the use of a lottery or gambling device, petitioners are able to, and do, compete successfully with those who will not and do not use this method of competition.

That such a method of competition is unfair, within the meaning of § 5 of the Federal Trade Commission Act, is well settled. *Federal Trade Commission v. R. F. Keppel & Bro.*, 291 U. S. 304, 309; *Walter H. Johnson Candy Co. v. Federal Trade Commission*, 7 Cir., 78 F. 2d 717; *Hofeller v. Federal Trade Commission*, 7 Cir., 82 F. 2d 647, 649; *Federal Trade Commission v. Southern Premium Mfg. Co.*, 5 Cir., 83 F. 2d 1008; *Federal Trade Commission v. A. McLean & Son*, 7 Cir., 84 F. 2d 910; *Federal Trade Commission v. F. A. Martoccio Co.*, 8 Cir., 87 F. 2d 561, 563; *Federal Trade Commission v. George Ziegler Co.*, 2 Cir., 90 F. 2d 1007; *Federal Trade*

Commission v. Barager-Webster Co., 7 Cir., 95 F. 2d 1000; *Federal Trade Commission v. Charles N. Miller Co.*, 1 Cir., 97 F. 2d 563; *Federal Trade Commission v. American Candy Co.*, 7 Cir., 97 F. 2d 1001.

That petitioners are using this method, and using it as a method of competition in interstate commerce, is not disputed. They nevertheless ask us to set aside the Commission's orders, on the ground that its conclusion—which they call a finding—that the method is unfair is not supported by testimony. Petitioners' brief states:

Petitioners contended before the Commission and now contend before this court that the record in these cases wholly fails to sustain the finding of the Commission that this "punchboard" method of distribution is considered to be an unfair method of competition in the Pacific Northwest, the area in which these petitioners conduct their business. The Commission in these cases failed to produce a single witness who was actually or even potentially a competitor of these petitioners who did or would testify that the method of distribution used by the petitioners is considered to be an unfair method of competition.

[720] Hence, it is argued, "the finding of the Commission that the 'punchboard' method of candy distribution in the Pacific Northwest constitutes an unfair method of competition within the meaning of § 5 of the Federal Trade Commission Act cannot be sustained."

The argument assumes, erroneously, that whether petitioners' method of competition—which, admittedly, involves the use of a lottery or gambling device—is fair or unfair is a question of fact to be determined by testimony. Actually, it is a question of law to be determined by the courts. *Federal Trade Commission v. Gratz*, 253 U. S. 421, 427; *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441, 453; *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568, 579; *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 648; *Federal Trade Commission v. R. F. Keppel & Bro.*, supra, p. 314. Testimony of witnesses as to how, in their opinion, the question should be determined would be useless and improper. The Supreme Court has, in the *Keppel* case, declared the law on this subject, not for one State or one Circuit only, but for the entire United States, including the Pacific Northwest.

As stated before, petitioners pack their candy in boxes. They call these boxes fancy packages. They also call their candy fancy package candy, and call their business the fancy package candy business. They say in their brief that there is no testimony that anyone engaged in the fancy package candy business is injured by their use of the punchboard method of selling and distributing candy. Hence, they contend, the Commission's finding that their use of this method injures their competitors is not supported by testimony. The contention is based on the false assumption that petitioners are in competition only with those who sell and distribute candy in fancy

packages. There is abundant testimony that sales of petitioners' candy by the punchboard method are in competition with, and subtract from, "straight" sales of other candy. Whether such candy is sold in fancy packages, plain boxes, tinfoil wrappers, or paper bags is quite immaterial.

Sales of petitioners' candy by the punchboard method exceed, in the aggregate, \$250,000—five million punches—a year. Here, as in the *Keppel* case, supra (p. 309), the practices complained of affect not only competing manufacturers, but the far greater number of wholesalers and retailers to whom the manufacturers sell, and the customers to whom the retailers sell. It is clear, therefore, that the present proceeding is not a mere private controversy, but is, as § 5 of the act requires, "to the interest of the public."

Each of the five orders under review reads as follows:

It is ordered that the [petitioner], 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.

Petitioners contend that paragraphs (1) and (2) of each order are too broad, [72] in that they relate not only to sales which are to be made by means of a lottery, gaming device, or gift enterprise, but to those which "may be" so made, and relate not only to assortments of candy which are to be used in conducting a lottery, gaming device, or gift enterprise, but to those which "may be" so used. This point is well taken. The orders, as drawn, would prevent petitioners from selling any candy which any person might thereafter sell by means of a lottery, gaming device, or gift enterprise, or might thereafter use in conducting a lottery, gaming device, or gift enterprise, even though such sale or use was not designed, intended, caused, procured, or consented to by petitioners. This, obviously, was not the intention of Congress. *Federal Trade Commission v. A. McLean & Son, supra,*

p. 913; *Federal Trade Commission v. Charles N. Miller Co.*, *supra*, p. 564.

The orders are modified by striking out the words "or may be made," in paragraph (1) of each order, and by amending paragraph (2) of each order to read as follows:

(2) Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy whose contents are arranged to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

As thus modified, the orders are affirmed.

THE GOODYEAR TIRE & RUBBER COMPANY v. FEDERAL
TRADE COMMISSION ¹

No. 7369

(Circuit Court of Appeals, Sixth Circuit. February 16, 1939.)

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—PROVISOS OR EXCEPTIONS—
WHERE DIFFERENCES BASED ON GRADE, QUALITY, QUANTITY; COST OF SELLING,
ETC.; OR IN GOOD FAITH TO MEET COMPETITION—AS MUTUALLY EXCLUSIVE.

The exceptions to statutory price discrimination prohibition permitting discrimination based on differences in grade, quality, or quantity of commodity sold and differences in cost of selling or transportation and discriminations made in good faith to meet competition are mutually exclusive, and the exception permitting allowance for difference in cost of selling or transportation does not qualify the preceding exception permitting discrimination on account of differences in grade, quality or quantity (Clayton Act, sec. 2, 15 U. S. C. A. sec. 13).

STATUTORY CONSTRUCTION—CONGRESSIONAL DEBATE—WHERE COMMON AGREEMENT
THROUGHOUT.

Although statements in debate are of doubtful aid in construing statutes, common agreement throughout consideration of legislation, when it exists, may be considered in determining purpose of legislation.

STATUTORY CONSTRUCTION—CONGRESSIONAL DEBATE—WHEN MEANING PLAIN ON
FACE.

When meaning of act to be construed is plain on its face, resort to reports of congressional committees concerning it is unnecessary.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—PROVISOS OR EXCEPTIONS—
WHERE DIFFERENCES BASED ON GRADE, QUALITY, QUANTITY—WHETHER LIMITATION
TO APPROXIMATE COST SAVINGS.

The provision of statutory price discrimination prohibition permitting discrimination in price on account of differences in grade, quality, or quantity of commodity sold did not limit discrimination in price on account of quantity to approximate savings in cost.

¹ Reported in 101 F. (2d) 620. The case before the Commission is reported in 22 F. T. C. 232. Certiorari denied Oct. 9, 1939, 60 Sup. Ct. 74.

EVIDENCE—WHERE UNCONTROVERTED—ANALYSIS TO WEAKEN OR OVERCOME.

The persuasiveness of evidence may upon occasion be destroyed by analysis even though uncontroverted.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—PROVISOS OR EXCEPTIONS—WHERE DIFFERENCES BASED ON GRADE, QUALITY, QUANTITY—WHERE DIFFERENTIAL FAVORING MAIL ORDER HOUSE DID NOT VARY WITH VARYING VOLUME, NO QUALITY COMMITMENTS IN CONTRACTS, AND PROPORTIONALLY GREATER THAN ALLOWED INDEPENDENTS.

Evidence that prices did not vary according to varying volume of business of mail order house purchasing automobile tires from tire manufacturer, that there was no quantity commitment in contracts, and that price discrimination in favor of mail-order house was proportionally greater than that allowed independent dealers, was insufficient to establish that differential was not on account of quantity, and hence within exception to statute prohibiting price discrimination.

CEASE AND DESIST ORDERS—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2—PROVISOS OR EXCEPTIONS—WHERE DIFFERENCES IN GRADE, QUALITY, QUANTITY—WHERE PRICE DIFFERENTIALS FAVORING MAIL ORDER HOUSE REASONABLY BASED ON, ABSENT VALID FINDING OTHERWISE.

The Federal Trade Commission was without power to direct discontinuance of price differentials, if reasonably based on quantity, in favor of mail-order house purchasing automobile tires, and its order so directing could not be upheld, where, because of failure to recognize any proper standard for making of such finding, there was no finding determining that price differentials involved were not based on quantity.

(The syllabus, with substituted captions, is taken from
101 F. (2d) 620)

On petition by Goodyear Tire & Rubber Co. to review, cease and desist order of Commission charging it with violation of Clayton Act by discriminating in price of tires between those sold in interstate commerce to a mail-order house on the one hand and to dealers on the other, order set aside; HAMILTON, *Circuit Judge*, dissenting.

Mr. Grover Higgins, of Cleveland, Ohio (Messrs. Newton D. Baker, Grover Higgins, and H. Chapman Rose, all of Cleveland, Ohio, on the brief), for petitioner.

Mr. P. B. Morehouse and *Mr. E. F. Haycraft*, both of Washington, D. C. (Messrs. W. T. Kelley, Martin A. Morrison, Everett F. Haycraft, P. B. Morehouse, and James W. Nichol, all of Washington, D. C., on the brief), for respondent.

Before HICKS, SIMONS, and HAMILTON, Circuit Judges.

SIMONS, *Circuit Judge*:

The cease and desist order sought to be reviewed charges the petitioner with violation of § 2 of the Clayton Act by discriminating in the price of tires between those sold in interstate commerce to Sears, Roebuck & Co. on the one hand and to dealers on the other, with the

effect of lessening competition and tending to create a monopoly in their manufacture and distribution.

The case is here for the second time. At the first hearing, upon learning that the offending practices of the petitioner which led to the order had been discontinued under compulsion of the amendment to § 2 of the Clayton Act made on June 19, 1936, by the Robinson-Patman Act (U. S. C. A. title 15, § 13), and with complete comprehension of the rule that discontinuance of a condemned practice constituting a violation of the act does not render a controversy moot where the offender by the mere exercise of volition may resume them, *United States v. Trans-Missouri Freight Assn.*, 166 U. S. 290, 309, 310, and other cases, yet conceiving ourselves bound by the decision and reasoning in *United States v. Hamburg-Amerikanische Co. etc.*, 239 U. S. 466, and by the analogy of present circumstances to those there adjudicated and the relief there granted, held the controversy moot, set aside the order, and remanded the case, but without direction to dismiss the complaint and without prejudice to the filing of a supplemental complaint under the amended law. *Goodyear Tire & Rubber Co. v. Federal Trade Commission*, 92 F. (2d) 677. Neither side supporting our view, the Supreme Court, without indicating departure from the rule announced in the Hamburg-Amerikanische case, without pointing to aught inapposite in our analogy or citing the reference, reversed. *Federal Trade Commission v. Goodyear Tire & Rubber Co.*, 304 U. S. 257. Upon its remand the cause is before us for decision upon the merits after full reargument.

As indicated in our former opinion, the controversy involves principally an 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, subject to the 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 petitioner contends that a discrimination in price is permitted if based upon the quantity of the commodity sold, without respect to whether it makes only due allowance for difference in cost of selling or transportation. The Commission contends that while the proviso permits discrimination on account of differences in quantity, such discrimination is not permitted unless reasonably related to and approximately no more than the difference in cost, and that a price discrimination is contrary to § 2 unless it can be shown that it represents and fairly approximates lower costs.

Prior to 1926 the large mail-order house of Sears, Roebuck & Company, with [622] retail stores in many cities of the United States, bought its tires from one or more small manufacturers. Though doing a much larger general business than its principal competitor, Montgomery, Ward & Company, its tire business failed to keep pace with that of the latter. It set about to improve this condition by changing the personnel of its tire department and inaugurating a vigorous advertising campaign, and sought Goodyear as a source of tire supply. Its first contract with Goodyear in 1926 covered its requirements for a period of 3 years. The price was cost of manufacture plus a profit of 6 percent, later adjusted in some instances to 6½ percent. Sears was to do its own advertising and to sell the tires under trade-names of its own. In May 1928, a second contract was concluded covering requirements to December 31, 1932, but terminable on that date by a year of advance notice. In the summer of 1931 Sears, signifying its intention to terminate, a new arrangement was made by which a 10-year contract was entered into upon Goodyear paying to Sears a consideration in cash and common stock amounting to \$1,250,000. Like preceding arrangements, the contract called for a price of cost plus profit.

Under its several contracts with Sears, Goodyear manufactured and sold to Sears during the 8-year period, 1926-1933, more than 19,000,000 tires, for which Sears paid to it a gross sum of \$129,252,984, and a net sum of \$116,359,367. The Commission made an exhaustive study of the cost of tires sold by Goodyear under the Sears contracts and that of tires sold to its independent dealers upon a similar volume of business. It found that based upon the profit and loss statement of Goodyear adjusted as the result of such study, Goodyear realized on its sales to Sears during the entire period a total net profit of \$7,715,794.56, and on its sales of equal volume to service-station dealers a net profit of \$20,425,807.21. The difference of \$12,710,012.65 in net profit it found to be the aggregate net price discrimination not accounted for by differences in cost of transportation and selling according to the respondent's own calculations and based upon the method which it itself suggested. It concluded that this price discrimination in favor of Sears against independent service-station dealers was not justified by differences in cost of transportation or selling. Conceding that quantity discounts are exempt because they involve some economic utility that should be preserved, the Commission asserts that the quantity exception does not permit price discrimination without limit or restraint, that while a difference in quantity of the commodity sold must be given reasonable weight in determining whether the discriminatory price is warranted, yet in arriving at a price on account of quantity it is necessary

that the difference in price be reasonably related to the difference in cost, though remote and unsubstantial differences in cost may be disregarded.

The petitioner, conceding that price discrimination on account of quantity does not mean discrimination without limit, denies that such discrimination must be based on difference in cost or be reasonably related to such difference. It points to the value to Goodyear of the Sears requirements in removing hazard and insuring stability, the avoidance of profit fluctuation inevitable in its other business, and the casting upon Sears of the risk which Goodyear normally bore of raw material price decline and credit losses. It asserts that these advantages, over and above mere savings in costs, are substantial and real, even though they may not readily be measured in terms of dollars, and that the statute by its language permits a discrimination that will measure economic advantage of quantity sales beyond mere savings in cost.

The Commission dismissed from its consideration all intangible economic advantages of quantity sales over and above savings in cost as being too speculative and remote to justify price discrimination. Accepting the finding that the \$12,000,000 difference in profit between tires sold to Sears and an equal volume of business with independent dealers measures its discount in excess of savings, the petitioner points out that this discrimination amounts to but 6.96 percent of the gross price to Sears. The Commission's counsel, however, contends that this calculation is erroneous, in that the profit differential should be related not to the gross selling price of tires to Sears but to the cost of their manufacture, and that so computed the discrimination not accounted for by savings is 11.89 percent. So it is argued on the one hand that the discrimination on account of quantity is reasonably related to the economic advantages of quantity sales in the volume made to Sears and on the other that discrimination on account of quantity even if [623] permitted by the statute is too great to be so related.

Primary consideration must necessarily be given to the meaning of § 2 of the Clayton Act. It will be observed that by the proviso, nothing contained in the section is to prevent discrimination in price between purchasers of commodities (1) "on account of differences in the grade, quality, or quantity of the commodity sold," or (2) "that makes only due allowance for difference in the cost of selling or transportation," or (3) "discrimination in price in the same or different communities made in good faith to meet competition." With the third exception of the proviso we are not concerned, and as to the meaning of the second exception there is no dispute. It is conceded that there may be a discrimination in price based upon quan-

tity, but the Commission would read the second exception as a limitation or qualification of the first. We see no warrant for such construction and the structure of the proviso as well as the history of the section repel it.

The three exceptions of the proviso would seem to be mutually exclusive. If the second qualifies and limits the first, the word "quantity" in the first exception appears to be redundant. Mindful of the rule that statements in debate are of doubtful aid to the construction of the statute, yet when there is common agreement throughout the consideration of legislation such agreement may properly be considered in determining its purpose. *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 650; *Humphrey's, Executor v. United States*, 295 U. S. 602, 624. The history of § 2 of the Clayton Act, both before and after its passage, its subsequent amendment by the Robinson-Patman Act, so that the phrase dealing with differences in quantity reads, "That nothing herein contained shall prevent differentials * * * which make only due allowance for differences in the cost of manufacture, sale, and delivery, resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered," point with greater than usual persuasiveness not only to its original purpose but to subsequently discovered infirmities, in the light of matured views upon the necessity of further regulation.

In its report of the Clayton Bill to the House of Representatives, the House Judiciary Committee made it clear that its primary purpose was to reach the practice of destroying competition in certain sections by lowering prices below cost and thereafter recouping such losses at the expense of the general public when monopoly had been achieved. The Senate Committee adopted the report (Cong. Record, vol. 51, p. 15857). In the House it was pointed out by Mr. Webb in charge of the bill (*ibid.*, p. 9072), that the practice of giving a cheaper rate to the purchaser who buys in wholesale lots was a business necessity that the Committee did not feel warranted in trying to disturb. When it was objected that this would allow great mail-order houses to buy in enormous quantities and so to retain the great advantages they had always had, it was suggested that a section be drawn to correct that evil, but no such amendment was incorporated in the act. The Clayton Act was passed in 1914, but until the present investigation began the Commission never assumed it had the power to prohibit price discrimination on account of quantity when unrelated to differences in cost. In 1928 Senate Resolution 224 directed the Commission to undertake an inquiry into the chain store system of marketing and distribution. Its final report was filed December 14, 1934 (Senate Document No. 4, 74th Congress, first session). In it the Commission indicated that lower selling prices were a very substantial if not the

chief factor in the growth of chain store merchandising, and specifically discussing § 2 of the Clayton Act (p. 97), said:

That unless the price discrimination permitted "on account of" quantity shall make "only due allowance" therefore, § 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.

In its annual report for the year ending June 30, 1935, the Commission recommended the enactment of a law forbidding a seller "to discriminate unfairly or unjustly in price between different purchasers" or else a law "to clearly define the discrimination in price intended to be forbidden." Quite promptly bills were concurrently introduced into the House and Senate, each of which eliminated the proviso of the old § 2 and substituted the language we have already recited. The two bills were consolidated under the style of the Robinson-Patman Bill, and as consolidated enacted into law June, 1936, with amended § 2 unchanged. In reporting the bill, the House Judiciary Committee (Report 2287, 74th Congress, second session), said:

* * * present § 2 of the Clayton Act places no limit upon quantity differentials of any kind. * * * This proviso is of great importance for * * * it also limits the use of quantity price differentials to the sphere of actual cost differences. * * * In the above exemption the phrase "which makes only due allowance" is carried over from the present act, but as coupled with the remainder of the clause, is here extended to limit quantity differentials to differences in cost of manufacture, sale and delivery as provided in said subsection 2.

In the report of the Senate Judiciary Committee (1502), it was said: The weakness of present § 2 lies principally in the fact that (1) it places no limit upon differentials permissible on account of differences in quantity. * * *

We defer to the rule that when the meaning of an Act of Congress is plain on its face there is no occasion to resort to the reports of Congressional Committees concerning it, *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, and it seems to be clear that § 2 of the Clayton Act permits discrimination in price on account of quantity without relation to savings in cost, and that the distinguishing phraseology employed in the two exceptions must not be ignored. But if in the light of the Commission's own change of view as to its meaning we assume it to be necessary to resort to extrinsic aid to ascertain it, it is made clear by the declaration of the several Committees of the Congress and the history of the section, that the amendment incorporated in the Robinson-Patman Act marks a change in the law and not mere clarification. So concluding we deem the order of the respondent erroneous insofar as it is necessarily based upon

a construction of the law, which limits discriminations in price on account of quantity to approximate savings in cost.

We do not find anything in the case of *American Can Co. v. Ladoga Canning Co.*, 44 F. (2d) 763 (C. C. A. 7), to conflict with this view. There was in that case direct and substantial evidence that the discriminations there involved were not in good faith made on account of differences in quantity, and that the contention that they were so made was an afterthought first conceived when the case went to trial. There is no such factual situation here.

The Commission's counsel insist that even though the Commission is wrong in its construction of § 2, it found as a fact that the excess differential of \$12,000,000 on tires sold to Sears over the price to independent dealers on a similar volume of business was not on account of quantity, and that this finding is based upon substantial evidence and so conclusive upon us. The contention requires analysis. We may say at once that it is not a sufficient answer to say, as does the petitioner, that Mr. Litchfield of the Goodyear Co. testified that such differential was in good faith made on account of quantity after detailed consideration of the survey and report of experts, and his testimony stands unimpeached, for as we have frequently said, the persuasiveness of evidence may upon occasion be destroyed by analysis even though uncontroverted.

It is urged that the finding that excess discrimination was not on account of quantity is supported by evidentiary facts, including the fact that prices did not vary according to the varying volume of the Sears' business, that there was not quantity commitments in the Sears' contracts, and that the discrimination was proportionally greater than that allowed dealers in view of the economic principle that at some point saturation must be reached beyond which no increase in quantity would justify an increase in discount. These evidentiary circumstances do not of themselves, however, sustain an ultimate finding that the differential was not on account of quantity. The lack of a definite commitment when the contract was for Sears' entire requirements, less minor checking orders, the failure of the price to rise and fall concurrently with the rise and fall of quantity shipments, and the lack of relation between the discount to Sears and the gradations of discount to independent dealers, are all inherent in the nature of a cost-plus agreement of such unusual volume as was expected to and did result from the Sears' business, for the evidence discloses that it was from 13 to 36 times the volume of that of Goodyear's largest independent customer.

[625] All this aside, however, it seems perfectly clear that the findings and conclusions of the Commission that the discrimination in price was not on account of quantity, were all based upon the Com-

mission's interpretation of the law. This permeated all of its discussion and controlled its evidentiary findings and its ultimate conclusions. Section 17 of the Commission's findings dealing with the present question is a composite of evidentiary facts, reasoning, and conclusion. Without denying that there are economic advantages in dealing with a large customer on the basis of hazard, the stabilizing of production and profit, and other factors not translated into dollar and cents advantage, it is determined without pretense of appraising such advantages that they are too speculative, intangible, and remote to justify a price discrimination. It is further determined that the discrimination was not a quantity discount as customarily understood in the trade, because the Commission, weighing the testimony of expert economists pro and con, concluded that quantity discounts not justified on approximate savings are in that field considered as a form of price cutting, and so condemned by the law. The conclusion is inescapable that any discrimination in price exceeding by more than a negligible amount a due allowance for differences in cost must have brought about the same result. The Commission found no standard in the law by which a discrimination on account of quantity unrelated to savings in cost is to be judged. There is therefore no finding that the petitioner's differential, whether it be 6.96 percent or a greater percentage, is not on account of quantity because such discrimination is not permitted and may not be judged by a non-existent standard. Once a discrimination is found unrelated to savings in cost, it is ipso facto to be condemned. So is there not only a misconstruction of the law, but a refusal to recognize a standard of judgment not based on such misconstruction and so impossibility of its application to the facts if rightly construed.

Applicable in this connection is the language of the court in the *Raladam Company* case, *supra*: "Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader powers be desirable they must be conferred by Congress. They cannot be merely assumed by administrative officers nor can they be created by the courts in the proper exercise of their judicial function." We conclude that the Commission had no power to command discontinuance of price differentials reasonably based on quantity, and there is no finding which properly construed determines that those here involved are not so based, since no standard for the making of such finding is recognized.

The order of the respondent is set aside.

HAMILTON, *Circuit Judge* (dissenting).

I am unable to concur in the majority opinion. With all due regard to, and respect for, the legal ability of my associates, I be-

lieve they have included in the proviso of the statute a case that lies beyond its direct expression and not within its letter or spirit.

This statute should be construed in the light of attendant conditions and the state of the law at the time of its enactment and applied to carry out the intention and meaning of the legislature gleaned from its language. A proviso which operates to limit the application of the general provisions of a statute should be strictly construed to include no case not within its letter. The last rule is especially applicable to the case here under consideration.

A proviso may be used as a guide in the selection of one or the other of two possible constructions of words or phrases found in a statute doubtful in scope, but to read into it a meaning not comprehended by the enactment itself and contrary to its terms, makes it an instrument of discrimination and defeats, rather than clarifies, legislative intent.

Usually provisos find their way into statutes at the behest of persons who are unreasonably apprehensive as to their effect and by those who wish to obtain immunity from their terms. They are the favorite instrument of lobbyists and those who desire to escape the effect of general provisions of a statute applicable to a large class. Having put in a proviso which in many instances is needless, in order to satisfy the persistent and allay a particular class, courts are sometimes led to construe it as to relieve of liability those plainly within the scope of the statute and impose liability on those not so apprehensive of [626] its effect or so diligent to protect their interests.

The problem of monopolies has engaged the attention of organized society for centuries. The first regulatory statute was passed in England in 1624, making all illegal except such as might be authorized by Parliament in respect to new manufacturing enterprises carried on by corporations or companies. The proviso in this statute was used as an excuse for subsequent transgressions of the act and so it is that provisos have since been an avenue of evasion.

A private monopoly is indefensible and intolerable. To this principle all agree. The first Federal law on the subject was passed in 1890 (26 Stat. 209). It was designated An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies and was passed as the result of widespread and vehement popular insistence that something be done to curb the growing tendency toward concentration of industry to the disadvantage of both the consumer and small producer. It declared illegal "every contract, combination in the form of trusts or otherwise or conspiracy in restraint of trade or commerce among the several states or with foreign nations," and that "every person who shall monopolize or attempt to

monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade, or commerce among the several states" violates the act.

Efforts to eliminate restraints or attempted restraints of competition were carried on by the United States under this act for 24 years. Its success fluctuated with the courts' interpretation of what the words and phrases of the act meant. There was difficulty in applying such vague terms as "contracts in restraint of trade" and "attempts to monopolize" when the question arose as to the applicability of these terms to concrete situations. The tendency toward industrial concentration continued unabated which resulted in the disappearance of small units of production and brought forth two paradoxical types of economic restraint; one, no competition; the other, ruinous competition. President Wilson, in his message to the Sixty-third Congress, said:

We are sufficiently familiar with the actual processes and methods of monopoly and of the many hurtful restraints of trade to make definition possible, at any rate up to the limit of which experience has disclosed. These practices, being now abundantly disclosed, can be explicitly and item by item forbidden by statute in such terms as will practically eliminate uncertainty, the law itself and the penalty being made equally plain.

Such was the historic background and the motives which moved the framers of the legislation which was passed as The Federal Trade Commission Act and the Clayton Anti-Trust Act of 1914 which concerns us here. *Johnson v. Southern Pacific Co.*, 196 U. S. 1, 22.

A study of the debates upon these measures in Congress clearly shows the intent to declare illegal all practices regarded as likely to promote monopolies thus forestalling an evil before its development.

During the course of the debates, Senator Walsh, of Montana, in referring to the Clayton Act, said:

The purpose of the legislation of which the pending bill forms a part is to preserve competition where it exists, to restore it where it is destroyed and to permit it to spring up in new fields. Congressional Record, Oct. 5, 1914, vol. 51, p. 16.

While the Federal Trade Commission Act and the Clayton Act were passed separately they were considered by Congress concurrently, reference to the other being frequently made in the course of the debates on each, and they should be understood as complementary attempts to promote our government's basic concept of economic equality.

In the Federal Trade Commission Act, the Congress attempted to set up a permanent body of trained personnel whose duty it was to safeguard and promote competition in industry. The companion

Clayton law was entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes." Section 2 of the act (U. S. C. A. 15, sec. 13) provides:

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption or resale * * * *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality or quantity of the commodity sold, or that [627] makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: And provided, further, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

Respondent found, and the facts conclusively show, that petitioner has violated the above section unless exempt under the proviso. Bearing in mind the rule of interpretation heretofore announced that the intention of the legislature is controlling, the single question in the case is what is meant by the expression "discrimination in price between purchasers of commodities on account of difference in grade, quality, or quantity."

The Commission finds, and the undisputed evidence shows, there was no difference in grade or quality between the tires petitioner sold to its dealers generally and those sold to Sears-Roebuck & Co., so the single issue is the true construction of the phrase "on account of the difference in quantity." It is a rule of universal application that words or phrases in a statute must be construed to carry out the manifest intent of the Congress and in all cases they should be construed in the sense which best harmonizes with the context and promotes to the fullest extent the desired objective.

Every technical rule as to the construction or force of particular terms must yield to the clear expression of the paramount will of the legislature and the words and phrases of a statute will be construed in their ordinary sense, and with the meaning commonly attributed to them in the ordinary business affairs of life. *Sproles v. Binford*, 286 U. S. 374, 397.

Excluding the proviso in the statute here, every discrimination in price between different purchasers is prohibited. It was not intended that the prohibition should be cancelled by the proviso. Such an interpretation would lead to an absurdity and if the rule of liberality applied in the majority opinion is applicable to the proviso, it sets up a method of evasion not intended by the Congress. For the reasons heretofore pointed out, a proviso must be strictly construed.

The Congress intended to maintain competitive prices, which means those resulting from the activities of many buyers and sellers, each of

whom can affect the outcome only by buying or selling large or small quantities according as the price is at one point or another. It intended to proscribe monopoly prices which are those fixed with a view to the advantage of the purchaser or seller by a single (exclusive) seller or buyer or by a combination of sellers or buyers acting as a unit. Monopolistic prices are always possible when a seller is able to deal differently with the same classes of buyers of the same product or to manage in some other way to sell his goods in virtually separate markets. Recognizing this practice and in order to suppress monopolies at their inception, the Congress penalized sales of the same article to different customers at different prices.

If the contract between the petitioner and Sears-Roebuck falls within the definition of the term "monopolistic prices" above outlined, there is a violation of the act regardless of difference in quantity, because the transaction is what is commonly known in ordinary business affairs as fixing a discriminatory price and by a device having the monopolistic tendency denounced by the Clayton Act.

The rule to be followed in the construction of statutes relating to commercial transactions is that the descriptive terms applied to articles of commerce shall be understood according to the acceptance given them by commercial men doing business in our country at the time of the passage of the act in which they are found.

Under this rule the expression "discrimination in price between purchasers of commodities on account of difference in grade, quality, or quantity of the commodity sold" must be construed in the light of business practices in this regard at the time of the passage of the act. The testimony in the record of those familiar with the industry shows that quantity discounts on account of tire purchases are relatively small and based upon certain definite and known volumes of purchases none of which have any resemblance to the transaction between petitioner and Sears-Roebuck & Co. This being true the acts of the petitioner bring it within the general provisions of the antitrust laws and exclude it from the protection of the proviso therein.

[628] The statutes here in question do not require the adventitious aid of subsequent kindred legislation for the purpose of elucidation. "In other words, where Congress has expressly legislated in respect to a given matter that express legislation must control in the absence of subsequent legislation equally express, and is not overthrown by any mere inferences or implications to be found in such subsequent legislation." *Rosencrans v. United States*, 165 U. S. 257, 264. It is the primary duty of courts to interpret the meaning of statutes and a resort to contemporaneous or executive construction is both unnecessary and improper where the language used is clear or its meaning can be ascertained by the use of intrinsic aids alone. *Bates &*

Guild Co. v. Payne, 194 U. S. 106, 112; *United States v. Missouri Pacific Railroad Co.*, 278 U. S. 269, 282.

The mere failure of public officers charged with the public duty to enforce statutes against odious monopolies or their acquiescence in the conditions that permit them to flourish should not be allowed to stand in the way of the administration of such laws or be construed to estop more diligent and efficient public officials when they attempt to terminate monopolistic practices and tendencies.

I am of the opinion the order of the Commission should be upheld.

CALIFORNIA RICE INDUSTRY v. FEDERAL TRADE COMMISSION*

No. 8844

(Circuit Court of Appeals, Ninth Circuit. March 17, 1939)

INTERSTATE COMMERCE—SALES FOR TRANSPORTATION WITHOUT STATE—F. O. B. MILL OR DOCK DELIVERY—RICE MILLERS.

Sales of rice by millers for transportation outside the state, were sales in "interstate" or "foreign commerce" within jurisdiction of Federal Trade Commission, whether performance by millers was by shipment into other states and territories or by delivery to buyers at mill or dock "f. o. b." for shipment to points outside state (Federal Trade Commission Act, 1914, sec. 5, 15 U. S. C. A. sec. 45).

RESTRAINT OF TRADE—CONCERT OF ACTION—PRICE COMPETITION—ELIMINATION BY SELLER GROUP—FOOD STAPLE—PUBLIC INTEREST—JUDICIAL NOTICE.

The Circuit Court of Appeals takes judicial notice of the public interest involved in the elimination of price competition by a group of sellers to the public of substantially the entire supply of a preferred staple food such as rice.

CEASE AND DESIST ORDERS—APPELLATE PROCEEDINGS—DISPOSITION OF CASE—FINDINGS ON MATTERS OF JUDICIAL KNOWLEDGE—WHETHER COMMISSION REQUISITE.

The Circuit Court of Appeals is empowered by statute to make final disposition of proceeding to review an order of the Federal Trade Commission on the "pleadings, evidence, and proceedings," and no specific finding by the commission is required on a fact judicially known (Federal Trade Commission Act, 1914, sec. 5, amended by act March 21, 1938, 52 Stat. 111, 15 U. S. C. A. sec. 45 (c)).

FEDERAL TRADE COMMISSION ACT—SCOPE AND PURPOSE—PREVENTIVE AIM—SECTION 5.

One of purposes of statute empowering Federal Trade Commission to prevent use of unfair methods of competition in interstate and foreign commerce is to stop in their incipency those methods of competition which fall within meaning of word "unfair."

*Reported in 102 F. (2d) 716. The case before the Commission is reported in 26 F. T. C. 968.

CALIFORNIA RICE INDUSTRY *v.* FEDERAL TRADE COMMISSION 1913

FEDERAL TRADE COMMISSION ACT—SCOPE AND PURPOSE—FREEDOM OF COMPETITIVE ACTION—COMPETITORS—IMMEDIATE AND POTENTIAL.

The Federal Trade Commission Act is designed to aid in keeping free the potential as well as the immediate competitor for food customers' patronage.

RESTRAINT OF TRADE—CONCERT OF ACTION—PRICE COMPETITION—ELIMINATION BY SELLER GROUP—RICE GROWERS AND MILLERS OF STATE—AS EXHAUSTING COMPETITIVE FIELD—JUDICIAL NOTICE.

The Circuit Court of Appeals would take judicial notice that potentially there were many competitors who were not parties to price-fixing agreement between growers and millers who might acquire rice from California's existing and expanding rice fields.

"UNFAIR METHODS OF COMPETITION"—SCOPE AND MEANING—AS PERTAINING TO AND COMPREHENSIVE.

The word "of," as used in provision of Federal Trade Commission Act empowering commission to prevent use of unfair methods "of" competition in interstate and foreign commerce, means "associated with" or "connected with" or "pertaining to," and word "competition" is used in a broad sense covering the whole field of competition, so that use of phrase "using unfair methods of competition" means an "unfair method pertaining to the maintenance of competition."

"UNFAIR METHODS OF COMPETITION"—SCOPE AND MEANING—FREEDOM OF COMPETITIVE ACTION—WHERE COMPETITORS, ACTUAL OR POTENTIAL, ADVERSELY AFFECTED—AS THEN UNFAIR.

A "method," as used in provision in Federal Trade Commission Act empowering commission to prevent using unfair "methods" of competition, is an "unfair method" if it does not leave to each actual or potential competitor a fair opportunity for play of his contending force engendered by an honest desire for gain.

"UNFAIR METHODS OF COMPETITION"—PRICE FIXING AGREEMENTS—RICE GROWERS AND MILLERS OF STATE.

Price-fixing agreement between growers and millers of substantially all rice grown in the state of California, for purpose of attaining uniformity of price, was an "unfair method of competition," within meaning of provision in Federal Trade Commission Act empowering commission to prevent use of "unfair methods of competition."

CEASE AND DESIST ORDERS—PRICE FIXING AGREEMENTS—RICE GROWERS AND MILLERS OF STATE—ORDER'S SCOPE—VALIDITY—PRICE FIXING, PRICE LISTS, AND PRICE FIXING DEVICES.

Order of Federal Trade Commission was valid to extent that it required voluntary rice industry association and its members, in connection with offering for sale, and selling and distributing rice and rice [717] products in interstate and foreign commerce, to refrain from, by agreement, fixing and maintaining uniform prices, distributing or adopting uniform price lists or employing other devices tending to fix prices.

CEASE AND DESIST ORDERS—PRICE FIXING AGREEMENTS—RICE GROWERS AND MILLERS OF STATE—ORDER'S SCOPE—VALIDITY—MILLING QUOTAS OR PERCENTAGES AS INTRASTATE

Order of Federal Trade Commission was invalid to extent that it attempted to direct millers of rice from fixing or determining quotas or percentages of rice crop that millers might mill or process, since milling was "intrastate" rather than "interstate commerce."

(The syllabus, with substituted captions, is taken from 102 F. (2d) 716)

On petition by the California Rice Industry and others to review and set aside an order of Commission requiring petitioners to refrain from pursuing certain practices in connection with the sale and distribution of rice, order affirmed in part and reversed in part; MATHEWS, Circuit Judge, dissenting.

Mr. Harry M. Creech, of San Francisco, Cal., for petitioners.

Mr. W. T. Kelley, Chief Counsel, *Mr. Martin A. Morrison*, Assistant Chief Counsel, *Mr. Daniel J. Murphy*, and *Mr. James W. Nichol*, Special Attorneys, Federal Trade Commission, all of Washington, D. C., for respondent.

Before DENMAN, MATHEWS, and HEALY, Circuit Judges.

DENMAN, *Circuit Judge*:

This is a petition to review and set aside an order of the Federal Trade Commission requiring petitioners to "cease and desist, in connection with offering for sale, sale and distribution of rice and rice products in commerce as defined in section 4 of the Federal Trade Commission Act, from doing and performing by agreement, combination or conspiracy between or among any two or more of said respondents (petitioners here), or with others, the following acts and things:

1. Fixing and maintaining uniform prices.
2. Compiling, publishing and distributing any joint or uniform list or compilation of prices.
3. Adopting any joint or uniform price list or other device which fixes prices.
4. Discussing through the medium of meetings of the California Rice Industry or its Marketing and Crop Boards, or in any similar manner, uniform prices, terms, discounts, agreements upon prices, by resolution or otherwise, or employing any similar device which fixes or tends to fix prices, or which is designed to equalize or make uniform the selling prices, terms, discounts or policies of respondent millers.
5. Fixing or determining the quotas or percentages of the rice crop that the miller respondents may mill or process which, thereby, unlawfully restricts or hinders the sale of rice or rice products in interstate commerce. * * *

The California Rice Industry is a voluntary unincorporated association. It does not have officers or directors, neither does it have articles of organization, constitution or by-laws, except the Intrastate Marketing Agreement dated August 28, 1935, which created it. Or-

ganized within the association and controlling and administering its policies and activities are the Crop Board and the Marketing Board. The Agreement provides for a Crop Board composed of members selected by Rice Growers Association of California, Paddy Rice Growers of California, Independent Rice Growers, the latter being growers unorganized except for purposes of the Intrastate Marketing Agreement, and members selected by joint action of the first and last named organizations. Some of the rice growers who are members of the Crop Board were made respondents by the Federal Trade Commission and all such respondents are petitioners here. The Marketing Board is composed of members selected by the Rice Growers Association of California, a grower and miller cooperative, and by those others signatory to the Intrastate Marketing Agreement engaged in the State of California in milling rice or marketing rice. Some of the individuals who have constituted the Marketing Board were made respondents by the Federal Trade Commission and all such respondents are petitioners here. Harry M. Creech, for many years counsel for the Rice Growers Association of California and later attorney in the drafting and [718] execution of the Intrastate Marketing Agreement, is the neutral nonvoting chairman of the Marketing Board, neutral nonvoting member of the Crop Board and attorney for the California Rice Industry. The Federal Trade Commission included him as a respondent and he is a petitioner here. In addition to the above individuals, the Federal Trade Commission also included as respondents all but two of the various individuals, firms, corporations and cooperatives who signed the Intrastate Marketing Agreement. They are petitioners herein.

Substantially all of the rice produced within the State of California is of a shorter and plumper grain than the medium and longer grained rices produced in other sections of the United States. This rice, as grown and milled in California, is known as California-Japan type and the petitioners include or represent substantially everyone in California so engaged.

The petitioners' brief admits that "Substantially all of such rice after milling is sold and delivered by those among petitioners engaged cooperatively or commercially in milling rice *and some part is shipped by such millers into other States and Territories.*" [Italics supplied.] About half the rice grown and milled in California is shipped to Hawaii, about a quarter of the remainder is shipped to Puerto Rico and the balance is sold in California and in various other states of the United States.

There is a long established preference for this type of rice in Hawaii, where but a relatively small amount of other rice is imported from Japan and the southern states. Also in Puerto Rico it is a preferred

type, commanding a higher price than other types of rice sold there. The Commission properly may have inferred that its peculiarly plump characteristics have found consumers in other states who prefer it. It is obvious that the price of such a food, having such preferring consumers, will be affected if all competition of its suppliers is eliminated. Such evidence tends to support the Commission's finding of ultimate fact (though stated as a conclusion) that "2. As a result of the respondents entering into and making effective the agreement as above described, competition in the sale of rice and rice products in commerce as hereinabove referred to has been restricted and suppressed."

In addition to the admission of interstate shipments above italicized, the California-Japan type rice is sold by petitioners under sales contracts "fob cars" at the mill or "fob dock" at San Francisco, most of which is destined for points outside the state. The loading "on board" the cars or the car or truck movement from the rice mill to the dock, constitutes the beginning of the interstate or foreign transit. Thus there are sales contracts, in which it is found to be the practice of petitioners to charge uniform, fixed prices, which, as well as the delivery to the buyers, are "in" interstate or foreign commerce. *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282, 290, 291; *Addyston Pipe & Steel Co. v. U. S.* 175 U. S. 211, 241; *U. S. v. Addyston Pipe and Steel Co.*, (C. C. A.-6) 85 Fed. 271, 298; *U. S. v. United Shoe Machinery Co.* (D. C. E. D., Mo.) 234 Fed. 127, 144; *Santa Cruz Co. v. N. L. R. B.*, 303 U. S. 453, 463; *Pennsylvania R. R. Co. v. Clark Bros. Coal Mining Co.*, 238 U. S. 456, 468. Cf. *Federal Trade Comm. v. Pacific States Paper Trade Ass'n.* 273 U. S. 52, 63, where intrastate price list was held a price factor in interstate transactions.

These facts establish that the acts interdicted by paragraphs "1" to "4" inclusive of the Commission's order are "in" interstate commerce and hence satisfy that requirement of the Federal Trade Commission Act.

The Commission's complaint was issued on March 26, 1937. The relevant portions of section 5 of the Federal Trade Commission Act as it then read (Act of September 26, 1914, c. 311, 38 Stat. 717, 719-720; U. S. C., 1934 ed., title 15, § 45), are:

SEC. 5. That unfair methods of competition in (interstate and foreign) commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, * * * from using unfair methods of competition in (interstate and foreign) commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the [719] commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect * * *. [Italics supplied.]

The questions remain whether the acts prohibited by paragraphs "1" to "4" inclusive of the Commission's order come within the class of "unfair methods of competition" in such commerce and whether their prevention "would be to the interest of the public," as these terms are used in section 5 of the Act.

The Commission has found the sales are at a uniform fixed price, the same for each petitioner, and that the uniformity is attained by a price fixing agreement among the petitioners. It has been found that "At meetings held on Tuesday of each week the Marketing Board from time to time, and with the concurrence of the Crop Board, fixes an industry price for extra-fancy clean rice, and from this price, by use of a formula adopted by said Marketing Board, the base price, producer's price, and trade prices for all grades of processed rice are computed."

The price fixing clauses of the Agreement provide with relation to the "industry price," from which by use of a formula the price at which rice is to be offered for sale is computed, that "by vote of either the Marketing Board or the Crop Board in the manner hereinafter provided, Industry Prices fob dock San Francisco for Extra Fancy clean rice of types produced in California shall be the simple average of the price for Extra Fancy Blue Rose rice at New Orleans for the ten preceding weeks as reported by the Federal-State Marketing News Service in its official Rice Market Review, provided that if more than one price is reported for any week then the price used in the average shall be the midpoint between the high and low so reported, plus ten cents per bag in the case of California Japan type or 35 cents per bag in the case of any other type, * * *."

The brief of petitioners admits the effectiveness of fixing the uniform prices above the arbitrarily set New Orleans market price of another rice, and compares the result with that of the prior free competition and emphasizes the benefit to the miller-vendors and, it claims, to the growers as well. The probability is that no such agreement would have been made to fix the price for the small remainder sold in California to California buyers.

The total volume of the annual crop of rough or "paddy" California-Japan type rice grown in California is about 3,000,000 bags, which is equivalent to 1,500,000 bags of clean rice. We take judicial notice of the public interest involved in the elimination of all price competition by a group of sellers to the public of substantially the entire supply of such a volume of one of the preferred staple foods. Since section 5 (e) of the Act (15 U. S. C. A. § 45 (c)) empowers us to make final disposition of the case upon the "pleadings, evidence and proceedings"¹

¹ *Federal Trade Comm. v. Curtis Publishing Co.*, 260 U. S. 568, 580. Cf. *Hills Bros. v. Federal Trade Comm.* (C. C. A.-9) 9 F. (2d) 481, 483, 484.

no specific finding by the Commission is required of a fact so judicially known.

All the growers, processors and sellers in interstate and foreign commerce of the California-Japan type rice, here appearing, are satisfied with such a control of prices. There is no evidence of dissatisfaction by other growers. Hence this part of the review narrows itself to the question whether the agreed elimination of competition in price fixing is an "unfair method of competition" as that phrase is used in section 5 of the act.

Each of the petitioners is a potential competitor of each other in the sale of this food of the common people. This potential competition is prevented not only by the mutual promises of the millers but by the sanction of a substantial fine on any miller violating the agreement by selling his rice at a price less than that fixed by the Marketing Board. The fine is collected from a Millers' Trust Fund created by the Agreement.²

[720] It is obvious that the consumers of this food will be most unlikely to receive the benefit which, under competition, would flow

² "Article IV. Miller's Trust Fund

"1. Each miller on or before the 10th of the first full calendar month next following the execution hereof and on or before the 10th day of each month thereafter, shall pay into the Millers' Trust Fund 10 cents for each bag of paddy processed by it in the month preceding, plus 10 cents for each bag of paddy processed by it during the said preceding month in excess of its quota. If any miller fails to make the required payment by the 16th of the month in which such payment is due, he shall pay an additional 5 cents per bag for all paddy processed during said preceding month. In computing the amounts payable under this paragraph, there shall be deducted all amounts similarly payable in any other Marketing Agreement for the California Rice Industry to which the parties hereto are signatory.

"2. Expenses deemed necessary by the Marketing Board and incurred incident to the performance by the Marketing Board of its functions and duties hereunder shall be paid from the Millers' Trust Fund.

"3. On October 1, 1936, and on October 1 of each year thereafter, or upon any interim termination of this Agreement, the Millers' Trust Fund, after deducting accrued expenses in accord herewith, shall be distributed to the respective millers in the same percentages as their normal volume percentages, except that a miller who has exceeded his total quota for the preceding 12 months shall receive only one-half of his normal volume percentage of the amount contributed by him for such excess.

"4. By 60 percent affirmative vote presenting at least three members of the Marketing Board, partial distributions of the Millers' Trust Fund may be made not exceeding in the aggregate 50 percent of the total collections to any given date, nor more frequently than at monthly intervals.

"Article XII. Enforcement

"3. If at any time it is found by the Marketing Board, after due notice, hearing and determination under procedure as prescribed by the Marketing Board, that a miller has failed or is failing to abide by, or has violated or is violating any provision of this agreement, or any sales terms, rules, regulations, or policies prescribed by the Marketing Board pursuant hereto, the Marketing Board shall cause to be deducted from such miller's share in the Millers' Trust Fund as damages a sum or sums not exceeding four times the profit estimated by the Marketing Board, if any, realized by such miller in the transaction in respect of which such default or violations occurred, and no such deduction for such default or violations shall in any event be less than five hundred dollars. All sums thus deducted shall be distributed to the other millers in proportion of their respective normal volume percentages."

to them in the form of lower prices charged by miller-vendors whose costs are less than those of competitors, because of improved mechanical processes, higher managerial or operating efficiency, or advantageous location with respect to transportation costs.

This deprivation of benefit to the consumer resulting from lower costs of the more efficient miller-vendors arises from the fact that no higher cost miller-vendor of rice would join in the combination to fix the price unless the price be one advantageous to it. That is to say, the strong tendency in any such combination is to fix a price making a profitable return on the rice to the particular miller-vendor which has the highest production cost at the point of sale. In addition is the pressure, always present with a monopoly controlling the supply of a particular product preferred by consumers, to raise the price to a point which affords an unreasonable profit to all members composing the group of monopolizing suppliers. The success of the price as fixed by the Agreement may lead to a revision of its method of price fixing and a higher price agreed on. One of the purposes of the Act is "to stop in their *incipiency* those methods of competition which fall within the meaning the word 'unfair.'" *Federal Trade Comm. v. Raladam Co.*, 283 U. S. 643, 647.

Prior to the Agreement, the petitioners were competing with one another for food customers' patronage. This normal economic condition is what the Congress has created the Federal Trade Commission to aid in maintaining.

The Agreement has destroyed the freedom to compete by the sanction of the fine on any one of the price fixers who may seek at any time a greater economic advantage because of his superior energy, ability and resources to process more than his permitted quota of the crop of rice and making larger sales at smaller profits. Each petitioner is a potential competitor who, if freed, would renew the desired norm of free competition with the others. That is to say, each petitioner, through the price fixing Agreement, prevents each other from the free use of his economic power and ability. It is the "potential" as well as the immediate competitor whose competition the Act seeks to keep free. *Federal Trade Comm. v. Raladam Co.*, 283 U. S. 643, 651; [721] *Federal Trade Comm. v. Klesner*, 280 U. S. 19, 28.

We take judicial notice that potentially there are many other competitors—persons not parties to the Agreement—who may acquire rice from California's existing and expanding rice fields. Against such outside competition, here again, each price-fixer, through the Agreement, hamstring each other price-fixer in the free exercise of his energy and economic power. The single price as here fixed makes it impossible for him to meet the day to day change of a free

market. The acts interdicted by the Commission certainly are methods of competition, unfair both to the petitioners and the consumers of the food, if a "fair field and no favors" is the condition sought to be protected by the Federal Trade Commission Act.

There is no question that a destruction by the use of economic power by one interstate vendor of the freedom of his competitor's trade, if not accomplished by a contract or other combination with the latter, would warrant the Commission's order to cease and desist. However, it is contended that since petitioners have by an agreement eliminated price competition in the California-Japan type rice, and it has proved profitable to them, and, since each is dealing with his own property, there is no "unfair method of competition" involved in each preventing the other from a free competition with one or more of the agreeing parties which would destroy any price fixing profit, or in preventing one or more of them from competing with an outsider whom the price-fixers are not able to persuade to join them.

We do not so narrow the meaning of the phrase "unfair method of competition." We regard Congress to have used the preposition "of" in the broader sense stated in the dictionaries as meaning "associated with" or "connected with" or "pertaining to" and the word "competition" in a broad sense covering the whole field of competition. That is to say, we construe the phrase as meaning an "unfair method pertaining to the maintenance of competition."

This construction of the phrase accords with the purpose of the act as repeated in identical language in several opinions of the Supreme Court. A method is "an unfair method of competition" if it does not leave to each actual or potential competitor a "fair opportunity" for the play of his contending force engendered by an honest desire for gain. "The great purpose of both statutes (Federal Trade Commission and Clayton Acts) was to advance the public interest by securing *fair opportunity* for the play of the contending forces ordinarily engendered by an honest desire for gain. And to this end it is essential that those who adventure their time, skill and capital should have large freedom of action in the conduct of their own affairs." (Emphasis supplied.) *Federal Trade Comm. v. Sinclair Co.*, 261 U. S. 463, 476. *Int. Shoe Co. v. Federal Trade Comm.*, 280 U. S. 291, 298; *Federal Trade Comm. v. Raladam Co.*, 283 U. S. 643, 647.

The Supreme Court in *Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52, has so treated the phrase in sustaining the Commission's cease and desist order to associations of paper sellers in interstate commerce who, by agreement and understanding, had divided the Pacific Coast States into regional areas where they sold 75 percent of the paper and paper products, other than newsprint,

there consumed. Each local association distributed uniform price lists to its members to be observed in its territory within the State. The secretary of each was authorized to investigate complaints against members to determine whether they sold below the established prices; and three of the associations authorized the imposition of heavy fines on members for making such sales. These association lists were habitually carried and used by the salesmen of members in quoting prices and making sales outside the State. No association had any requirements that such price lists be observed outside the State; and the quoting of, or the making of sales at, lower or different prices in such territory was not deemed an infraction of rules or trade regulations by reason of which any jobber or wholesaler could complain. Referring to the prices fixed by the local associations, the Commission said the habitual carrying and use of such price lists by member jobbers in quoting prices and making sales outside the State, had a natural tendency to and did limit and lessen competition therein, and [722] the result of such practice was fixed and uniform prices for such products within such territories.

Paragraph (b) of the Commission's order was to prevent the local associations, their officers and members, separately or in combination, from using any price list fixed by agreement between wholesalers in soliciting or selling in interstate commerce, and from making and distributing any such price list intended for use in making such sales.

This court held that the order to cease and desist the use of the common price list should be reversed because there was no showing that there was a "combination" of the dealers for such use. This court stated that such a combination would bring the price-fixing within the order of the Commission. *Pacific States Paper Trade Assn. v. Fed. Trade Comm.*, 4 F. (2d) 457, 460.

In reversing this court and deciding to be valid the cease and desist order of the Commission because the facts justified a finding of such a price-fixing combination, the Supreme Court held:

The weight to be given to the facts and circumstances admitted, as well as the inferences reasonably to be drawn from them is for the commission. *Its conclusion that the habitual use of the established list lessens competition and fixes prices in interstate territory cannot be said to be without sufficient support. Paragraph (b) does not go beyond what is justified by the findings. It is valid. [Italics supplied.] Federal Trade Comm. v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 63.

Here were no findings of a method of competition unfair or harmful to any *competing* paper-seller outside the combination. Neither the Supreme Court nor the Commission considered relevant the question whether the sellers of the 25 percent outside the combination were damaged by its price-fixing. The reasoning of the opinion would

apply *a fortiori* if 100 percent instead of 75 percent of the paper business had been controlled by the combination and it had changed the prior actual competitors into no more than potential competitors restrained by the agreement.

In the paper associations, as in the Rice Industry here, no member of the combination was found injured in his profits by the restraint of the combined members. It is obvious that it was the harm by destroying a "fair opportunity" for competition among themselves and *to the public* from the "fixed and uniform prices" established by the combination which made unfair this method of restraining competition. We hold paragraphs "1" to "4" inclusive of the Commission's order to be valid.

It is suggested that construing the so-called Intrastate Agreement as controlling interstate shipments and prices, it does no more for the rice industry than is permitted by the Agricultural Adjustment Act. There was a so-called Interstate Marketing Agreement of which the Secretary of Agriculture was a signatory, made prior to the agreement here involved, but the Secretary of Agriculture subsequently withdrew his approval. Congress has created in the Agricultural Adjustment Act a mechanism permitting the elimination of certain competitive factors in interstate commerce in agricultural products but, in the absence of a government control of such a regulated economy, competition cannot be impaired by such an agreement as that of petitioners.

With regard to paragraph "5" of the Commission's order directed against the fixing or determining of quotas of the petitioners in rice milling,³ this enterprise [723], like mining in the *Carter Coal* case, is not commerce and is intrastate in character. *Carter v. Carter Coal Co.*, 298 U. S. 238, 299, 317.

Undoubtedly the fixing of such quotas "affects" the volume of rice which *after* milling is sold and delivered into interstate commerce,

³ The so-called Intrastate Marketing Agreement provides:

"Article III. Processing Quotas

"1. The Marketing Board shall promptly determine from all available statistical information and state in terms of percentages of the total annual shipment, the proportionate shipment of California rice by calendar months. These percentages will hereinafter be referred to as 'normal monthly demand percentages.'

"2. The Marketing Board shall on October 1, 1935, and on October 1, of each year thereafter, so long as this Agreement shall be in effect, estimate the total available supply of rice for the ensuing year and apply it to the 'normal monthly demand percentages' to determine the estimated monthly volume for the ensuing year.

"3. Each month the Marketing Board shall determine a processing quota for each miller of the estimated monthly volume for the succeeding month by applying each miller's normal volume percentage to the estimated volume for said succeeding month, and adding such miller's unused volume, if any, of the two months next preceding. A quota shall include and apply to all rice milled whether on toll or otherwise."

* * * * *

but unlike the National Labor Relations Act⁴ the Federal Trade Commission Act does not create a control in the Commission of practices both "affecting" interstate commerce and "in" interstate Commerce. Since the Commission's authority is confined to transactions "in" interstate commerce, paragraph "5" of its order to cease and desist from "fixing or determining the quotas or percentages of the rice crop that the miller respondents may mill or process * * *" is beyond its jurisdiction and void.

The Commission's order is affirmed as to paragraph "1" to "4" inclusive and reversed as to paragraph "5" thereof.

After the issuance of the complaint on March 26, 1937, the Act was amended prescribing as a remedial measure that to the extent that the order of the Commission is affirmed, this court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. (15 U. S. C. A. sec. 45 (c)). Such an order of this court will be issued.

MATHEWS, *Circuit Judge* (dissenting):

This is a petition to review and set aside an order issued by the Federal Trade Commission. Petitioners are California Rice Industry (an unincorporated association), members of the association (hereafter called the millers)⁵ members of the association's marketing board⁶ and members of its crop board.⁷ The order requires petitioners to "cease and desist, in connection with offering for sale, sale and distribution of rice and rice products in commerce as defined in section 4 of the Federal Trade Commission Act,⁸ from doing and performing by agreement, combination or conspiracy between or among any two or more of [petitioners], or with others, the following acts and things:

1. Fixing and maintaining uniform prices.
2. Compiling, publishing and distributing any joint or uniform list or compilation of prices.
3. Adopting any joint or uniform price list or other device which fixes prices.

⁴ 49 Stats. 449, 450, 453, sec. 2 (6) and (7) and sec. 10 (a); 29 U. S. C. A. sec. 152 (6) and (7) and sec. 160 (a).

⁵ Charles S. Morse, Allen A. Morse, Nelson B. Morse, Clarence G. Morse and Gertrude Morse, trading as Capital Rice Mills; Ellen S. Grosjean and Eileen Callaghan, trading as C. E. Grosjean Rice Milling Co.; Growers Rice Milling Co., a corporation; Pacific Trading Co., a corporation; Phillips Milling Co., a corporation; Rice Growers Association of California, a corporation; Rosenberg Brothers & Co., a corporation; and William Crawford, trading as Woodland Rice Milling Co.

⁶ George W. Brewer, William Crawford, Harry M. Creech, Florence M. Douglas, Charles S. Morse, J. S. Ritterband, W. T. Wellsch, I. Yamakawa and O. F. Zebal.

⁷ Hugh Baber, Leon Brink, Harry M. Creech, N. F. Dougherty, Ernest Grell, Lewis Manor, R. A. Renaud and A. E. Scarlett.

⁸ 38 Stat. 719, 15 U. S. C. A. sec. 44. By this section, "commerce" is defined as "commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation."

4. Discussing through the medium of meetings of the [association] or its Marketing and Crop Boards, or in any similar manner, uniform prices, terms, discounts, agreements upon prices, by resolution or otherwise, or employing any similar device which fixes or tends to fix prices, or which is designed to equalize or make uniform the selling prices, terms, discounts, or policies of [the] millers.

5. Fixing or determining the quotas or percentages of the rice crop that the [millers] may mill or process which, thereby, unlawfully restricts or hinders the sale of rice or rice products in interstate commerce.

[724] The order was issued on March 26, 1938, in a proceeding under section 5 of the Federal Trade Commission Act.⁹ Hence, the Commission's authority to issue the order must be found, if at all, in section 5, as it existed on that date.¹⁰ Section 5, as it then existed, declared that unfair methods of competition in commerce¹¹ were unlawful. It empowered and directed the Commission to prevent persons, partnerships or corporations, except banks and common carriers subject to the Interstate Commerce Act, from using such methods of competition. To that end, it provided:

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. * * * If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership or corporation to cease and desist from using such method of competition. * * *

Then, as now, section 5 empowered this court, upon petition of either party, to review and affirm, modify or set aside any such order, and provided that, upon such review, the Commission's findings as to the facts, if supported by testimony, should be conclusive.

Section 5, as it then existed, did not empower the Commission to prevent, or to require anyone to cease or desist from, any act or thing except the use of an unfair method of competition in commerce. The order here under review does not purport to be an order preventing, or

⁹ 38 Stat. 719, 15 U. S. C. A. sec. 45.

¹⁰ With the amendment of June 23, 1938 (52 Stat. 1028), we are not here concerned.

¹¹ See footnote 4.

requiring petitioners to cease or desist from using, any such method of competition. It says nothing about competition or methods of competition.

There is no finding, nor any evidence which would warrant a finding, that petitioners have any competitors, actual or potential. On the contrary, it appears from the findings that the millers—who, so far as shown, are the only petitioners engaged in any business—are engaged in the business of milling, in the State of California, a particular type of California-grown rice and in the business of selling and distributing such California-grown, California-milled rice in interstate commerce and in commerce between the State of California and the Territories of Hawaii and Puerto Rico, and that no one else is similarly engaged. Whether anyone else desires to, or could under any circumstances, engage in either of these businesses, the record does not show. Since, from the record, petitioners do not appear to have any competitors, actual or potential, they cannot, I think, be said to be using any unfair method of competition. *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 646-654.

The conclusion just stated is not inconsistent with *Federal Trade Commission v. Pacific States Paper Trade Ass'n*, 273 U. S. 52.¹² The respondents in that case were wholesale paper dealers and trade associations of which they were members. The respondent dealers constituted a majority, but not all, of the wholesale paper dealers in the Pacific Coast States and had 75 percent, but not all, of the wholesale paper business in that region.¹³ In their business, the respondent dealers had actual as well as potential competitors. They had, as actual competitors, wholesale dealers who were not members of the association, paper manufacturers [725] who sold direct to the retail trade, and paper brokers who negotiated such sales.¹⁴ In that competition, the respondents used methods which the Supreme Court held were unfair methods of competition.

If, in the *Pacific States* case, the respondents had had no competitors, actual or potential, the Supreme Court, undoubtedly, would have applied in that case the doctrine which, subsequently, it applied in the *Raladam* case—that one who has no competitors cannot be said to be using an unfair method of competition.

The order should be set aside.

¹² Reversing, in part, *Pacific States Paper Trade Ass'n v. Federal Trade Commission*, 9 Cir., 4 F. 2d 457.

¹³ 273 U. S. 59.

¹⁴ 4 F. 2d 460.

OLIVER BROTHERS, INC., ET AL. v. FEDERAL TRADE COMMISSION¹

No. 4349

(Circuit Court of Appeals, Fourth Circuit. March 25, 1939)

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, PAR. (a) and (c)—BROKERAGE OR COMMISSION PROVISIONS—ADVERSE COMPETITIVE EFFECT PROVISOS PAR. (a)—WHETHER APPLICABLE AND PREREQUISITE IN OTHER.

The statutory provision prohibiting payment or receipt of commissions except for services rendered, either to other party or to an intermediary acting on his behalf, is not subject to provision prohibiting practices which tend to create a monopoly or prevent competition, so that such payment or receipt is illegal though it does not tend to create a monopoly or prevent competition (15 U. S. C. A., sec. 13 (a, c)).

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, PAR. (c)—BROKERAGE OR COMMISSION PROVISIONS—WHERE SELLER TO BUYER COMMISSIONS ON BUYER PURCHASES VIA MARKETING INFORMATION AND PURCHASING SERVICE CONCERN—WHETHER VIOLATIVE "DUE PROCESS" AS APPLIED TO.

The statute prohibiting payment or receipt of commissions, except for services rendered, either to other party or to an intermediary acting on his behalf, is not violative of the due process clause as applied to firm which, while furnishing combined marketing information and purchasing service for wholesale distributors, passed on to distributors the commissions it received from sellers (15 U. S. C. A., sec. 13 (c); U. S. C. A. Const. Amend. 5).

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, PAR. (c)—BROKERAGE OR COMMISSION PROVISIONS—WHERE SELLER TO BUYER COMMISSIONS ON BUYER PURCHASES VIA MARKETING INFORMATION AND PURCHASING SERVICE CONCERN—WHETHER VIOLATIVE "FREEDOM OF CONTRACT" AS APPLIED TO.

The statute prohibiting payment or receipt of commissions, except for services rendered, either to other party or to an intermediary acting on his behalf, does not interfere with "freedom of contract" as applied to firm which, while furnishing combined marketing information and purchasing service for wholesale distributors, passed on to distributors the commissions it received from sellers.

TRADE ACTS AND PRACTICES—WHERE TENDENCY HARMFUL—PROHIBITION—CONGRESSIONAL POWER—AS PREVENTIVE.

In prohibiting practices because of their harmful tendency, Congress need not limit its prohibition to cases in which those practices have actually resulted in the evil which it was purpose of statute to prevent.

¹Reported in 102 F. (2d) 763. The case before the Commission is reported in 20 F. T. C. 200.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, PAR. (c)—BROKERAGE OR COMMISSION PROVISIONS—SERVICES RENDERED EXCEPTION—WHERE SELLER TO BUYER COMMISSION ON BUYER PURCHASES VIA MARKETING INFORMATION AND PURCHASING SERVICE CONCERN—WHETHER FOR SERVICES RENDERED SELLER—AS AGENT OF BUYER, NOT SELLER.

A firm engaged in furnishing combined marketing information and purchasing service at stipulated monthly compensation was an agent of buyers and not of sellers, so that brokerage commissions received by firm from sellers and passed on to distributors whom firm represented were not paid for services rendered sellers within exception of statute prohibiting payment or receipt of commissions either to other party or to intermediary acting on his behalf, except for services rendered.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, PAR. (c)—BROKERAGE OR COMMISSION PROVISIONS—SERVICES RENDERED EXCEPTION—COMPENSATION FOR BUYER SERVICES—WHERE INCIDENT TO PURCHASE AND NOT NECESSARY SERVICE OF SELLER.

Compensation received by buyer for services rendered by him or his agent to come within excepting clause of statute prohibiting payment or receipt of commissions except for services rendered, either to other party or to an intermediary acting on his behalf, must be such as seller was bound to render in connection with sale, not such as were performed by buyer in connection with purchase or such as were rendered to him by his agent to enable him to purchase.

CEASE AND DESIST ORDERS—DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, PAR. (c)—BROKERAGE OR COMMISSION PROVISIONS—WHERE SELLER TO BUYER COMMISSIONS ON BUYER PURCHASES VIA MARKETING INFORMATION AND PURCHASING SERVICE CONCERN.

The action of a firm engaged in furnishing a combined marketing information and purchasing service at a stipulated monthly compensation, while acting as purchasing agent for wholesale distributors, in crediting or passing on to distributors broker's commissions received from sellers, was in violation of statute prohibiting payment or receipt of premiums, except for services rendered, either to the other party or to intermediary acting on his behalf.

(The syllabus, with substituted captions, is taken from 102 F.
(2d) 763)

[764] Petition by Oliver Bros., Inc., and others to review order of Commission directing petitioners to cease and desist from payment or receipt of fees or commissions in alleged violation of Robinson-Patman Act, denied, Commission's cross-petition asking for enforcement of order allowed, and such decree entered.

Mr. T. Russell Cather, of Winchester, Va., and *Mr. Felix H. Levy*, of New York City (Mr. John D. Swartz, of New York City, on the brief), for petitioners.

Mr. Allen C. Phelps, special attorney, Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, of Washington, D. C., on the brief), for respondent.

Messrs. Raymond N. Beebe, Adrien F. Busick, Seth W. Richardson, and Davies, Richberg, Beebe, Busick & Richardson, all of Washington, D. C., amici curiae.

Before PARKER and SOPER, Circuit Judges, and WYCHE, District Judge.

PARKER, *Circuit Judge*:

This is a petition to review an order of the Federal Trade Commission directing petitioners to cease and desist from payment or receipt of fees or commissions in violation of section 2 (c) of the Robinson-Patman Act, 49 Stat. 1426, 15 U. S. C. A. 13 (c). The order was entered in a proceeding instituted against Oliver Brothers, Inc., hereafter referred to as Oliver, a purchasing agent for wholesale distributors, certain of the buyers whom it represented in making purchases and certain of the manufacturers or sellers from whom purchases were made. The charge was that, while acting as agent for the buyers, Oliver received brokerage commissions from the sellers which it credited or passed on to the buyers. The case was heard on a stipulation that the record made in the proceeding of the Commission against the Biddle Purchasing Co. et al. should be adopted as the record correctly describing the business practices of Oliver; and the order in the Oliver case followed, in substance, the findings and order in the Biddle case. The Biddle order was reviewed by the Circuit Court of Appeals of the Second Circuit and petition to set it aside was denied in *Biddle Purchasing Co. v. Federal Trade Commission*, 2 Cir. 96 F. 2d 689, and certiorari was denied by the Supreme Court. 59 S. Ct. 101: To the petition that we review and set aside the order in the Oliver case, the Commission has filed a cross petition asking a decree for the enforcement of the order.

There is, in reality, no dispute as to the facts, but only as to the inferences to be drawn from admitted facts and constituting mixed questions of law and fact. All of the petitioners are engaged in interstate commerce. Oliver furnishes a purchasing service to over 300 distributing concerns scattered over the United States, who are principally wholesalers of automobile, electrical, radio, mill, machine, plumbing, steam, and hardware supplies. It has an office in New York and a branch office in Chicago. It has several salesmen who travel throughout the United States to solicit distributing concerns to purchase its market information and purchasing services and who, at times, contact manufacturers and processors. It has also a number of buyers and assistant buyers who place orders for its sub-

scribers and deal with manufacturers, processors, and producers in their behalf. It examines and tests the wares of such manufacturers and producers and obtains from them prices and descriptions of goods which it sends to its subscribers. It furnishes the subscribers a loose-leaf price book, showing the prices and sources of supply of the merchandise in which they are interested, and keeps this book current by the issuance of price sheets and bulletins from time to time, as prices and sources of supply change. It also makes purchases for its subscribers of the goods described in its information service and gives them the benefit of the brokerage commissions which it collects from the sellers upon such purchasers. The Commission found that these brokerage commissions were passed on to the buyers with the knowledge of the sellers. Petitioners challenge this finding in so far as it relates to knowledge of the sellers; but an examination of the record shows that it is amply sustained by the testimony and that the matter was one of common knowledge in the trade. (See Biddle transcript of record pages 165, 193, 283-284, 314, 321, 327, 347, 372, 379-380, 387, 490, 544, 582, 596, 608, 615, 635, 645, 656, 675, 688, 741.)

For the informational and purchasing services thus rendered its subscribers, [765] Oliver receives a stipulated monthly compensation of \$25 and upward. The brokerage commissions received by 86 percent of the subscribers on their purchases amount to less than the amount paid Oliver. Those received by the remaining 14 percent are in excess of the amount so paid.

A written contract is entered into between Oliver and each of its subscribers. This contract is on stationery describing Oliver as "Resident buyers for wholesalers of hardware, iron, steel, metals, etc." The following provisions thereof are pertinent and illuminating:

We hereby agree to act as your New York, Chicago and Pittsburgh Resident Representatives in the capacity of Purchasing Agents.

We agree to furnish you our loose-leaf Price Book and send you our General Service covering lines as per the subject hereof; also to send you Oliver Brothers' Comment Letters, letters on Market Conditions, lists of special offerings, and submit to you other information in the way of prices and market information which we may consider to be of interest to you.

We will use our best efforts to secure the lowest possible prices on your inquiries or orders. We will forward to the manufacturers or parties with whom we have favorable arrangement such orders for merchandise as you may send to us.

Orders which we may receive from you or letters which we may receive are to be regarded as authority to act as your Agents in connection with any transaction which may transpire between us. While we will use our best efforts in acting as your Agent it is understood that we will not be liable for the failure of any manufacturer of supplies to perform his agreements or promises in connection with quotations or shipments.

It is mutually agreed that all communications between us in the way of correspondence, Comment Letters, letters on Market Conditions or Confidential Price Sheets, shall be treated as strictly confidential and used solely in connection with your own business and shall not be divulged to other parties nor procured for the use of other parties.

The facts with respect to the purchases made by Oliver are thus stated by the Commission :

Oliver receives daily from its subscribers approximately 100 orders. When a subscriber forwards an order to Oliver, usually at a specified price, Oliver 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 a commission or brokerage on the transaction and Oliver 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 Oliver in its bulletins, or a lower price. If Oliver 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 Oliver to transmit the order to some producer who will supply goods of the quality and standard required.

And the whole course of business between Oliver and its subscribers is summed up in paragraph 11 of the Commission's findings as follows :

The contract between respondent Oliver Brothers, Inc., and its subscribers is construed by the parties thereto as being a contract for the sale and purchase of the Oliver market information service with a privilege extended to the buyers of using the Oliver 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 purchasing services of Oliver Brothers, Inc., in order to secure a discount in price from the current market price and the buyers when purchasing commodities through Oliver 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 Oliver and by Oliver transmitted to them. The buyers, in their bookkeeping, do not treat the brokerage fees and commission received from respondent Oliver Brothers, Inc., as being an offset to the monthly fee paid by them to Oliver. The amount of the monthly fee paid by the buyers to Oliver 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 Oliver purchasing service is unknown and incapable of ascertainment at the time the contract is entered into.

[766] In its tenth finding the Commission states its conclusions with respect to the agency of Oliver and the services rendered by it as follows :

In all of the purchasing transactions which the respondent Oliver Brothers, Inc., executes for its buyers, Oliver Brothers, Inc., 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 Oliver Brothers, Inc., in such purchasing transaction 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 Oliver Brothers, Inc., 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 Oliver in connection with the sale or purchase of such commodities, such services are donated by Oliver Brothers, Inc., to the seller. There is not, in fact, any payment of brokerage commissions made by any of respondent sellers to respondent Oliver Brothers, Inc., 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 Oliver Brothers, Inc., 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 fee paid to him. Respondent buyers render no service to respondent sellers in connection with the purchase of commodities through respondent Oliver Brothers, Inc. Respondent buyers render no service to respondent Oliver Brothers, Inc., in connection with the purchase of goods, wares and merchandise made for them by said respondent Oliver Brothers, Inc.

Complaint is made of this finding that it ignores evidence of certain sellers as to the benefit derived by them from dealings with Oliver. Briefly stated, this evidence is to the effect that these sellers furnish Oliver lists and prices of what they have to sell; that, in sending out circulars to its subscribers, Oliver brings about a sale of the goods more satisfactorily than a broker would do; and that for this reason brokerage commissions are allowed Oliver on sales resulting from the Oliver service. On the basis of this evidence, petitioners contend that the Commission should have found that Oliver renders a service to the sellers which justifies the commissions paid, and that the contrary finding by the Commission in its tenth finding of fact is unsupported by the evidence. As heretofore indicated, we think that the controversy here is over conclusions to be deduced from the facts rather than over the facts themselves; but as we shall hereafter point out we are in accord with the conclusions of the Commission.

On the whole record, there can be no doubt that the following is the truth with respect to the matters in controversy: Oliver is the agent of the buyers and not of the sellers and is paid by the buyers for the service rendered them. It collects brokerage commissions from the sellers on purchases made for the buyers which it credits to the accounts of the buyers or otherwise passes on to them. In furnishing the service which it has contracted to furnish the buyers, it affords to the sellers facilities for placing their goods before the buyers and obviates the necessity of their employing brokers to reach these customers; but this is a service rendered the buyers which Oliver has bound itself to render them under their subscription contracts. The benefit to the sellers is incidental to this service rendered the buyers and is not the result of a service undertaken for the benefit of the sellers.

No showing was made as to whether the effect of this practice of Oliver "may be substantially to lessen competition, or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit" of the brokerage commissions allowed, as required by section 2 (a) of the Robinson-Patman Act, since the proceeding before the Commission was not had under that section but under section 2 (c). The argument is made that the provisions of section 2 (a) with respect to limitation of competition or tendency to create monopoly must be read into section 2 (c), and that, unless this is done, section 2 (c) is unconstitutional because violative of the due process clause of the Fifth Amendment. These contentions of the petitioners, together with their contentions as to the applicability of the act to the trade practices which we have out[767]lined, present three questions for our consideration: (1) Must the Robinson-Patman Act be so construed as to read the limitations of section 2 (a) into section 2 (c) as limitations upon the latter section? (2) If not, is section 2 (c) invalid when tested by the due process clause of the Fifth Amendment? And (3) does the case as presented fall within the exception contained in section 2 (c)? We think that all of these questions must be answered in the negative.

The Robinson-Patman Act of June 19, 1936, 49 Stat. 1526, was an amendment of the Clayton Anti-Trust Act of October 15, 1914, 38 Stat. 730. Section 2 of the Clayton Act, which was the section amended, merely forbade discrimination in price when the effect of such discrimination was to substantially lessen competition or tend to create monopoly. The Robinson-Patman Act broadened the scope of this provision, conferred upon the Federal Trade Commission power to establish quantity differentials for the purpose of determining discrimination, and cast the burden of proof upon one charged with discrimination to justify any discrimination shown. Receipt of price discrimination was made unlawful for the first time, 2 (f); and three specific matters were forbidden as unfair trade practices by subsections (c), (d) and (e), viz.: the granting of commission or brokerage, or any allowance in lieu thereof, to the other party to the transaction or his agent, the making of discriminatory payments by seller to buyer for services rendered by the latter and discrimination by the seller in the rendering of services to the buyer. It is perfectly clear that all three of these practices were forbidden because of their tendency to lessen competition and create monopoly, without regard to their effect in a particular case; and there is no reason to read into the sections forbidding them the limitations contained in section 2 (a) having relation to price discrimination, which is an extremely difficult matter to deal with and is condemned as unfair

only in those cases where it has an effect in suppressing competition or in tending to create monopoly. The forbidding of specific practices because of their tendency toward a general result, also forbidden, is familiar legislative practice; and no reason suggests itself why the limitations and provisions relating to one should be read into those relating to the other. The subsection immediately applicable is section 2 (c), which is as follows:

(c) That it shall be unlawful for any person engaged in commerce, 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.

The language of this section is so clear that there is no occasion to resort to the reports of Congress to ascertain what was intended. It may not be amiss to note, however, that House Rep. 2687, 74th Cong., 2d sess., has this to say with regard to it (it was then section (b)) :

Section (b) deals with the abuse of the brokerage function for purposes of oppressive discrimination. The true broker serves either as representative of the seller to find him market outlets, or as representative of the buyer to find him sources of supply. In either case he discharges functions which must otherwise be performed by the parties themselves through their own selling or buying departments, with their respective attendant costs. Which method is chosen depends presumptively upon which is found more economical in the particular case; but whichever method is chosen, its cost is the necessary and natural cost of a business function which cannot be escaped. It is for this reason that, when free of the coercive influence of mass buying power, discounts in lieu of brokerage are not usually accorded to buyers who deal with the seller direct, since such sales must bear instead their appropriate share of the seller's own selling cost.

Among the prevalent modes of discrimination at which this bill is directed is the practice of certain large buyers to demand the allowance of brokerage direct to them upon their purchases or its payment to an employee, agent, or corporate subsidiary whom they set up in the guise of a broker, and through whom they demand that sales to them be made. But the positions of buyer and seller are by nature adverse, and it is a contradiction in terms incompatible with his natural function for an intermediary to claim to be rendering services for the seller when he is acting in fact for or under the control of the buyer, and no seller can be expected to pay such an intermediary so controlled for such services unless compelled to do so by coercive influences in compromise of his natural interest. Whether employed by the buyer in good faith to find a source of supply, or by the seller to find a market, the broker so employed discharges a sound economic function and is entitled to appropriate compensation by the one in whose interest he so serves. But to permit its payment or allowance where no such service is rendered, where in fact, if a "broker," so labeled, enters the picture at all it is one whom the buyer points out to the seller rather

than one who brings the buyer to the seller, would render the section a nullity. The relation of the broker to his client is a fiduciary one. To collect from a client for service rendered in the interest of a party adverse to him, is a violation of that relationship; and to protect those who deal in the streams of commerce against breaches of faith in its relations of trust, is to foster confidence in its processes and promote its wholesomeness and volume.

And the Report of the House and Senate Conference Committee, House Rep. 2951, 74th Cong., 2d sess., interprets the section as follows:

This subsection permits the payment of compensation by a seller to his broker or agent for services actually rendered in his behalf; likewise by a buyer to his broker or agent for services in connection with the purchase of goods actually rendered in his behalf; but it prohibits the direct or indirect payment of brokerage except for such services rendered. It prohibits its allowance by the buyer direct to the seller, or by the seller direct to the buyer; and it prohibits its payment by either to an agent or intermediary acting in fact for or in behalf, or subject to the direct or indirect control, of the other.

And we are not impressed with the argument that when construed without the limitation prescribed by 2 (a) section 2 (c) is violative of the due process clause of the Fifth Amendment. It is addressed to a definite evil in interstate trade and commerce which Congress has full power to regulate. It is uniform in operation and applies to all persons alike. It is not arbitrary or unreasonable, but is directed toward the elimination of hidden discriminations in price which are thought to be injurious to the proper operation of a free competitive system of trade and commerce and to have a tendency to promote unreasonable restraints and monopolization. As said by the Circuit Court of Appeals of the Second Circuit in the *Biddle* case, supra: "Congress may have had in mind that one of the principal evils inherent in the payment of brokerage fees by the seller to the buyer directly or through an intermediary, is the fact that this practice makes it possible for the seller to discriminate in price without seeming to do so. If a price discount is given as a brokerage payment to a controlled intermediary, it may be and often is concealed from other customers of the seller. One of the main objectives of section 2 (c) was to force price discriminations out into the open where they would be subject to the scrutiny of those interested, particularly competing buyers."

Counsel for appellants rely upon *Fairmont Creamery Co. v. Minnesota* 274 U. S. 1, which held invalid, under the due process clause of the Fourteenth Amendment, a State statute which forbade the purchase of milk in one locality of the State at a higher price than paid in another locality. That statute was held unconstitutional because it was thought that its inhibition had "no reasonable relation to the anticipated evil—high bidding by some with purpose to monopolize or destroy competition." The same cannot be said of the prac-

tice forbidden by the section here under consideration, as shown in the reports of the Committee of Congress from which we have quoted, *supra*. Of such a practice, what was said by the Supreme Court in *Booth v. Illinois*, 184 U. S. 425, with respect to the prohibition of option contracts to sell or buy grain at a future time is appropos. The court said:

The argument then is, that the statute directly forbids the citizen from pursuing a calling which, in itself, involves no element of immorality, and therefore by such prohibition it invades his liberty as guaranteed by the supreme law of the land. Does this conclusion follow from the premise stated? Is it true that the legislature is without power to forbid or suppress [769] a particular kind of business, where such business, properly and honestly conducted, may not, in itself be immoral? We think not. A calling may not in itself be immoral, and yet the tendency of what is generally or ordinarily or often done in pursuing that calling may be toward that which is admittedly immoral or pernicious. If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the State thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law.

Any contention that this section of the statute constitutes an interference with freedom of contract is answered by what was said by the Supreme Court in *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, as follows:

The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, and morals, and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.

This essential limitation of liberty in general governs freedom of contract in particular. More than 25 years ago we set forth the applicable principle in these words, after referring to the cases where the liberty guaranteed by the Fourteenth Amendment had been broadly described:

"But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community." *Chicago, B. & Q. R. Co. v. McGuire*, 219 U. S. 549, 565.

There is no ground for the contention that, in prohibiting practices because of their harmful tendency, Congress must limit its prohibition to cases in which those practices have actually resulted in the evil which it was the purpose of the statute to prevent. "If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court functus officio." *Nebbia v. New York*, 291 U. S. 502, 537.

We come then to the final question in the case, viz., whether the brokerage commissions here involved come within the exception contained in section 2 (c), i. e. are they paid for services rendered to the sellers? A sufficient answer to the question is found in the fact that the commissions are received by the buyers and not by Oliver, and that there can be no contention that any services are rendered by the buyers to justify the payment of compensation to them. The fact that the commissions pass through the hands of Oliver is immaterial; for it is understood on all sides that they are paid for the benefit of and go to the buyers under the contract which Oliver has with them. The statute forbids the receiving of such commissions except for services rendered. The buyers receive them and they admittedly render no service to earn them. It is idle to contend that they are merely being reimbursed for what they have paid to Oliver by way of subscription. They are receiving brokerage commissions on their purchases; and the fact that they may have paid the purchasing agent for services rendered them and that they receive the commissions because of this does not alter the fact that they are receiving the commissions on their purchases.

[770] And even if it were true that Oliver rendered services to the sellers, we do not think that this would change the situation. No one would contend that, without violating this section, a broker representing the seller could give his commissions to the buyer; for in such case the action of the broker would be the action of his principal, the seller, and would amount to the allowance of commissions by the seller to the other party to the transaction in direct violation of the statutory provision. As we have seen, it constitutes a clear violation of the section for the buyer to receive commissions allowed an agent who represents him alone. If, therefore, the buyer may not receive commissions allowed either his own agent or the agent of the seller, it would seem to follow necessarily that he may not receive commissions allowed a broker who is the agent of both. We may assume that under the section it is permissible for a broker to render services to both buyer and seller and to receive from both compensation for the services rendered; but this is a very different thing from the buyer himself receiving the compensation.

And we think that the Commission was correct in holding upon the facts that the services rendered by Oliver were rendered to the buyers and not to the sellers. Oliver is the agent of the buyers, not of the sellers. The services rendered in advising the buyers as to the character and prices of sellers' merchandise are services rendered the buyers under their contracts, and are services rendered in the purchase and not in the sale of the goods. While such services resulting in sales by the sellers and obviating, no doubt, the adoption of other sales devices, are of undoubted benefit to them, this benefit is incidental and is an entirely different thing from the rendering of services by an agent responsible to the seller as principal. If it were a sufficient basis to bring the allowance of brokerage commissions within the exception of the section, every purchasing agent for a chain of stores might lawfully receive such commissions; for he does for the stores of his chain precisely what is done by Oliver for the subscribers to its service and benefits the sellers in making sales in precisely the same way. We have no doubt that it was just this sort of thing that it was the purpose of the act to prevent.

The case presented is not unlike that before the Supreme Court in *Lehigh Valley R. R. Co. v. United States* 243 U. S. 444, in which a carrier made payments to a shipper, who was a mere importer and forwarder, for services rendered in bringing business to its road. In holding this a violation of the provisions of the Elkins Act as amended, the Supreme Court, speaking through Mr. Justice Holmes, said:

It is true no doubt that George W. Sheldon & Co. in the performance of the services for which it is paid maintains offices here and abroad, advertises the railroad, solicits traffic for it, does various other useful things, and, in short, we assume, benefits the road and earns its money, if it were allowable to earn money in that way. It is true also that in *Interstate Commerce Commission v. F. H. Peavey & Co.*, 222 U. S. 42, an owner of property transported was held entitled under section 15 of the Act to Regulate Commerce to an allowance for furnishing a part of the transportation that the carrier was bound to furnish. (So *Union Pacific R. R. Co. v. Updike Grain Co.*, 222 U. S. 215, and *United States v. Baltimore & Ohio R. R. Co.*, 231 U. S. 274.) But that case goes to the verge of what is permitted by the act. The services rendered by George W. Sheldon & Co., although in a practical sense "connected with such transportation," were not connected with it as a necessary part of the carriage—were not "transportation service," in the language of *Union Pacific R. R. Co. v. Updike Grain Co.*, 222 U. S. 215, 220—and in our opinion were not such services as were contemplated in the Act of June 29, 1906, c. 3591, sec. 4, 34 Stat. 589, amending section 15 of the original act. On the other hand the allowance for them falls within the plain meaning of section 2 of the Act of 1906, to which we referred above.

Just as the services performed by Sheldon & Co. in that case were not a part of what the carrier was paid for, although undoubtedly resulting in benefit to the carrier, so the services performed by Oliver

here, although beneficial to sellers, are no part of what the sellers are paid for, but on the contrary are services rendered the buyers for which they have already paid Oliver. For the sellers to pay for them is for them to pay Oliver for services which Oliver was bound to render the buyers and [771] which the sellers were under no duty to perform in connection with the sales made. Such payment falls, therefore, within the condemnation of the language used by the Supreme Court in *Mitchell Coal & Coke Co. v. P. R. R. Co.*, 230 U. S. 247, 263, wherein it was said, "To pay shippers for doing their own work would have been a mere gratuity, and if here the carrier was not bound to haul from the mine it had no more right to pay these companies for bringing their coal over the spur track to the junction than it would have had to pay a merchant for hauling his goods in a wagon to the railroad depot". See also *Merchants Warehouse Co. v. United States*, 283 U. S. 501, 511. For compensation received by a buyer for services rendered by him or his agent to come within the excepting clause of section 2 (c) of the statute, we think that such services must be such as the seller was bound to render in connection with the sale, not such as were performed by the buyer in connection with the purchase or such as were rendered to him by his agent to enable him to purchase.

It is argued that the act was directed at the practices of chain stores in using the force of great buying power to obtain these concessions from the seller. It is sufficient answer that the act makes no distinction as to size and shows no intention to give the small any more than the great the right to receive brokerage commissions on their purchases. Because of the buying power possessed by purchasing agents, whether representing chains or independent dealers, sellers may be willing to allow them brokerage commissions and may consider such commissions earned in the sense that the sellers are thus enabled to sell goods without resorting to other sales devices; but the fact remains that the buyer who receives the brokerage allowed his purchasing agent receives an advantage, and a concealed advantage, which the buyer who purchases directly from the dealer does not receive. It was this sort of discrimination, we think, which it was the purpose of this section of the act to forbid.

Much argument has been directed to the question as to whether the control exercised by buyers over Oliver is the kind of control contemplated by the statute. This discussion is wholly irrelevant in view of the fact that the commissions are paid to an agent "acting in fact for and in behalf of" buyers and are actually received by the buyers themselves. The clause of the statute, "or is subject to the direct or indirect control" is in the alternative and need not be considered when the payment is made to an agent acting "for or in behalf" of the other party, or to the other party himself. Of course,

an agent acting for and in behalf of another is under his control; and it was to reach other intermediaries, such as were dealt with in *Trunz Pork Stores v. Wallace*, 2 Cir. 70 F. 2d 688, that Congress inserted the broad alternative provision.

For the reasons stated, the petition to set aside the order of the Commission will be denied, the prayer of the cross-petition will be allowed and decree will be entered enforcing the Commission's order.

Order enforced.

FEDERAL TRADE COMMISSION v. WESTERN CHEMICALS, INC., MAFFETT SALES CORPORATION, BARTELL DRUG STORES, FRANK L. WILSON, N. B. WILSON, AND REUEL K. YOUNT.¹

No. 46

(District Court, Western District of Washington. March 27, 1939)

Decree of preliminary injunction by District Judge John C. Bowen, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisement of product "Alcoban," for reduction of weight, pending issuance of complaint by Commission against defendants under section 5 of Commission Act and disposition of such complaint as in said decree set forth.²

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Gerard A. Rault*, special attorney, both of Washington, D. C., for plaintiff.

Mr. Charles C. Hall, of Washington, D. C., for defendants.

DECREE

This cause coming on to be heard upon the complaint of the Federal Trade Commission for the issuance of a preliminary injunction against the defendants Western Chemicals, Inc., Maffett Sales Corporation, Bartell Drug Stores, Frank L. Wilson, N. B. Wilson, and Reuel K. Yount, and the court having read the pleadings and affidavits filed in connection therewith and having heard and considered the arguments of counsel, and

It appearing to the Court, That the defendants reside or transact business in the Western District of Washington, and

It appearing to the Court, That it has jurisdiction over the parties and the subject matter hereof and that the law and the evidence are in the favor of the plaintiff and against the defendants, and

It appearing to the Court, That said defendants have disseminated, are now disseminating, and have and do now cause to be disseminated,

¹ Not reported in Federal Reporter.

² Such complaint, duly issued in the matter of Western Chemicals, Inc., et al., Docket 3735, and is pending as of this writing, awaiting Commission disposition.

false advertisements by the United States mails and by other means in commerce for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of a preparation known as "Alcoban," and by various means for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase in commerce of said preparation "Alcoban" in violation of the Federal Trade Commission Act, by means of which advertising the defendants have falsely represented that said preparation "Alcoban" is a competent, safe, and scientific treatment for alcoholism and that its use will have no ill effect upon the human body, and

It appearing to the Court, That the preparation "Alcoban" contains as active ingredients ephedrine hydrochloride, emetine hydrochloride, and pilocarpine hydrochloride and that each of these drugs is in itself potent and powerful and when combined with the others in this preparation results in a compound which may have a marked toxic and sometimes fatal effect upon the human system, and

It appearing to the Court, That the further dissemination of such false advertisements would cause immediate and irreparable injury to the public and that it would be in the public interest to enjoin and restrain the further dissemination of said advertising pending the issuance of a complaint by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission or set aside by a court on review or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act,

It is hereby ordered, adjudged, and decreed, That the defendants Western Chemicals, Inc., Maffett Sales Corporation, Bartell Drug Stores, Frank L. Wilson, N. B. Wilson, and Reuel K. Yount, their agents, servants, representatives, employees, successors, and assigns, and all other persons participating with them and having notice of this order, be, and they hereby are and each of them is hereby strictly enjoined and restrained from:

Disseminating or causing to be disseminated any advertisement by means of the United States mails or in interstate commerce by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of the preparation known as "Alcoban," whether mentioned specifically by name or not, or disseminating and causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in interstate commerce of said preparation "Alcoban" and which advertisements represent that such preparation, whether mentioned specifically by name or not, is a competent, safe and scientific treatment for alcoholism and that its use will have no ill effects upon the human body, or which advertisements

fail to state that said preparation if used as directed or under such conditions as are customary and usual may result in the serious illness and in some cases the death of the user; pending the issuance of the complaint by the Federal Trade Commission against said defendants under section 5 of the Federal Trade Commission Act and until such complaint is dismissed by the Commission or set aside by a United States Circuit Court of Appeals or the Supreme Court of the United States on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act.

It is further ordered, That this decree of injunction issue without bond.

BELMONT LABORATORIES, INC. v. FEDERAL TRADE
COMMISSION ¹

No. 6738

(Circuit Court of Appeals, Third Circuit. March 29, 1939)

FALSE ADVERTISING—SPECIFIC PRACTICES—QUALITIES, RESULTS AND HISTORY, AND
INDORSEMENT, USE OR STANDING OF PRODUCT—SOAP AND OINTMENT FOR SKIN
AILMENTS—INTERNALLY CAUSED CONDITIONS AS DIFFERENTIATING CLAIMS'
VALIDITY.

Claim that soap and ointment eliminated specified and other skin disorders, that they were the "original" treatment for such disorders, and that some of the best known skin specialists were using the treatment "exclusively," held false in fact and unlawful, as regards skin disorders that proceed from internal causes, but not as regards disorders which are due to external causes, and "ivy poison" which is an irritant reaction from a vegetable fibre.

"Original" appears to be used in the two senses of "novel" and "not otherwise obtainable." "Exclusiveness" is by definition a rare attribute.

CEASE AND DESIST ORDERS—FALSE ADVERTISING—WHETHER REPRESENTATIONS—
WHERE MATTER NOT QUESTIONED BY COMMISSION.

On petition to review a cease and desist order of Federal Trade Commission, the court cannot question advertising in respect not questioned by the Commission.

FALSE ADVERTISING—ADVERTISING VEHICLES—AS NONDECEPTIVE TO EXPERT AND
INFORMED OR NONAVAILABLE TO LAITY IN ADVANCE OF PURCHASE—SOAP AND
OINTMENT ADVERTISING IN PROFESSIONAL JOURNALS AND BY LEAFLETS IN
PRODUCTS' CARTONS.

Untruthful advertising of soap and ointment cannot be justified on ground that readers of professional journals are too smart to be deceived and that lay purchasers buy blindly because the leaflet is inside the ointment carton.

¹ Reported in 103 F. (2d) 538. The case before the Commission is reported in 28 F. T. C. 244. Petitions for rehearing in the above matter by Belmont Laboratories, Inc. and by the Commission were respectively denied on May 3, 1939 and May 15, 1939.

FALSE ADVERTISING—DEFENSES OR PLEAS—UNWISDOM OF INJURED.

Both "deceit," apart from negligent misrepresentation, and "false advertising," are "intentional torts," and the "should have known or acted more wisely" of the injured is inappropriate in both cases.

CEASE AND DESIST ORDERS—FALSE ADVERTISING—DEFENSES OR PLEAS—LOCUS POENITENTIAE OF OFFENDER.

On review of cease and desist order respecting untruthful advertising petitioner's plea of locus poenitentiae must be denied.

CEASE AND DESIST ORDERS—FALSE ADVERTISING—SCOPE—SOAP AND OINTMENT FOR SKIN AILMENTS—WHERE CURABLE THROUGH EXTERNAL APPLICATION—AS MAKING TOO BROAD.

A cease and desist order respecting advertising of a soap and an ointment was too broad as applied to diseases curable through external application.

CEASE AND DESIST ORDERS—FALSE ADVERTISING—SCOPE—SOAP AND OINTMENT FOR SKIN AILMENTS—WHERE FOREIGN OR CANADIAN ADVERTISING SOUGHT TO BE REACHED—AS TOO BROAD.

A cease and desist order respecting advertising of a soap and an ointment was too broad, where it attempted to cover advertising in Canada.

(The syllabus, with substituted captions, is taken from 103 F. (2d) 538)

On petition for review from order of Commission, order modified in accordance with opinion, and affirmed.

Mr. Laurence H. Eldredge and *Montgomery & McCracken*, all of Philadelphia, Pa., for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. DeWitt T. Puckett* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for respondent.

Before BIGGS, MARIS, and CLARK, Circuit Judges.

CLARK, *Circuit Judge*:

The Federal Trade Commission had before it here a rather mild instance from a black chapter of American business history. The emporer who is greedy (mail fraud) or gluttonous (food) or vain (cosmetics) may be getting more protection than he deserves; so he perchance should be forced to "cavere." Around the emporer whose sole desire is relief from the ills to which our mortal flesh is heir, the law has thrown too transparent and tardy a cloak. That, at least, is the opinion of those who should know.

A distinguished Senator of the United States:

They are the people, who for the sake of a few dirty dollars, are willing to imperil the comfort, the wealth, and the lives of millions of people who cannot protect themselves. From a speech by Senator McCumber sponsoring the original Pure [539] Food and Drugs Act (1906), 40 Cong. Rec., part 3, p. 2653.

A leading medical authority:

In the field of medicine human credulity learns little from experience. In the purchase of any kind of merchandise, except that sold for the alleged alleviation or cure of disease, the buyer has a chance of learning eventually whether or not he has been swindled. In the purchase of an automobile, a piano, or a suit of clothes, time will prove whether it was a good or a bad bargain; nature, through its agencies of wear and tear, makes clear whether one has been cheated. But when we go into the market to buy medicament or medical service, we are at sea for here we have nature not as an assistant to aid our judgment but as an opponent to confuse it. In from 80 percent to 85 percent of all cases of human ailments, it is probable that the individual will get well whether he does something for his indisposition or does nothing for it. The healing power of nature—*vis medicatrix naturae*—fortunately for biologic perpetuity, works that way. The seller of medicaments, then, obviously starts with at least an 80 percent chance in his favor.

The pills and panaceas of today are colloquially, but incorrectly, called "patent medicines"; incorrectly, because among the thousands of remedies offered to the public for the self-treatment of disease there are probably not half a dozen that are really patented. The reasons are not far to seek. The United States Patent Office is not supposed to grant a patent on a product unless it can be shown that the article on which protection is sought is a new and useful invention. This simple requirement is sufficient in itself to prevent practically all so-called "patent medicines" from being patentable. From the Introduction (p. vii) of Dr. Arthur J. Cramp's 3rd volume of *Nostrums and Quackery and Pseudo-Medicine*:

A leading legal scholar:

The seriousness of the problem of false advertising, both sociologically and financially, requires no demonstration. The toll which is assessed upon the consumer runs into the millions; the effects upon the health and well-being of the community are incapable of estimation. Handler, *The Jurisdiction of the Federal Trade Commission Over False Advertising*, 31 *Columbia Law Review* 527, 551.

A leading journalist:

In the patent-medicine business, the essential art was not medicine, nor chemistry. The fundamental genius for it was psychological. It consisted of skill in playing on the credulity of the simple-minded and the trusting.

* * * * *

The patent-medicine manufacturers made an art of describing the symptoms of disease in such a way as to terrorize the reader of their pamphlets and advertisements into believing he had one or more of the ailments they pretended to cure; and in describing their cure-alls in terms to convey the conviction of hope. Mark Sullivan, *Our Times*, Vol. II, *America Finding Herself*, p. 511.

A distinguished former President and Chief Justice of the United States:

Fraudulent misrepresentations of the curative value of nostrums not only operate to defraud purchasers but are a distinct menace to the public health. There are none so credulous as sufferers from disease. The need is urgent for legislation which will prevent the raising of false hopes of speedy cures of

serious ailments by misstatements of facts as to worthless mixtures on which the sick will rely while their diseases progress unchecked. President Taft, Message to Congress June 21, 1911, see 48 Cong. Rec., part 12, p. 675.

The present distinguished Chief Justice of the United States:

* * * we find no ground for saying that Congress may not condemn the interstate transportation of swindling preparations designed to cheat credulous sufferers and make such preparations, accompanied by false and fraudulent statements illicit with respect to interstate commerce, as well as, for example, lottery tickets.

In sustaining the Sherley Amendment (U. S. C. A. title 21, sec. 10) to the original Pure Food and Drugs Act, an amendment made necessary by the failure of the majority of the Court in the case of *U. S. v. Johnson*, 221 U. S. 488, to agree with his views.

Seven Cases v. United States, 239 U. S. 510, 516-517.

It is thus apparent that our "mild" is not in characterization of ethics but in description of harm. The products advertised (Mazon), a soap and an ointment, are germane only to the treatment of certain diseases of the skin. These diseases, always irritating and sometimes painful, [540] may work from the inside out. As the reverse is not true, they affect the case and not the wheels of our human watch. They cannot, therefore, make it cease ticking. So the false therapeutic claims of the petitioner company may disappoint. The disappointment will not, however, be fatal.

The advertisements objected to are curative, not palliative in tenor. They assert the "elimination" rather than the alleviation of the conditions treated. They are listed as Federal Trade Commission Exhibits 4, 3, and 2B and read:

In circulars addressed to members of the medical profession:

Mazon—an ethical preparation compounded under the personal supervision of its originator—is the *original* treatment of its character for: Eczema, Psoriasis, Head Scalds, Ivy Poison, Ring Worm, Athlete's Foot, Barber's Itch, And Other Skin Disorders.

The colloidal nature of the base of Mazon and its strong penetrating characteristics, together with its healing and soothing ingredients, afford quick and *permanent* elimination of Eczema and *other* skin disorders. Federal Trade Commission's Exhibit 4.

No other treatment for *permanent cure* has ever been discovered * * *. Some of the best-known skin specialists in the City (of Philadelphia) are using it *exclusively* and praise it highly. Federal Trade Commission's Exhibit 4.

In a professional journal having wide circulation among graduate nurses:

Thousands of physicians have clinically proved the effectiveness of Mazon treatment, and are prescribing it daily to permanently eliminate: (diseases substantially similar to those listed above). Federal Trade Commission's Exhibit 3.

In leaflets (somewhat less boastful) contained in each individual package of its product:

The therapeutic value and distinctive characteristics of Mazon were immediately recognized by physicians, who by personal clinical tests and observations, proved to their own satisfaction the unusual effectiveness of Mazon in the treatment and *elimination* of symptoms associated with certain types of: Eczema, Psoriasis, Alopecia, Dandruff, Ring Worm, Ivy Poison, Athlete's Foot, and *other* skin irritations. Federal Trade Commission's Exhibit 2B.

Do Not Attempt to Diagnose Your Own Skin Condition. Consult your physician and be guided by his advice. Federal Trade Commission's Exhibit 2B.

Such a claim is medically untrue. It fails to recognize the scientific necessity for the application of internal remedies to diseases, which, by their etiology (the science of causes), proceed from internal disorders. Ring worm, head scalds (favus), athlete's foot, barber's itch, and ivy poison are excluded from this necessity. They are due to external causes, ring worms, favus, and athlete's foot being parasitic or fungoid in character, and ivy poison being an irritant reaction from a vegetable fibre. In eczema, psoriasis, alopecia (falling hair), and dandruff (seborrhea, a cause of alopecia) on the other hand, the outward manifestation is, in part at least, the result of an inward disturbance. There is something amiss in the interaction of the body's chemical elements (metabolism). As both the physicians called by the petitioner company are, with one possible exception, in agreement as to what we have just said, we do not have to corroborate their testimony by resort to any principle of judicial notice, *Illinois Cudahy Packing Co. v. Kansas City Soap Co.*, 247 F. 556; 23 C. J. 168. It is nevertheless comforting to find the medical works in complete accord, Knowles, *Diseases of the Skin*, as to: ringworm, p. 394, favus, p. 384, athlete's foot, p. 389, barber's itch, p. 392, ivy poison, p. 167; as to: eczema, p. 119, alopecia (there are four kinds), p. 475 et sequitur, seborrhea, p. 452. The exception spoken of is psoriasis. The medical witnesses differ on its etiology and we find the same difference in the text book, Knowles, above cited, p. 102. All, however, agree upon the necessity for internal remedies, Knowles, above cited, p. 104.

The Commission might well have stopped with this question of etiology. Once the internal cause of the disease is established, it does not take a doctor to point out the futility of an outward application to an interior evil. Such application can do no more than alleviate by modifying the exterior symptoms. Accordingly, petitioner's [541] advertisements, in their assertion of elimination, are bad in medicine and, fortunately for the public, bad also in law.

The advertising complained of uses two other words of, to be conservative, exaggeration—"original" and "exclusively." Dr. Saul testified, Record p. 138, that the components of the compound (Commission's Exhibit 6, record p. 159) are all "common drugs used in the practice of medicine." An examination of the medical authority

already cited amply supports his view. The principal drugs indicated, sodium salicylate, resorcinol, and phenol are prescribed in the paragraphs covering external treatment of the diseases mentioned, Knowles, above cited, pp. 105, 128, 399, 461, 483. One might add that the formulas there set out are more complete.

Here "original" appears to be used in the two senses of "novel" and "not otherwise obtainable." Strictly speaking, therefore, it has no bearing on efficacy and so no relation to false hopes. But it has, it seems to us, a harmful connotation appropriate to each sense. The implication of newness is well recognized. In law what is old may be good, but in science progress is prized. One has a vision of thousands of doctors and druggists working in thousands of hospitals and laboratories and emerging with—Mazon. In the second sense it may, like the apple, keep the doctor away. It carries a suggestion of mystery and of secret sources. The fact is that, as we have seen, its ingredients can be obtained by resort to the prescription blank of the family physician.

It seems even less necessary to dwell upon the claim of exclusiveness. That, one need hardly observe, is by definition a rare attribute. What we have just said shows, we think, that there is no semblance of rarity. The "leading specialists," both those called to the witness stand and in the profession generally, may prescribe Mazon (one medical witness did and the other did not), but they do not pretend that their treatment has only that one facet.

We cannot, because the Federal Trade Commission did not, question either the reference in the advertising to "other" skin diseases, the claim that the ointment was prepared in collaboration with the University of Pennsylvania Medical School, or the implication that some special quality in the accompanying and high-priced soap makes it indispensable to an advantageous use of the ointment. Any rule of ejusdem generis does not seem appropriate to a unilateral effect on the consumer's mind. They cannot be expected to add the limiting "like." Fisher, *The Proposed Food and Drugs Act, A Legal Critique*, 1 *Law & Contemporary Problems*, 74, 82. We imagine that the University of Pennsylvania medical authorities may be surprised at the generous assistance furnished to their former pharmacist by their staff. The nature of the chemical cooperation of soap and ointment if any, is not developed.

As might be expected from the words of the act, i. e. "unfair" and "competition," the stock attempts to escape its incidence stress the entire absence of the first and the indefiniteness of the second. In the field of therapeutic claims, precedents are scarce. This is due, in part at least, to the discouraging history of the legislative efforts to extirpate an admitted and shocking evil. The best account of that struggle is to be found in books by those who took part in it. We

refer to chapter 27, volume II, of *Our Times*, by Mr. Mark Sullivan, from which we have already quoted, and the autobiography of the famous Dr. Wiley. See also, Reiger, *The Struggle for Federal Food & Drugs Legislation*, 1 *Law & Contemporary Problems* 3; Weber, *The Food, Drug, & Insecticide Administration, Its History and Organization*; Kallet and Schlink, *100,000,000 Guinea Pigs*; Kallet, *Counterfeit*; and, Lamb, *American Chamber of Horrors* (one chapter of which is entitled, *Blood Money*). That history, not yet as we think ended, shows the proprietary medicine lobby fighting a successful rear-guard action against anything and everything calculated to enlighten the sick and suffering public. They fought, of course, in the courts as well as in the Congress, one of their notable victories coming strangely enough from the mouth of the son of the Autocrat of the Breakfast Table, *U. S. v. Johnson*, above cited, and requiring the passage of the Sherley Amendment, above cited, to restore the legislative intent. The Consumer's Protection Under the Federal Pure Food and Drugs Act, 32 *Columbia Law Review* 720; Shearer, *The National Government and False Advertising*, 19 *Iowa Law Review* 28. A comparison of the terms of the so-called Tugwell Bill (introduced by Senator Copeland as S. 1944, 73rd Cong., 1st sess.) with those of the two companion and mayhap overlapping statutes which eventually became law, the Copeland Act (U. S. C. A. [542] title 21, sec. 321) and the Wheeler-Lea Amendment (U. S. C. A. title 15, sec. 55) leads to the belief that the lobby is still going strong. Fisher, *The Proposed Food and Drugs Act, A Legal Critique*, above cited; *A Proposed Revision of the Food and Drug Laws*, 22 *Georgetown Law Journal* 306; Woodward, *It's an Art*, chapter 25, *Congress Says "Boo"*; Lamb, *American Chamber of Horrors*, above cited.

So we find the Government department technically equipped to ascertain the truth about drugs prevented from exercising jurisdiction where the greatest damage is done, and the Government department with no such facilities constrained to act lest the people perish. The author of a legislative note in a recent issue of the *Virginia Law Review* writes:

The Federal Trade Commission, on the other hand, has handled cases involving false advertising for a number of years with some success, despite the limitations on its jurisdiction. * * * The proceedings of the Commission in which orders are issued only after full hearings, have established an enviable reputation for their impartiality so that appeals from them are relatively infrequent. It does not appear, however, that the Commission has at present adequate means of obtaining the necessary scientific evidence to fully cope with false advertising in this field. 22 *Virginia Law Review* 812, 820.

We may say that the examination of witnesses gives the impression that the Federal Trade Commission's legal staff did not equip itself with even the elementary medical books we borrowed from a local physician.

We come now to a consideration of such precedents as exist. In *Minter v. Federal Trade Commission*, 102 F. (2d) 69 (decided February 14, 1939), we had recent occasion to discuss what we deemed a judicial tendency to broaden the meaning of competition in the interests of consumer protection. Even without such liberal construction, we think the "procedural restriction" of *Federal Trade Commission v. Raladam*, 283 U. S. 643 (criticized in Handler, *Jurisdiction of the Federal Trade Commission Over False Advertising*, 31 *Columbia Law Review* 527, 549, 551; *Federal Trade Commission and False and Misleading Advertising*, 31 *Michigan Law Review* 804), has been fully met by the proof here. In fact, one of the offending circulars was distributed in explanation of some litigation with that most exasperating of all competitors, the former employee who has departed with a trade secret. For the most recent discussion of *Federal Trade Commission v. Raladam* and the later case of *Hughes Inc. v. Federal Trade Commission*, 77 F. (2d) 886, cert. den. 296 U. S. 617, see an interesting note in the February number of the *Columbia Law Review*, 39 *Columbia Law Review* 259, 261.

The only other case we have been able to find in the therapeutic field seems to have escaped the attention of counsel for the Commission. It is reported sub nomine, *Fairyfoot Products Co. v. Federal Trade Commission*, 80 F. (2d) 684. It deals with a bunion cure in contrast with the obesity cures (Marmola, Bad-Em Salts) of the two cases previously cited. The opinion, by Judge Alschuler of the Seventh Circuit, expresses a point of view which seems to us more in accord with a suppression of the actual evil legislated against than that of some of the earlier cases.

We quote:

That petitioner's plaster has virtue may, for the purposes hereof, be conceded. Indeed, it would be quite unreasonable to assume that one putting out a purported remedy for an affliction would not employ some ingredients or means calculated to benefit some cases at some stage. But this would not justify such sweeping claims as the condemned items of this advertising matter disclose, which were evidently intended to induce in the public mind the belief that here was an absolute and unfailing panacea for bunions of all kinds and degrees.

Just where lies the line between "puffing," which is not unlawful and unwarranted, and misleading representations in advertising, is often very difficult of ascertainment. But in our judgment this case does not present such embarrassment, since the advertising here condemned is well beyond any "puffing" indulgence. *Fairyfoot Products Co. v. Federal Trade Commission*, 80 F. (2d) 684, 686.

As the writer of an article to which we have several times referred (Fisher, *The Proposed Food and Drugs Act, A Legal Critique*, above cited, p. 82) points out:

In the field of therapeutic representation a fine line between "remedy" and "cure" has been drawn, although as often as not the gullible purchaser has been deceived in both [543] instances. * * * Some courts seem entirely too content with a "commercial" standard of truth, piously hoping that the purchaser will not be so gullible as to be deceived by the depicted panaceas.

We are not pious and we are not content with the advertisements in the case at bar.

The suggested comparison between what was sought and what was had would have emphasized this very point. To check the obscurantism about puffing, the draftsmen offered two provisions. First, in order to discourage self-medication in the case of 36 named diseases, falsity was attributed to any representation made to laymen as to the effect of any drug in their treatment, *A Proposed Revision of Food and Drug Laws*, 22 *Georgetown Law Journal* 306; Fisher, *The Proposed Food and Drugs Act, A Legal Critique*, above cited, p. 98. The petitioner, in the less blatant of its two advertisements, makes a gesture in obeisance to this same principle. But it combines this lip service with a therapeutic claim—so the sufferer is left with a choice of reliances. Second, the test of truth was made the "general agreement of medical opinion," Fisher, *The Proposed Food and Drugs Act, A Legal Critique*, above cited, p. 95.

Petitioner addresses some argument to the especial character of its circulation. It says that one putative audience will not read and the other will not heed. In other words, the contention is made that physicians and readers of professional journals are too smart to be deceived and that lay purchasers buy blind because the leaflet is inside the carton containing the ointment. We think that one position is untrue legally and the other factually.

Conceding the somewhat violent assumption that prospective patients never read medical and nursing journals, we do not concede either the ethics or the law of a proposition which puts a premium on a failure in wickedness. In the closely analogous field of common law deceit, the courts have long since refused to sanction the application of some idea of contributory negligence as a defense. Both deceit (apart from negligent misrepresentation), the genus, and false advertising, the species, are intentional torts and the "should have known or acted more wisely" of the injured are inappropriate in both cases, Green, *Deceit*, 16 *Virginia Law Review* 763; Bohlen, *Misrepresentation as Deceit, Negligence, or Warranty*, 42 *Harvard Law Review* 732, 739; 49 *Harvard Law Review* 830 (Note); Harper and McNeely, *A Synthesis of the Law of Misrepresentation*, 22 *Minnesota Law Review* 939, 957. We believe that Congress might well have given some thought to this before enacting paragraph (a) of section 55, title 15, U. S. C. A. If they had, they would have recognized the confusion in using the proviso of the proposed self-medication section and leaving out the section itself.

We find an equal inadequacy in the petitioner's reasoning about the casual inferences properly to be drawn from the enclosure of the leaflet. In the first place, the retailer is obviously interested in familiarizing himself with the goods he offers for sale. Recommendation will follow upon knowledge whether or not it is accompanied by belief. In the second place, the self-medicator's conviction is not dependent upon one use. He may and often must be influenced to a further purchase before success or failure is finally apparent, or he may and often must be influenced to a further purchase for treatment of some subsequent one of the other skin diseases mentioned or implied.

We are constrained also to ignore petitioner's plea of locus poenitentiae. Experience has compelled the Commission to insist upon the letter of its bond. So the courts have upheld it in demanding a stipulation, *Federal Trade Commission v. A. McLean & Son*, 84 F. (2d) 910, *Federal Trade Commission v. Morrissey*, 47 F. (2d) 101, and in requiring that such stipulation be unconditional, *Fairyfoot Products v. Federal Trade Commission*, above cited, 686.

We arrive therefore at this conclusion. We are satisfied with the Commission's cease and desist order entered January 6, 1938, except in two particulars. We think that subparagraphs b and d of paragraph 1 should be omitted because they apply to the diseases curable through external application, and paragraph 3 should be omitted because it improperly attempts to extend the jurisdiction of the Commission to Canada. We leave untouched subparagraph a of paragraph 1. The words used therein are "competent remedy or cure." Our quotation from Fisher's *The Proposed Food and Drugs Act, A Legal Critique* (pages 11-12 of this opinion) contains an implied criticism of the judicial effort to draw a "fine line" between remedy and cure. We agree with that criticism and in support of it cite an excerpt from an opinion of the Circuit Court of Appeals for the Sixth Circuit:

There was still room for a conclusion that substantial mischief resided in the claim of a universally efficacious remedy for the numerous and widely prevalent maladies in question; for the term "remedy" must at least imply a curative tendency, although not of course guaranteeing a cure. *Simpson v. U. S.*, 241 Fed. 841, 845.

It is hardly necessary to comment upon the synonymy of "efficacious" in the passage above quoted and "competent" in the Commission's order or to call attention to the a fortiori character of a civil proceeding. The contrary holding of *United States v. Natura Co.*, 250 Fed. (D. C.) 925, is an example of the judicial line drawing animadverted on above.

The order of the Federal Trade Commission is modified in accordance with this opinion and is in all other respects affirmed.

STARTUP CANDY COMPANY v. FEDERAL TRADE
COMMISSION¹

No. 1789

(Circuit Court of Appeals, Tenth Circuit. Mar. 31, 1939)

Order dismissing petition to review Commission's order in Docket 2705, 25 F. T. C. 234, directing respondent, its officers, etc., in offering for sale, sale and distribution of candy, to cease and desist from the use of lottery schemes, as therein set forth.

Mr. H. Hartland Halliday, of Salt Lake City, Utah, for petitioner.
Mr. W. T. Kelley, chief counsel, Federal Trade Commission, of Washington, D. C., for respondent.

Before LEWIS and PHILLIPS, *Circuit Judges*.

PER CURIAM.

This cause came on to be heard on the motion of petitioner to withdraw the petition for review herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that said motion be and the same is hereby granted and that the petition to review in this cause be and the same is hereby dismissed out of this court at the costs of petitioner.

It is further ordered by the court that the clerk of this court forthwith transmit to the secretary of the Federal Trade Commission a certified copy of this order.

FEDERAL TRADE COMMISSION v. LEWYN DRUG,
INCORPORATED²

File No. 315-J

(District Court, Southern District of California, Central Division.
April 7, 1939)

Decree of preliminary injunction by District Judge Wm. P. James, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisement of "Dr. Haller's Prescriptions" for women, and pending issuance of amended complaint by Commission against defendant under section 5 of Commission Act and disposition of such amended complaint as in said decree set forth.³

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and
Mr. Gerard A. Rault, special attorney, both of Washington, D. C.,
for plaintiff.

¹ Reported in 102 F. (2d) 1015.

² Not reported in Federal Reporter.

³ Such amended complaint duly issued in the matter of Lewyn Drug, Inc., Docket 2934, and was followed by order to cease and desist issued as of June 6, 1939, 29 F. T. C. 7.

DECREE

This cause coming on to be heard upon the complaint of the Federal Trade Commission for the issuance of a preliminary injunction against the defendant, Lewyn Drug, Inc., and the court having read the pleadings and affidavits filed in connection therewith and having heard and considered the arguments of counsel, and

It appearing to the Court, That the defendant is domiciled in and transacts business in the Southern District of California, and

It appearing to the Court, That it has jurisdiction over the parties and subject matter hereof, and that the law and the evidence are in favor of the plaintiff and against the defendant, and

It appearing to the Court, That said defendant is engaged in the sale and distribution of two medicinal preparations for the relief of delayed menstruation designated as Dr. Haller's Prescription 5000 and Dr. Haller's Prescription 2000, in commerce between and among the various states of the United States and in the District of Columbia, and

It appearing to the Court, That said defendant has disseminated, is now disseminating, and has caused and is now causing the dissemination of false advertisements by the United States mails and by other means in commerce for the purpose of inducing and which are likely to induce directly or indirectly the purchase of said medicinal preparations, and by various means for the purpose of inducing or which are likely to induce directly or indirectly the purchase in commerce of said medicinal preparations in violation of the Federal Trade Commission Act by means of which advertising the defendant has falsely represented that the use of said preparations is a competent, safe, and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, and

It appearing to the Court, That the use of either of these preparations may result in gastrointestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, inflammation and congestion of the uterus and adnexa leading to excessive uterine hemorrhage, and in those cases where either of these preparations is used to interfere with the normal course of pregnancy, may result in uterine infection with injury to the pelvic and abdominal structures, causing septicemia or blood poisoning, and

It appearing to the Court, That the further dissemination of such false advertisements would cause immediate and irreparable injury to the public, and that it would be in the public interest to enjoin and restrain the further dissemination of said advertising pending

the issuance of an amended and supplemental complaint by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission or set aside by a court on review or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said act,

It is hereby ordered, adjudged and decreed, That the defendant, Lewyn Drug, Incorporated, its officers, servants, representatives, employees, successors, and assigns and all other persons participating with them and having notice of this order, be and they hereby are, and each of them is hereby strictly enjoined and restricted from:

Disseminating or causing to be disseminated any advertisements by means of the United States mails or in commerce by any means for the purpose of inducing or which is likely to induce directly or indirectly the purchase of said preparations known as Dr. Haller's Prescription 5000 and Dr. Haller's Prescription 2000, whether sold under the same names or under any other names, or disseminating and causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce directly or indirectly the purchase in commerce of said preparations, and which advertisements represent that either or both of said preparations constitute a safe, competent and scientific treatment for delayed menstruation and that their use will have no ill effects upon the human body, or which advertisements fail to state that said preparations if used as directed or under such conditions as are customary and usual may result in the serious illness and in some cases the death of the user;

Pending the issuance of an amended and supplemental complaint by the Federal Trade Commission against said defendant under section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission or set aside by a United States Circuit Court of Appeals or the Supreme Court of the United States on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 of said Act,

It is further ordered, That this decree of injunction issue without bond.

CALIFORNIA LUMBERMEN'S COUNCIL ET AL. v.
FEDERAL TRADE COMMISSION¹

No. 8984

(Circuit Court of Appeals, Ninth Circuit. April 14, 1939)

PRACTICE AND PROCEDURE—DUE PROCESS—FAIR TRIAL.

Administrative agencies must grant a fair trial.

CEASE AND DESIST ORDERS—VALIDITY—DUE PROCESS—FAIR TRIAL.

A cease and desist order made by Federal Trade Commission is invalid as violative of "due process" if persons ordered [305] to cease and desist were deprived of fair trial.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE—EVIDENCE PROFFERED BEFORE COMMISSION—REJECTION AS DEPRIVING OF FAIR TRIAL—ON MOTION TO STRIKE—WHERE MATTER INVOLVED IN MERITS.

A motion to strike transcript of record filed in Circuit Court of Appeals reviewing cease and desist order of Federal Trade Commission did not bring before court the question whether persons ordered to cease and desist were deprived of fair trial by not being permitted to make of record matters properly included in record, since determination of question required an examination of merits and motion did not bring case before court on merits (Federal Trade Commission Act, sec. 5 (c), 15 U. S. C. A. sec. 45 (c)).

(The syllabus, with substituted captions, is taken from 103 F. (2d) 304)

Upon motions to strike transcript of record from the files, to require filing of proper Record, or to vacate cease and desist order in proceeding by California Lumbermen's Council and others to review cease and desist order of Commission, motions denied.

Mr. Morgan J. Doyle, of San Francisco, Calif., for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. Daniel J. Murphy* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for respondent.

Before GARRECHT, HANEY, and STEPHENS, Circuit Judges.

STEPHENS, *Circuit Judge*:

Petitioners present two motions. One is to strike the transcript of the record heretofore filed in this court, and the other (premised upon the granting of the first) is to require respondent to file a proper transcript of the record or to vacate the cease and desist order made by respondent. Both motions must be denied.

¹ Reported in 103 F. (2d) 304. The case before the Commission is reported in 27 F. T. C. 515.

The basis of the motion to strike is that the record as it is before us is not the true record of the proceedings had before the trial examiner. An examination of the petition and supporting affidavits reveals that such record is a true record of the evidence received, but that the real complaint is that the hearing was so conducted by the examiner as not to allow petitioners to make of record matters properly included in the record.

It is clear that administrative agencies must grant a fair trial. *Chamber of Commerce v. Federal Trade Commission* (C. C. A. 8, 1926) 13 F. (2d) 673, 683, 684; *Morgan v. United States*, 304 U. S. 1, 14, 15; *Shields v. Utah Idaho Central R. R. Co.*, 305 U. S. 177, December 5, 1938; *Ohio Bell Tel. Co. v. Commissioner*, 301 U. S. 292, 302, 304.

If, then, petitioners have been deprived of a fair trial the order made by the Commission is invalid as violative of due process. A motion to strike the transcript is not, however, the manner in which to bring such a question before us, for its determination requires an examination of the merits of the case that we may know the pertinency of the excluded matter in its relationship to the case as a whole. This case is not now before us on the merits.

We shall not herein attempt to advise petitioners as to the course they should pursue, but we are constrained to remark that since section 5 (c) of the Federal Trade Commission Act and section 10 (e) (f) of the National Labor Relations Act are similar, the case of *Consolidated Edison Co. of New York v. N. L. R. B.*, 305 U. S. 197, December 5, 1938, may be found helpful.

FIORET SALES COMPANY INC., ET AL. v. FEDERAL
TRADE COMMISSION ¹

No. 16034

(Circuit Court of Appeals, Second Circuit. April 28, 1939)

Decree by Learned Hand, Augustus N. Hand and Robert P. Patterson, Circuit Judges, resetting court's prior decree of December 16, 1938, following opinion and decision affirming Commissioner's order in *Fioret Sales Co., Inc., et al.*, Docket 3164, 26 F. T. C. 806, so as to prohibit respondent from representing, through use of words "Les Parfums des Jardine de Fioret," or other foreign words, or otherwise, that perfumes made or compounded in the United States are made in France or other foreign country, or imported, but to permit respondents, petitioners herein, while observing injunction above set forth, to state on packages, etc., of their products, that "The concentrates of which these perfumes are made were produced in France

¹ Not reported in Federal Reporter.

and, as such, were imported into the United States, where they were combined or diluted with domestic alcohol, and the resulting perfume was bottled in U. S. A.”; as in said resettling decree in detail set forth.

Mr. John A. Glaccum of Munn, Anderson & Liddy, of New York City, for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. S. Brogdyné Teu, II* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for respondent.

FINAL DECREE

This cause having heretofore been presented and submitted to this Court by counsel for the several parties hereto, upon printed briefs and oral arguments; and this Court, thereafter, to wit: on the 5th day of December 1938, after duly considering the same and being fully advised in the premises, having made, delivered and entered herein its opinion upon and decision of this cause, which opinion and decision include and close with these words, to wit: “The petition is denied and the order affirmed”; and there having thereafter, to wit: On the 16th day of December 1938, been made and entered herein a formal decree upon said opinion and decision; and respondent Federal Trade Commission having thereafter, to wit: On the 17th day of April 1939, filed herein its certain written petition or motion for an order resettling said decree by amending the same to read in the language of a certain proposed decree attached to said petition as an exhibit thereto and as a part thereof; and notice of said motion having been duly served upon counsel for petitioners, and counsel for the petitioners having appeared herein in answer to said petition or motion, and said petition or motion having been duly submitted to this Court for consideration and decision; and the Court having duly considered the same and being fully advised in the premises, this Court now hereby orders, adjudges and decrees that its said decree herein so made and entered herein on the 16th day of December 1938, except the title thereto and the first paragraph thereof, which shall remain unchanged and unaffected by this order resettling said decree, be and the same hereby is resettled to read as follows, to wit:

First: Now therefore, it is hereby ordered, adjudged, and decreed, That said order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of February 19, 1938, be, and the same hereby is, affirmed.

Second: And it is hereby further ordered, adjudged, and decreed, That the petitioners, Fioret Sales Co., Inc., a corporation, its officers, representatives, agents, and employees, and Murray W. Morin and

Irving Unterman, individually and as officers of petitioner Fioret Sales Co., Inc., in connection with the offering for sale, sale, and distribution of perfumes in interstate commerce or in the District of Columbia, cease and desist, either directly or through implication, from representing, through the use of such words as "Les Parfums des Jardine de Fioret" or through the use of any foreign words or phrases, or through any other means or device, or in any manner, that perfumes manufactured or compounded in the United States are made or compounded in France or in any other foreign country, or are imported.

Third: *And it is hereby further ordered, adjudged, and decreed,* That, so long as petitioners shall obey the terms of the second paragraph hereof, they shall be, and hereby are, permitted and authorized to imprint upon or affix to packages, cartons, bottles, or other containers of their said perfumes the following words, to wit: "The concentrates of which these perfumes are made were produced in France and, as such, were imported into the United States, where they were combined or diluted with domestic alcohol, and the resulting perfume was bottled in U. S. A."

Fourth: *And it is hereby further ordered, adjudged, and decreed,* That the petitioners, Fioret Sales Co., Inc., and Murray W. Morin and Irving Unterman, individually and as officers of Fioret Sales Co., Inc., shall have 90 days after the service upon them of a copy of this decree to comply with said decree, and shall within said 90 days file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which they have complied with this decree.

NATIONAL SILVER COMPANY v. FEDERAL TRADE
COMMISSION¹

(Circuit Court of Appeals, Second Circuit. May 1, 1939)

Order by Circuit Judge Harrie B. Chase, dismissing petitions for review of Commission's modified order in Docket 2111, 27 F. T. C. 538, directing respondent, its officers, etc., in the offer, sale and distribution of knives and flatware cutlery, to cease and desist from falsely representing its products as "Stainless" and "Stainproof," etc., as in said order set forth.

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

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. M. Marshall Morgan* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for respondent.

¹ Not reported in Federal Reporter.

ORDER

This matter having come on to be heard, and upon the motion of Brill, Bergenfled & Brill, attorneys for the petitioner National Silver Co., a corporation, and upon the approval of the Federal Trade Commission as appears from the letter of said Federal Trade Commission dated April 20, 1939, attached hereto,¹ it is hereby

Ordered, adjudged, and decreed, That the petitions for review heretofore filed on May 17, 1938, and on September 24, 1938, be and the same hereby are withdrawn and the said proceeding be and the same hereby is dismissed.

BAYUK CIGARS INCORPORATED *v.* FEDERAL TRADE COMMISSION²

No. 3788

(Circuit Court of Appeals, Third Circuit. May 8, 1939)

Decree by Circuit Judge John Biggs, Jr., modifying, as below set forth, prior decree modifying and affirming Commission's cease and desist order in Docket 1391, 12 F. T. C. 19, with respect to use of certain labels, designations, etc., for domestically made cigars containing either no Havana tobacco or such tobacco only in a minor proportion.³

Mr. Jerome J. Rothschild of Fox, Rothschild, O'Brien & Frankel, for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. James W. Nichol*, special attorney, all of Washington, D. C., for respondent.

DECREE

And now, The 8th day of May, 1939, after hearing of the motion by the Federal Trade Commission for a modification of the decree entered in the above cause on November 21, 1930, and the answer filed thereto by Bayuk Cigars Incorporated,

It is now ordered, adjudged, and decreed, By this Court that Bayuk Cigars Incorporated, its officers, directors, agents, representatives, servants, and employees, on and after 2 years from the date hereof shall cease and desist in connection with the shipment or distribution of cigars from any of its factories in Interstate Commerce from using the word "Havana" or other word or words of similar import, alone or in conjunction with the word "Ribbon" or

¹ Not published.

² Not reported in Federal Reporter.

³ See, for prior decrees of court, 14 F. T. C. 708.

with any other word or words, as or in a brand or trade name for, or as descriptive of, cigars unless the cigars to which such brand or trade name has been applied contain a sufficient quantity of tobacco grown on the Island of Cuba to warrant the use made of such trade mark, trade name, or description.

It is further ordered, adjudged, and decreed, That pending the expiration of the said period of 2 years, the decree of this court entered November 21, 1930, shall remain in full force and effect save that Bayuk Cigars Incorporated upon the adoption of some new brand name containing the word "Ribbon" but eliminating the word "Havana" may during said period of 2 years but not thereafter accompany such new brand name with the words "Formerly Havana Ribbon" without the addition of the qualifying words prescribed in the aforesaid decree of November 21, 1930; provided however that such accompanying words be in letters substantially smaller than the new brand name.

It is further ordered, adjudged, and decreed, That the original decree of June 14, 1930, entered in the above cause shall remain in full force and effect with respect to the brand and trade name Mapacuba.

Without withdrawing, limiting, or otherwise disturbing the jurisdiction of the Federal Trade Commission over this case, the court will retain jurisdiction of the case to act within its powers in any exigencies that may arise by reason of the premises.

BUNTE BROTHERS, INC. v. FEDERAL TRADE
COMMISSION ¹

No. 6651

(Circuit Court of Appeals, Seventh Circuit. May 17, 1939)

CEASE AND DESIST ORDERS—LOTTERY MERCHANDISING—DEFENSES OR PLEAS—
THEREFORE AGREEMENT OF RESPONDENT TO DISCONTINUE—AS PRECLUDING.

A candy manufacturer's agreement to discontinue selling of candy in "break and take" assortments did not preclude Federal Trade Commission from issuing order requiring manufacturer to desist from that practice (Federal Trade Commission Act, sec. 5, 15, U. S. C. A. sec. 45).

CEASE AND DESIST ORDERS—LOTTERY MERCHANDISING—PUNCHBOARD SELLING—AS
DIVERSION AND NON-COMPETITIVE WITH LEGITIMATE PRODUCT.

A candy manufacturer using punchboards in sale of candy contrary to public policy could not avoid cease and desist order of Federal Trade Commission on ground that method of sale by which winners on punchboards were alone entitled to candy constituted a mere diversion and did not constitute competition with sale of legitimate candy.

¹ Reported in 104 F. (2d) 906. The case before the Commission is reported in 26 F. T. C. 786.

CEASE AND DESIST ORDERS—LOTTERY MERCHANDISING—PUNCHBOARD SELLING—
WHERE IN COMPETITION WITH CANDY MANUFACTURERS NOT SO SELLING PROD-
UCT, ABSENT UNFAIR COMPETITION IN RETAIL TRADE IN USE OF BOARDS.

A candy manufacturer which sold candy to jobbers, wholesalers and dealers in assortments including a punchboard as a means to be used in final disposition of candy was guilty of unfair competition with candy manufacturers selling for cash, and was properly ordered to cease and desist from that practice, regardless of whether there was any unfair competition in actual UCT, ABSENT UNFAIR COMPETITION IN RETAIL TRADE IN USE OF BOARDS.

(Syllabus, with substituted captions, is taken from 104 F. (2d) 996)

On petition for review of order of Commission, order affirmed.

Mr. Samuel G. Clawson, of Chicago, Ill. (Messrs. Samuel G. Clawson and Le Roy R. Krein, both of Chicago, Ill., of counsel), for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. P. C. Kolinski* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for respondent.

Before SPARKS, MAJOR, and TREANOR, Circuit Judges.

MAJOR, *Circuit Judge*:

This is a petition to review an order of the Federal Trade Commission entered February 19, 1938 under section 5 of the Federal Trade Commission Act, 15 U. S. C. 45, in reference to unfair methods of competition in commerce, which order involves, among other things, the interstate shipment of candy described as "break and take" and "punchboard assortments." The order is based on findings of the Commission made after hearings held on an amended complaint issued January 7, 1936. The original complaint against petitioner was issued May 1, 1930, involving only the "break and take" assortments. As to this, petitioner did not contest and an order was entered by the Commission April 3, 1934. This order was set aside January 17, 1936 when the amended complaint was filed, covering both candy assortments.

The Commission found, among other things, that petitioner is an Illinois Corporation, with its principal place of business in Chicago; that it has been for several years engaged in the manufacture of candies and in the sale and distribution thereof to wholesalers, jobbers and retail dealers located in all States of the United States, and makes its shipments interstate. It was found that petitioner, prior to April 1, 1934, shipped in interstate commerce, assortments of candy known in the candy trade as "break and take" assortments; that such assortments consist of a number of pieces of candy retailing for 1 cent each and with differently colored centers and a few larger bars; that the smaller pieces of candy purchased for 1 cent

each are broken open by the purchaser to determine the color of the center; that some pieces with certain colored centers and the last piece in the assortment entitle the purchasers thereof to a larger bar of candy free of charge; that the assortments comprise both the smaller pieces of candy and the prizes and are sold by the petitioner as a unit to the purchasers of such assortments. The Commission found that on or about April 1, 1934, the petitioner discontinued the sale and distribution of assortments similar to those just described to purchasers located in States other than the State of Illinois.

The Commission also found, among other things, that the petitioner ships in interstate commerce, assortments of candy consisting of a number of boxes of candy accompanied by a punchboard; that a punchboard is a cardboard device containing pieces of paper with printed numbers; that the numbers on each board are effectively concealed from the purchasers until a punch or selection has been made and a particular punch selected from the board; that the punches or chances sell for five cents each; that purchasers of chances who select winning numbers are given one of the boxes of candy without additional charge; that the purchasers of chances who do not select winning numbers receive nothing but the privilege of punching a number from the board; that some of the boards distribute boxes of candy and other articles of merchandise as prizes to purchasers selecting or punching particular numbers. The packages of candy in the assortments consist of 1 or 2 pound boxes which range in retail price from 60 cents to \$5 per box; these assortments consisting of boxes of candy and a punchboard are sometimes referred to as "deals."

The above related facts as to both the "break and take" and "punchboard assortments" are not in dispute. In fact, they are conceded by petitioners. It is also admitted that each candy assortment involves the use of chance and that such use is contrary to public policy.

It is also agreed by the petitioner that the use of chance prior to April 1, 1934 in the "break and take" assortments constituted an unfair method of competition under the act in question. It is agreed that the sale of penny candies by the aid of the element of chance in such assortments necessarily injures its competitors and that proof of such is unnecessary. The only question raised with reference to the Commission's order insofar as it pertains to this assortment is that inasmuch as petitioner had made a report of compliance to the Commission, that it would cease and desist from selling such assortments in interstate commerce and that a finding to such effect was made by the Commission, that the Commission's order in respect thereto is unauthorized or justified. This contention can not be sustained. The act in question provides:

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce * * * it shall issue and serve * * * a complaint, etc. * * *.

It seems obvious that the words "has been" in the language just quoted authorize the Commission to issue its cease and desist order notwithstanding the unfair method complained of has been discontinued. This construction of the statute is sustained by the great weight of authority.

In *Federal Trade Commission v. Goodyear Company*, 304 U. S. 257, 260, the court said:

Discontinuance of the practice which the Commission found to constitute a violation of the Act did not render the controversy moot.

This court, in *Federal Trade Commission v. A. McLean and Son*, 84 F. (2d) [998] 910, 913, with reference to this same question, said:

Discontinuance or abandonment is no defense to the order, for, if true, it would be no guaranty that the challenged acts will not be renewed. *Federal Trade Commission v. Wallace* (C. C. A.) 75 F. (2d) 733. The benefit to respondents of an abandonment may be fully protected by their report to the Commissioner as required by the Commission's order.

In *Federal Trade Commission v. Wallace*, 75 F. (2d) 733, 738, the court said:

Respondent says that he ceased his "admitted activities" at once when this cause was filed. Abandonment will not be presumed and, even though pleaded and presently effective, is no bar to the entry of an enforcement order.

Petitioner's attack upon the Commission's order as it affects the "punchboard assortments" is somewhat difficult for us to comprehend. After conceding that such assortments involve the use of chance and is violative of public policy, it argues that the sale of such assortments is not an unfair method of competition under the act. We find this statement in petitioner's reply brief:

If this court determines that the use of chance in connection with the distribution of merchandise is an unfair method of competition *per se* under all circumstances, regardless of the manner in which it is used or its effect, then the court must decide that the Commission had jurisdiction.

Apparently, the distinction which is sought to be made between the instant case and the many adjudicated cases wherein the courts have considered and sustained the Commission's order under the same or similar circumstances, is the use made by the retailer of the condemned device. It is this use which is finally made upon which petitioner premises its argument that there is no competition with the sale of legitimate candy, and that the only competition afforded is with other punchboard operators or gambling devices. This fanciful theory is thus illustrated by petitioner:

A customer with \$1 in his pocket intending to buy a box of candy goes into a drug store and passes a counter with candy punchboards. He hesitates, attempting to decide between his desire to buy the candy and his desire to gamble. He finally prefers the punchboard and plays his entire dollar away on it. He either gets nothing for his dollar or wins a box of candy. In either case he does not buy the candy he came in to buy. There is diversion here from the person who manufactured the box of candy to the manufacturer of the punchboard assortment. Had the manufacturer of candy also manufactured punchboard assortments he could have had an even chance at this customer's dollar; by not doing so he has lost the business that might be obtained had he manufactured and sold punchboards.

Then it is argued:

There has been diversion here but there is no competition. The want or desire to gamble on the punchboard is not the same desire or want as the desire or want to eat candy. One set of competitors compete with each other to supply the want or the desire to gamble; a completely different set of competitors compete with each other to supply the want or desire for candy.

We are unable to subscribe to such theory. To us it is devoid of all logic. The customer who spends his dollar on a candy punchboard does so with the expectation of acquiring a box of candy. If he succeeds he has procured a box of candy which otherwise he would have purchased as a cash sale. If, however, he spends his dollar on the punchboard and wins nothing, his money is gone and there will be no cash sale of a box of candy. In either event, the dealer who offers his candy for cash has been deprived of a sale and his business reduced and interfered with to that extent. We think it is a fallacy to say there has been a diversion but no competition. It is difficult for us to understand how a competitor could be injured except by diverting his business. The one who is responsible for that diversion is a competitor and if the diversion is occasioned by a gambling apparatus which is contrary to public policy, *per se*, we think, unquestionably, such a method constitutes unfair trade practice as defined by the act.

We are familiar with no case where this precise question has been determined, yet there are cases where competition apparently is recognized to result from diversion. In *Federal Trade Commission v. Winsted Company*, 258 U. S. 483, 493, it is said:

For when misbranded goods attract customers by means of the fraud which they perpetrate, trade is diverted from the producer of truthfully marked goods.

In *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, where the order of the Commission was reversed for failure to show competition, the court, in discussing the matter, on page 653 said:

It is impossible to say whether, as a result of respondent's advertisements, any business was diverted, or was likely to be diverted, from others engaged in like trade, * * *.

In *Federal Trade Commission v. Keppel & Bro.*, 291 U. S. 304, 308, which we think is decisive of the case here, the court said:

Upon the record it is not open to question that the practice complained of is a method of competition in interstate commerce and that it is successful in diverting trade from competitors who do not employ it.

And again on page 313:

A method of competition which casts upon one's competitors the burden of the loss of business unless they will descend to a practice which they are under a powerful moral compulsion not to adopt, even though it is not criminal, was thought to involve the kind of unfairness at which the statute was aimed.

If, however, there were any merit in petitioner's contention concerning the form which its business takes in the retail trade, it would constitute no defense to the order complained of for the reason that the order only runs against interstate sales of "chance" candy to dealers. The means employed by the dealer in disposing of the candy is of little consequence. Petitioner sells to jobbers, wholesalers, and dealers, candy in an assortment which includes a punchboard as a means to be used in its final disposition. In such business he is in direct competition with the candy manufacturer who is engaged in the sale of his product for cash. The latter, under such circumstances, is not able to successfully compete with such a method. As a result, he must either suffer a loss of business or engage in a method which, admittedly, is a species of gambling and contrary to public policy.

The court, in *Federal Trade Commission v. Winsted Company*, *supra*, page 494, said:

The honest manufacturer's business may suffer, not merely through a competitor's deceiving his direct customer, the retailer, but also through the competitor's putting into the hands of the retailer an unlawful instrument, which enables the retailer to increase his own sales of the dishonest goods, thereby lessening the market for the honest product.

There the court was dealing with the use of false and deceptive brands and labels attached to merchandise. Much stronger language, we think, would be appropriate in the instant case where the sales of petitioner's product are enhanced by the use of a gambling device sold in connection therewith and placed in the hands of the retailer for the purpose of increasing its sales.

Owing to the narrow question which petitioners here raise, it would serve no good purpose for us to cite or review the many authorities where the act in question has been construed and discussed. In the recent case of *Ardelle, Inc. v. Federal Trade Commission*, 101 F. (2d) 718, the court sustained the order of the Commission under facts almost identical with those here presented.

A study of the authorities and the record convinces us that the order of the Commission was justified, both by the law and the facts.

The same is affirmed.

MEMORANDA OF COURT ACTION ON MISCELLANEOUS INTERLOCUTORY MOTIONS, ETC., IN CERTAIN CASES TO WHICH THE FEDERAL TRADE COMMISSION WAS A PARTY ¹

ENFORCEMENT APPLICATIONS—COMPLIANCE—ISSUE ON RULE TO SHOW CAUSE, ETC. In *F. T. C. v. Non-Plate Engraving Co., Inc.*, decided May 4, 1931, 49 F. (2d) 766 (C. C. A. 2), 15 F. T. C. 597 (and, before Commission, 13 F. T. C. 34), court, on March 9, 1931, following issuance of show cause rule on March 2, denied motion of company for dismissal of Commission's application on ground company had fully complied with order, and, on May 4 following, handed down its per curiam decision favorable to the Commission.

RECORD—TRIAL EXAMINER'S REPORT—WHETHER PART OF. In *Arnold Stone Co., Inc. v. F. T. C.*, decided May 25, 1931, 49 F. (2d) 1017 (C. C. A. 5), 15 F. T. C. 606 (and, before Commission, 14 F. T. C. 291), court denied motion for order directing Commission to file said report as part of record, opposed by Commission in line with its accepted practice of considering such report as confidential document for office use only.

RECORD—TRIAL EXAMINER'S REPORT—WHETHER PART OF. In *Flynn & Emrich Co. v. F. T. C.*, decided October 12, 1931, 52 F. (2d) 836 (C. C. A. 4), 15 F. T. C. 625 (and, before Commission, 14 F. T. C. 310), following petitioner's request that Commission certify trial examiner's report as part of record on appeal, Commission's refusal to do so, and petitioner's action in printing same as an addendum to record, the court, without deciding question or giving report in question any consideration, intimated that the report was proper part of record.

¹ The matter in question covers the calendar years 1930 to 1938, inclusive. Such matter is based on a similarly entitled memorandum contained at p. 485 et seq. of the Commission publication "Statutes and Decisions, Federal Trade Commission, 1930-1938." Material of a similar character covering the period from 1914 to 1929 may be found set forth in 20 F. T. C. at p. 739 et seq., and in Commission publication entitled "Statutes and Decisions, Federal Trade Commission, 1914-1929," at p. 715 et seq.

For decision involving matter of this same general character and during subsequent period covered by instant volume, namely, January 1, 1939, to May 31, 1939, see *California Lumbermen's Council et al. v. F. T. C.*, 103 F. (2d) 304, published *supra* at p. 1954, in which court denied motions by petitioner, following its petition to review cease and desist order, to strike transcript of record, and to require respondent to file proper transcript or vacate cease and desist order.

FINDINGS—SUPPLEMENTAL—ADDITIONAL EVIDENCE, AND CERTIFICATION, AFTER REVIEW PETITION. In *Consolidated Book Publishers, Inc. v. F. T. C.*, decided November 25, 1931, 53 F. (2d) 942 (C. C. A. 7), 15 F. T. C. 637 (and, before Commission, 14 F. T. C. 13 and 15 F. T. C. 292), court, on July 8, 1931, at instance of Commission and by reason of decision of Supreme Court in *Raladam* case (283 U. S. 643, 51 S. Ct. 587), granted leave to adduce additional evidence, following the taking of which, and the making and certifying to the court of supplemental findings of fact based thereon, and concerning general effect of methods employed by respondent in business with competitors, court rendered its decision on the merits, in favor of Commission.

PETITIONS FOR REVIEW—WHERE ARGUMENTATIVE, EXTRANEOUS TO RECORD, ETC. In *Royal Milling Co. et al. v. F. T. C.*, in which, on May 4, 1932, 58 F. (2d) 581 (C. C. A. 6), 16 F. T. C. 679 (and, before Commission, 15 F. T. C. 38), decision adverse to Commission was reversed by Supreme Court on February 6, 1933, 288 U. S. 212, 53 S. Ct. 335, 17 F. T. C. 664, motion by Commission to strike portions of petition for review as argumentative, extraneous to record, etc., opposed by petitioner, with filing of brief, was granted on November 6, 1931, and case thereafter decided, as above set forth.

RECORD—TRIAL EXAMINER'S REPORT—WHETHER PART OF. In *Raladam Co. v. F. T. C.*, decided against the Commission on June 28, 1930, 42 F. (2d) 430 (C. C. A. 6), 14 F. T. C. 683 (and, before Commission, 12 F. T. C. 363), and affirmed by Supreme Court on May 25, 1931, 283 U. S. 643, 51 S. Ct. 587, 15 F. T. C. 598, lower court, in its opinion (p. 432), gave consideration to question whether trial examiner's report, as insisted by petitioner, was properly a part of the record for review, and, lacking Circuit Court of Appeals rules on the subject, held that the exclusion of such report was supported by the better reason, and denied motion to include same, but directed that if record was prepared for review by Supreme Court, motion to bring in examiner's findings be included.

RECORD—TRIAL EXAMINER'S REPORT—WHETHER PART OF. In *Algoma Lumber Co. et al. v. F. T. C.*, decided March 7, 1932, 56 F. (2d) 774 (C. C. A. 9), 16 F. T. C. 657 (and, before Commission, 15 F. T. C. 139, 167, 168), and in which court's subsequent decision against Commission on the merits in 64 F. (2d) 618, 17 F. T. C. 669, was reversed by Supreme Court in 291 U. S. 67, 54 S. Ct. 315, 18 F. T. C. 669, Court of Appeals, on March 7, 1932, granted Commission's motion to amend ex parte order by striking out requirement that copy of trial examiner's report be included in the record to be certified by the Commission.

RECORD—PRINTING OF—COST—RESTRICTION OF ISSUE AND DIMINUTION OF, IN INTEREST SAVING EXCESSIVE. In *F. T. C. v. Paramount Famous-Lasky Corp. et al.*, decided against the Commission on April 4, 1932, 57 F. (2d) 152 (C. C. A. 2), 16 F. T. C. 660 (and, before Commission, 11 F. T. C. 187), in which the record, one of the largest ever before the Commission, comprised more than 17,000 pages of testimony, with extensive exhibits consisting of more than 15,000 additional pages, and cost of which, under rules of court, fell upon Commission, court, on March 9, 1931, granted motions of Commission: (1) For leave to amend its application for enforcement so as to limit the issue to paragraph 2, relating to "block booking"; and (2) for an order directing a revision and condensation of the transcript, the establishment of such revision and condensation as the record of evidence, and that the Commission cause to be printed only such record.

RECORD—TRIAL EXAMINER'S REPORT—WHETHER PART OF. In *The Arrow-Hart & Hegeman Electric Co. v. F. T. C.*, decided January 30, 1933, 63 F. (2d) 108 (C. C. A. 2), 17 F. T. C. 658, (and, before Commission, 16 F. T. C. 393), and decided against the Commission on the merits in 65 F. (2d) 336, 17 F. T. C. 683 (affirmed in 291 U. S. 587, 54 S. Ct. 532, 18 F. T. C. 691), court, in per curiam opinion, holding that court's own rules did not require inclusion of trial examiner's report as part of record, that such reports were for assistance of the Commission, to be kept in its files for reference, and not binding upon one charged with violation of the act, and that results or conclusions of the Commission were to be found in the findings adopted by it, granted motion of Commission to strike out such part of record, and denied that of petitioner for order directing Commission to amplify it in said respect.

RECORD—PRINTING OF—COST—DIMINUTION OF, IN INTEREST SAVING EXCESSIVE. In *F. T. C. v. Inecto, Inc.*, decided on April 2, 1934, 70 F. (2d) 370 (C. C. A. 2), 18 F. T. C. 705 (and, before Commission, 16 F. T. C. 198—and in which, following settlement by negotiation of matter at issue, as below indicated, consent decree, not reported in Federal Reporter (20 F. T. C. 722), was entered February 18, 1935) the court, following its previous order for the elimination of nonessential portions of the record before printing—made at the instance of the Commission and opposed by respondent as beyond the court's power—denied Commission's motion for leave to present case without printing entire record; holding, in a per curiam opinion, that its rule, on application for enforcement of an order, required that the transcript of an entire record be printed, and that, lacking consent of

the parties to printing less, the court could not do otherwise than require all the testimony to be printed as constituting court's record for review.

ENFORCEMENT APPLICATIONS—ANSWERS—WHERE IRRELEVANT. In *F. T. C. v. Artloom Corp.*, decided on January 30, 1934, 69 F. (2d) 36 (C. C. A. 3), 18 F. T. C. 680 (and, before Commission, 14 F. T. C. 383), in which Commission on April 11, 1933 moved to strike portions of answer as not relevant to issues and court postponed argument on such motion until final argument on the merits, court affirmed Commission's order without further reference to motion.

RECORD—PRINTING OF—EXHIBITS AND ERRATA IN TRANSCRIPT. In *E. Griffith Hughes, Inc., v. F. T. C.*, decided in favor of Commission on June 3, 1935, 77 F. (2d) 886 (C. C. A. 2), 20 F. T. C. 734 (and, before Commission, 18 F. T. C. 1), court, on March 12, 1934, granted petitioner's motion to dispense with printing of the exhibits and denied its motion for correction of certain errata in transcript of testimony on ground that latter was matter to be taken care of before Commission.

RECORD—TRIAL EXAMINER'S REPORT—WHETHER PART OF. In *F. T. C. v. Hires Turner Glass Co.*, decided on July 11, 1935, 81 F. (2d) 362 (C. C. A. 3), 21 F. T. C. 1207 (and, before Commission, 18 F. T. C. 69), in which court modified order of Commission, court also denied motion requesting it to order Commission to certify to the court report of trial examiner, holding that, in absence of proof that Commission's findings of fact, conclusive if supported by any evidence, were not so supported, there was no substantial ground for granting said motion.

RECORD—PRINTING OF—EXHIBITS—COSTS—SAVINGS. In *F. T. C. v. E. J. Wallace*, decided on February 9, 1935, 75 F. (2d) 733 (C. C. A. 8), 20 F. T. C. 713 (and, before Commission, 10 F. T. C. 135), in which court, after modification to make Commission's order more effective, unanimously affirmed same and entered decree of enforcement, court on April 10, 1934, on motion of Commission, entered order making it unnecessary to print or otherwise reproduce exhibits in case for use upon hearing before the court of Commission's application for enforcement, with resulting saving of some \$10,000 to the Commission, and on April 25, 1934, on motion of Commission, entered order granting leave to have transcript printed at Government Printing Office in Washington instead of at St. Louis, as provided for in previous order.

PROCEEDINGS BEFORE COMMISSION—EVIDENCE AND TESTIMONY—SUBPOENAS—WHERE REQUIRING APPEARANCE AND TESTIMONY OF COMMISSION'S INVESTIGATING ATTORNEY-EXAMINER, NOT THERETOFORE REQUESTED OF NOR DIRECTED BY COMMISSION. In the matter of *Edison-Bell Co., Inc., et al.*, Docket 2223 (in which were involved alleged misrepresentations in connection with sale and offer of radios and radio sets in interstate commerce, and in which cease and desist order, reported in 23 F. T. C. 69, issued as of July 17, 1936), subpoena, directing Commission's investigating attorney-examiner in the case to testify, issued at instance of counsel for respondents by the District Court for the Southern District of New York, no application having theretofore been made to the Commission to direct him to testify, as usual in such cases, was vacated on December 23, 1935, following objection of Commission counsel at adjournment of hearing and appearance of said counsel before District Court, where he contended that court did not have power to issue such subpoena; counsel (1) pointing out that under section 9 of Federal Trade Commission Act order of the court compelling witnesses to appear before Commission is to issue only in event of contumacy or refusal to obey subpoena *theretofore issued by Commission*, and calling court's attention to provisions of the act relating to making public by any employee of Commission of any information obtained by it.

PROCEEDINGS BEFORE COMMISSION—STAY ORDER UNDER 77-B OF NATIONAL BANKRUPTCY ACT—APPLICABILITY TO COMMISSION PROCEEDING. In *Englander Spring Bed Co., Inc.*, Docket 2602 (in which were involved use of alleged fictitious prices and in which cease and desist order, reported in 26 F. T. C. 68, issued on December 14, 1937), following (1) application, after case was set for trial and respondent notified, of respondent to District Court for Southern District of New York for capital reorganization under said Bankruptcy Act and the obtaining of a stay of all proceedings then pending against it; (2) disregard, in reliance on said stay, by respondent's principal officers of Commission subpoenas requiring their appearance at scheduled hearing; (3) calling of the case for hearing at time set by Commission attorney, who questioned applicability of said stay order to Commission proceedings; (4) obtaining of an adjournment by respondent, ostensibly to secure construction from court of its order which would specifically include Commission proceedings; (5) application by respondent for injunction to restrain Commission and its attorney from further action in premises; and (6) filing of a cross-bill by the Commission praying that the stay order be decreed to

exempt from its terms any proceeding on behalf of the Commission, that application for injunction be disallowed, and that officers therefore subpoenaed be directed summarily to appear and testify; prayers of the cross-bill were allowed, and an order entered in all respects in conformity thereto.

PROCEEDINGS BEFORE COMMISSION—EVIDENCE AND TESTIMONY—SUBPENAS DUCES TECUM—WHERE REFUSAL ON GROUND ILL HEALTH. In *Viscose Co., et al.*, Docket 2161 (in which was involved alleged conspiracy in restraint of trade in connection with sale and offer of rayon yarn, and in which cease and desist order, reported in 25 F. T. C. 421, issued on July 3, 1937), after several postponements granted at respondents' request and refusal of certain witnesses, on ground of ill health, to respond to subpoenas duces tecum issued by the Commission, there ensued following developments, to wit: (1) Securing of orders by the Commission from District Court for the Southern District of New York compelling such witnesses to appear before Commission's trial examiner on February 5, 1936, to testify, etc.; (2) the obtaining of a stay on February 4, 1936, by said witnesses, until February 14, to enable them to undergo medical examination; (3) modification of such stay on February 7, on motion of Commission counsel, and court order that such witnesses submit themselves to committee of doctors for examination between February 14 and 21; (4) filing of doctors' report on February 24, pronouncing witnesses able to testify; and (5) granting of Commission motion on March 3, and the compelling by the court of testimony by such witnesses on March 18, 1936, before trial examiner.

PROCEEDINGS BEFORE COMMISSION—MOTION TO RESTRAIN ON GROUND, INTER ALIA, INTRASTATE COMMERCE PURELY INVOLVED. In *National Optical Stores Co., et al.*, Docket 3143 (in which complaint, issued on June 4, 1937 and involving various alleged misrepresentations with reference to optical goods, is presently pending), motion on November 30, 1937, by counsel for respondents for temporary injunction, filed with District Court for the Northern District of Illinois, on grounds that their business was purely intrastate and that Commission, therefore, was without jurisdiction to hold hearings in pursuance of charges set forth in its complaint, was followed by Commission with motion to dismiss bill, which was sustained and injunction proceedings dismissed on December 3, 1937.

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| Saving or economizing----- | 869, 1084, 1692 |
| Quality----- | 986, 1019, 1033, 1084 |
| Quantity----- | 1652 |
| Safety----- | 869, 1692 |
| Sales promotion redemption plans and certificates----- | 857, 877, 1311, 1607, 1620 |
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| Place----- | 1019, 1033, 1084, 1195, 1465 |
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| National Guard, falsely claiming connection or indorsement or approval. <i>See</i> Advertising falsely, etc.; Assuming or using, etc.; Claiming or using, etc.; Misrepresenting business status, etc. | |
| Nature of product, misrepresenting as to. <i>See</i> Advertising falsely, etc.; Assuming or using, etc.; Misbranding or mislabeling; Misrepresenting product, etc.; Using misleading, etc. | |
| Need of product, misrepresenting as to. <i>See</i> Misrepresenting product, etc. | |
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| As to— | |
| Nonstandard character of product----- | 986, 1583 |
| Safety of, or dangers inherent in, product----- | 38 |
| New, representing old product falsely as. <i>See</i> Advertising falsely, etc.; Misbranding or mislabeling; Misrepresenting product, etc. | |
| Nondisclosure, using or benefiting by. <i>See</i> Advertising falsely, etc.; Neglecting unfairly, etc. | |
| Nonstandard character of product, neglecting to make disclosure as to. <i>See</i> Neglecting, etc. | |
| Nutritive qualities, misrepresenting as to. <i>See</i> Advertising falsely, etc. | |

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Offering deceptive inducements to purchase. (*See also*, Misrepresenting prices, and, in general, Unfair methods, etc.):

Through—

Representing or offering, falsely or misleadingly—

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| Price of which included in charge or service otherwise demanded..... | 158, 322, 363, 374, 386, 475, 756, 785, 1019, 1038, 1074, 1204, 1321, 1583, 1607, 1620 |
| Guarantees, refunds, replacements, or returns..... | 72, 322, 795, 857, 1084, 1341, 1400, 1607, 1620 |
| Jobs and employment..... | 756, 1272 |
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| Puzzle prize solutions or answers..... | 1311 |
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| Instalment or deferred payments..... | 977 |
| Insurance coverage..... | 795 |
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| Undertakings, in general..... | 64, 785, 977 |

Offer, misrepresenting product as to conformance to. *See* Advertising falsely, etc.; Offering deceptive, etc.

Off-price promotion sales, limiting. *See* Combining or conspiring.

Old or obsolete product, representing as new or up-to-date. *See* Advertising falsely, etc.; Misbranding or mislabeling; Misrepresenting product, etc.

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- Operation, misrepresenting as to. *See* Advertising falsely, etc.
- Opportunities, misrepresenting as to. *See* Advertising falsely, etc.; Securing agents, etc.
- Order, misrepresenting product as to conformance to. *See* Advertising falsely, etc.; Offering deceptive, etc.
- Origin of product, misrepresenting as to. *See* Advertising falsely, etc.; Assuming or using, etc.; Misbranding or mislabeling; Misrepresenting product, etc.
- "Overriding commissions," discriminating through. *See* Discriminating in price.
- Patent rights, misrepresenting as to. *See* Advertising falsely, etc.
- Payments and charges, misrepresenting as to. *See* Advertising falsely, etc.; Offering deceptive, etc.
- Permanence of product, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting product, etc.
- Personnel or staff, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
- Place of origin of product, misrepresenting as to. *See* Advertising falsely, etc.; Misbranding or mislabeling.
- Practices, unfair or deceptive, condemned in this volume. *See* Unfair methods, etc.
- Preferential treatment:
- Threatening discontinuance of, to cut off competitor's access to customers or market. *See* Cutting off competitors' access, etc.; Unfair, in general. *See* Discriminating, etc.
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- Preventive qualities, misrepresenting as to. *See* Advertising falsely, etc.
- Prices, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting prices; Offering deceptive, etc.
- Private person, dealer or business being association, misrepresenting as to. *See* Advertising falsely, etc.; Assuming or using, etc.; Misrepresenting business status, etc.
- Profits of product, misrepresenting as to. *See* Advertising falsely, etc.; Offering deceptive, etc.; Securing agents, etc.
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- Purchasing methods or advantages, misrepresenting as to. *See* Advertising falsely, etc.; Misrepresenting business status, etc.
- Puzzle prize contest schemes, using unfairly. *See* Advertising falsely, etc.; Using contest schemes, etc.
- Qualities of product, misrepresenting as to. *See* Advertising falsely, etc.; Misbranding or mislabeling; Misrepresenting product, etc.; Using misleading, etc.
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- Relevant or scientific facts, misrepresenting as to. *See* Advertising falsely, etc.

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| Replacements, misrepresenting as to. <i>See</i> Offering deceptive, etc. | |
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| Claiming or using indorsements or testimonials falsely or misleadingly. | |
| Coercing and intimidating. | |
| Combining or conspiring. | |
| Cutting off competitors' access to customers or market. | |
| Cutting off competitors' sources of supply. | |
| Dealing on exclusive and monopolistic basis. | |
| Dealing on exclusive and tying basis. | |
| Delaying and withholding corrections and adjustments improperly. | |
| Discriminating in price. | |
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| Enforcing and exacting, wrongfully, customer dealing. | |

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| Simulating. | |
| Using contest schemes unfairly in merchandising. | |
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War Department, falsely claiming connection or indorsement or approval. *See* Advertising falsely, etc.; Assuming or using, etc.; Claiming or using, etc.; Misrepresenting business status, etc.

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¹ Page references to stipulations of the radio and periodical division are indicated by italicized page references. Such stipulations are also distinguished by figure "0" preceding the serial number of the stipulation, e. g., "01," "02," etc.

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| Association of Western Union Employees..... | 1794 (2432) |
| “Authorities”..... | 1833 (02322), 1834 |
| Automotive Test Laboratories of America..... | 1854 (02344) |
| Doctors..... | 1834 |
| Federal Trade Commission..... | 1809 |
| Independent, qualified agency, etc., or “certified”..... | 1759 (2385), 1762 (2391) |
| Leading industrialists..... | 1772 |
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| Navy----- | 1787 |
| Nutritional chemists, New Century Foods, Inc., etc----- | 1799 |
| Personages----- | 1785 |
| Scientists----- | 1856 |
| State----- | 1786 (2419) |
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| Insurance----- | 1829 |
| Jobs and employment----- | 1739 |
| (2354), 1741, 1743, 1755 (2379), 1761 (2389), 1762 (2391), 1767 | |
| (2398), 1769, 1772, 1794 (2432), 1826 (02309), 1857, 1883. | |
| Law compliance— | |
| Pure Food Laws----- | 1786 (2419) |
| Nature of— | |
| Manufacture or preparation of product----- | 1753 (2374), |
| 1761 (2387), 1777 (2408), 1784 (2416), 1789 (2424), 1799, 1801 | |
| (2440, 2441), 1803 (2444), 1815 (2466), 1816, 1823 (02307), 1830 | |
| (02317), 1834, 1839 (02324), 1846, 1849, 1852 (02342), 1860, 1866 | |
| (02362), 1873 | |
| Product or service----- | 1753 (2374, 2375), 1761 (2387), |
| 1767 (2396, 2398), 1769, 1772, 1780, 1785, 1786 (2420), 1789 | |
| (2424), 1803 (2444), 1807 (2452), 1821 (2475), 1828 (02312), | |
| 1833 (02322), 1834, 1841 (02328, 02329), 1850, 1852 (02341), | |
| 1855 (02346), 1857, 1858 (02350), 1860, 1862, 1865 (02360, | |
| 02361), 1866 (02364), 1868 (02366), 1870 (02368, 02369), 1873, | |
| 1874, 1877 | |
| Navy certificate of approval----- | 1787 |
| Need or requirement for product----- | 1841 (02329), 1862, 1865 (02361) |
| Old, second-hand, used, or obsolete product as new----- | 1761 (2387) |
| Opportunities in product or service----- | 1739 |
| (2354), 1743, 1753 (2375), 1755 (2379), 1762 (2391), 1767 (2398), | |
| 1769, 1772, 1784 (2417), 1794 (2432), 1821 (2475), 1825 (02306), | |
| 1826 (02309), 1828 (02313), 1839 (02325), 1840 (02327), 1843 | |
| (02332, 02333), 1844, 1845 (02336), 1849, 1852 (02342), 1855 | |
| (02347), 1857, 1863, 1864, 1865 (02361), 1874, 1875 (02374), | |
| 1879 (02380), 1882 (02383), 1883 | |
| Patent rights----- | 1792 (2429), 1793 |
| Premiums----- | 1841 (02329) |
| Prices----- | 1737 |
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| 1807 (2454), 1810 (2458), 1811, 1812 (2461), 1828 (02313), 1839 | |
| (02324), 1846, 1855 (02347), 1868 (02366), 1874, 1877 | |
| Pure Food law conformance----- | 1786 (2419) |
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| Advisory, instructive, or helpful----- | 1825 (02307) |
| Air-conditioning----- | 1806 (2450) |
| Antiseptic or germicidal----- | 1780, 1844, 1863, 1877, 1881 |
| Aphrodisiac----- | 1780 |

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Advertising falsely or misleadingly—Continued.

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| Auxiliary, improving, and supplementary----- | 1832, |
| 1833 (02322), 1834, 1839 (02325), 1841 (02329), 1852 (02341, | |
| 02342), 1854 (02344, 02345), 1856, 1863, 1865 (02360), 1866 | |
| (02364), 1872, 1876 (02376), 1877 | |
| Beneficial, personal and social----- | 1780, 1785, 1826 (02309), |
| 1834, 1849, 1855 (02346), 1865 (02361), 1868 (02366), 1869, 1874 | |
| Capacity ----- | 1771 |
| Cleansing or purifying----- | 1846, |
| 1849, 1858 (02351), 1860, 1861 (02356), 1863, 1868 (0892), 1869, | |
| 1870 (02369), 1876 (02375, 02376), 1877, 1882 (02334) | |
| Conserving, preserving, or renewing----- | 1834, 1856 |
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| Cosmetic, toilet and beautifying----- | 1751 |
| (2370), 1780, 1786 (2420), 1789 (2425), 1790 (2426, 2427), 1827 | |
| (02311), 1828 (02314), 1831 (02319), 1833 (02321), 1845 (02335), | |
| 1846, 1847, 1848, 1849, 1850, 1858 (02351), 1861 (02356), 1862, | |
| 1866 (02363), 1868 (0892), 1869, 1870 (02369), 1876 (02375), | |
| 1882 (02384) | |
| Durability or permanence----- | 1747 |
| (2362), 1797 (2436), 1830 (02317), 1842 (02331), 1866 (02362) | |
| Educational and informative----- | 1739 (2354), |
| 1762 (2391), 1767 (2398), 1769, 1772, 1798, 1855 (02346), 1857 | |
| Functional effectiveness and scope, in general----- | 1739 |
| (2353), 1743, 1771, 1777 (2407), 1792 (2428), 1821 (2476), 1829, | |
| 1830 (02317), 1831 (02318, 02319), 1834, 1839 (02324, 02325), | |
| 1844, 1845 (02335), 1846, 1849, 1852 (02341, 02342), 1854 | |
| (02344), 1855 (02347), 1860, 1861 (02356), 1862, 1863, 1864, | |
| 1865 (02360), 1866 (02363), 1867, 1868 (0892), 1870 (02368, | |
| 02369), 1872, 1873, 1875 (02373), 1876 (02376), 1877, 1889, 1881 | |
| Illuminating ----- | 1879 (02379) |
| Insecticidal, vermicidal, or related----- | 1807 (2452), 1844, 1863 |
| Medicinal, therapeutic, remedial and healthful----- | 1752 |
| (2373), 1767 (2396), 1780, 1786 (2420), 1790 (2426, 2427), 1798, | |
| 1799, 1804 (2447), 1822 (2477), 1825 (02305), 1826 (02308), 1827 | |
| (02310), 1828 (02314), 1830 (02316), 1831 (02319), 1832, 1833 | |
| (02321, 02322), 1834, 1840 (02326), 1841 (02328, 02329), 1844, | |
| 1845 (02335, 02336), 1846, 1847, 1848, 1849, 1850, 1852 (02341, | |
| 02342), 1856, 1858 (02350), 1859 (02353), 1860, 1861 (02356), 1862, | |
| 1863, 1865 (02360), 1866 (02363, 02364), 1867, 1869, 1870 (02368, | |
| 02369), 1877, 1880, 1881, 1882 (02384). | |
| Nutritive----- | 1752 |
| (2373), 1786 (2420), 1789 (2425), 1790 (2426, 2427), 1825 (02305), | |
| 1832, 1833 (02322), 1834, 1841 (02328), 1847, 1848, 1850, 1852 | |
| (02341, 02342), 1856, 1858 (02351), 1862, 1864, 1865 (02360), 1866 | |
| (02364), 1870 (02369), 1877. | |

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Advertising falsely or misleadingly—Continued.

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| Qualities, properties, or results of product or service—Continued. | |
| Preventive, protective, and remedial..... | 1767 (2396), |
| 1780, 1821 (2476), 1825 (02305), 1827 (02311), 1830 (02316, | |
| 02317), 1834, 1841 (02329), 1846, 1847, 1848, 1852 (02342), 1856, | |
| 1858 (02350, 02351), 1859 (02353), 1860, 1861 (02356), 1862, 1863, | |
| 1867, 1869, 1870 (02369), 1876 (02375), 1877. | |
| Purity and sterility..... | 1750 (2369) |
| Reducing..... | 1824, 1828 (02314), 1834, 1852 (02341) |
| Rejuvenating..... | 1780, |
| 1786 (2420), 1831 (02319), 1847, 1850, 1858 (02351), 1861 | |
| (02356), 1862, 1866 (02363), 1875 (02373), 1876 (02375), 1880. | |
| Renewing and restoring..... | 1751 |
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| 1845 (02335), 1847, 1858 (02351), 1861 (02356), 1862, 1864, 1868 | |
| (0892), 1870 (02368). | |
| Safety..... | 1739 (2353), |
| 1780, 1830 (02317), 1849, 1860, 1863, 1869, 1876 (02375), 1881 | |
| Saving or economizing..... | 1739 |
| (2353), 1767 (2396), 1829, 1833 (02321), 1834, 1839 (02325), | |
| 1844, 1852 (02342), 1854 (02344, 02345), 1863, 1872, 1876 (02376), | |
| 1877. | |
| Simplicity and usability..... | 1857, 1872 |
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| Tonal..... | 1839 (02324) |
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| (2377), 1762 (2390), 1777 (2409), 1778 (2410), 1797 (2436, | |
| 2437), 1807 (2453), 1866 (02363). | |
| Quality of product..... | 1769, |
| 1772, 1774 (2403), 1777 (2403), 1792 (2428), 1801 (2440, 2441), | |
| 1810 (2457), 1812 (2460), 1832, 1834, 1846, 1849, 1852 (02342), | |
| 1857, 1863, 1873 | |
| Refunds..... | 1762 (2391), 1767 (2398), 1769, 1784 (2417), 1794 (2432) |
| Safety of product..... | 1739 (2353), |
| 1780, 1830 (02317), 1849, 1860, 1863, 1869, 1876 (02375), 1881 | |
| Sales assistance..... | 1784 (2417) |
| Sample or order conformance..... | 1817 (2469) |
| Scientific or relevant facts..... | 1739 |
| (2354), 1743, 1753 (2375), 1755 (2379), 1762 (2391), 1767 (2398), | |
| 1769, 1772, 1780, 1794 (2432), 1796 (2435), 1798, 1799, 1825 | |
| (02305, 02307), 1828 (02313), 1829, 1832, 1833 (02321, 02322), | |
| 1834, 1845 (02335, 02336), 1850, 1852 (02341, 02342), 1858 (02350), | |
| 1859 (02353), 1860, 1861 (02356), 1864, 1866 (02363, 02364), 1869, | |
| 1870 (02369), 1879 (02379), 1880, 1882 (02383), 1883 | |
| Size..... | 1761 (2389), 1771, 1809 |
| Source of origin of product— | |
| Government..... | 1747 (2363) |
| Maker..... | 1737 (2352), 1780, 1786 (2420), 1788 |
| (2423), 1792 (2428), 1794 (2432), 1799, 1834, 1862, 1873 | |

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Advertising falsely or misleadingly—Continued.

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| Source of origin of product—Continued. | Page |
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| Place----- | 1780, |
| 1788 (2423), 1801 (2440, 2441), 1804 (2448), 1805, 1812 (2460), 1815 (2466), 1816, 1819 (2472), 1827 (02311), 1842 (02330), 1846, 1849, 1870 (02368), 1873 | |
| Special or limited offers or selection----- | 1741, |
| 1762 (2391), 1767 (2398), 1772, 1780, 1790 (2427), 1810 (2458), 1855 (02346, 02347), 1857, 1873, 1874 | |
| Specifications or standards conformance— | |
| Government----- | 1747 (2363), 1748 (2366), 1776 (2406) |
| Style or type of product----- | 1815 (2466), 1816, 1846, 1856 (02347) |
| Success, use, or standing of product----- | 1757 |
| (2381), 1759 (2384), 1761 (2387), 1762 (2391), 1767 (2398), 1769, 1772, 1784 (2416, 2417), 1785, 1786 (2420), 1790 (2427), 1794, (2432), 1821 (2475), 1826 (02309), 1828 (02314), 1830 (02316), 1831 (02319), 1832, 1834, 1839 (02325), 1840 (02327), 1845 (02336), 1846, 1866 (02362), 1868 (02366), 1869, 1873, 1874, 1880, 1881 | |
| “Accredited by authorities”----- | 1857 |
| Beauty shops----- | 1828 (02314) |
| Government----- | 1839 (02325) |
| Hospitals----- | 1828 (02314) |
| Physicians----- | 1828 (02314) |
| Movie and stage stars----- | 1870 (02369) |
| “Recognized authorities”----- | 1834 |
| Terms and conditions----- | 1743, |
| 1767 (2398), 1769, 1772, 1780, 1790 (2427), 1794 (2432), 1821 (2475), 1825 (02306), 1826 (02309), 1829, 1834, 1839 (02325), 1840 (02327), 1845 (02336), 1853, 1854 (02344), 1855 (02347), 1857, 1874, 1875 (02374), 1879 (02380) | |
| Testimonials----- | 1739 |
| (2354), 1772, 1784 (2416), 1785, 1825 (02305), 1826 (02308), 1842 (02330), 1862, 1864, 1866 (02363, 02364), 1867, 1868 (02366, 0892), 1869, 1870 (02368, 02369), 1872, 1873, 1874, 1875 (02373, 02374), 1876 (02375, 02376), 1877, 1878, 1879 (02379, 02380), 1880, 1881 | |
| Tests— | |
| American Poultry Association----- | 1774 (2403) |
| “Automotive Test Laboratories of America”----- | 1854 (02344) |
| “Certified” product----- | 1856 |
| Chemical analysis----- | 1786 (2419) |
| Clinical----- | 1881 |
| Impartial and authorized agency or “certified”----- | 1759 (2385) |
| Laboratories----- | 1846, 1881 |
| State----- | 1786 (2419) |
| Type----- | 1812 (2460) |
| Undertakings, in general--- | 1739 (2354), 1769, 1772, 1794 (2432), 1834 |

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Advertising falsely or misleadingly—Continued.

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| Unique nature----- | 1761 |
| (2387), 1777 (2407), 1778 (2412), 1826 (02309), 1828 (02314), 1829, 1830 (02316), 1831 (02319), 1832, 1833 (02321), 1834, 1839 (02324, 02325), 1840 (02326), 1841 (02329), 1843 (02333), 1844, 1845 (02335), 1846, 1848, 1852 (02342), 1855 (02347), 1856, 1857, 1860, 1861 (02356), 1862, 1863, 1864, 1868 (02366), 1869, 1870 (02368, 02369), 1872, 1876 (02375, 02376), 1880, 1881 | |
| Value----- | 1769, 1772, 1780, 1790 (2427), 1796 (2434, 2435), 1807 (2454, 1826 (02309), 1834, 1846, 1849, 1855 (02347), 1877 |
| Aiding, assisting or abetting unfair or unlawful act or practice (<i>See, also,</i> Misbranding or mislabeling; Using lottery schemes, etc.; and, in gen- eral, Unfair methods, etc.): | |
| Through— | |
| Selling— | |
| Lottery or chance merchandising devices----- | 1745 (2358) |
| Supplying— | |
| Advertising, etc., calculated to mislead as to sample or order conformance----- | 1817 (2469) |
| Coloring ingredient calculated to mislead----- | 1786 (2419) |
| Labels, brands, or trade indicia calculated to mislead----- | 1795 |
| Assuming or using misleading trade or corporate name: | |
| As to— | |
| Blender and compounder being refiner----- | 1818 (2471) |
| Correspondence school being— | |
| Association of members of industry----- | 1772 |
| Engineering or technical school----- | 1739 (2354), 1753 (2375), 1762 (2391), 1767 (2398) |
| Healing ministry----- | 1855 (02346) |
| Institute----- | 1769, 1772 |
| Student or vocational service organization----- | 1741 |
| Dealer being— | |
| Breeder----- | 1774 (2403), 1776 (2405) |
| College or institution of higher learning----- | 1785 |
| Institute----- | 1798, 1799, 1845 (02336) |
| Manufacturer or producer----- | 1808 |
| Dealer owning or operating laboratory----- | 1786 (2420), 1790 (2427), 1814 (2463) |
| Domestic importer and blender being foreign----- | 1752 (2372) |
| Domestic product being imported----- | 1801 (2441) |
| History----- | 1762 (2391) |
| Identity----- | 1796 (2435) |
| Nature of— | |
| Business----- | 1784 (2416) |
| Product dealt in----- | 1873 |
| Publisher and dealer being institute----- | 1799 |
| Qualities, properties, or results of product— | |
| Durability or permanence----- | 1747 (2362) |
| Retailer being wholesaler----- | 1812 (2461) |
| Seller being collection agency or credit bureau of nation-wide extent----- | 1796 (2435) |

STIPULATIONS

Assuming or using misleading trade or corporate name—Continued.

As to—Continued.

Source or origin of product—

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| Maker----- | 1737 (2352) |
| Place----- | 1804 (2448) |

Claiming or using indorsements or testimonials, falsely or misleadingly:

As to or from—

| | |
|----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Agricultural experiment stations----- | 1859 (02353) |
| American Medical Association----- | 1841 (02329) |
| Association of Western Union Employees----- | 1794 (2432) |
| "Authorities"----- | 1833 (02322), 1834 |
| Automotive Test Laboratories of America----- | 1854 (02344) |
| Doctors----- | 1834 |
| Diesel manufacturers----- | 1739 (2354) |
| Federal Trade Commission----- | 1809 |
| Government----- | 1758 (2382) |
| Independent, qualified agency, etc., or "certified"----- | 1759 (2385), 1762 (2391) |
| Leading industrialists----- | 1772 |
| Mahatma Gandhi----- | 1830 (02316) |
| Navy----- | 1787 |
| Nutritional chemists, New Century Foods, Inc., etc----- | 1799 |
| Personages----- | 1785 |
| Scientists----- | 1856 |
| State----- | 1786 (2419) |
| Universities----- | 1859 (02353) |
| Users, in general----- | 1772, 1784 (2416), 1785, 1825 (02305), 1826 (02308), 1842 (02330), 1862, 1864, 1866 (02363, 02364), 1867, 1868 (02366, 0892), 1869, 1870 (02368, 02369), 1872, 1873, 1874, 1875 (02373, 02374), 1876 (02375, 02376), 1877, 1878, 1879 (02379, 02380), 1880, 1881 |

Coercing and intimidating:

Customers—

Through—

| | |
|----------------------------------------------------------------------------------------------------|-------------|
| Representing, falsely or misleadingly, consignee obligations, when product sent, unordered----- | 1796 (2435) |
| Simulating court summons or similar instruments----- | 1796 (2435) |

Disparaging or misrepresenting competitors or their products:

Products—

As to—

| | |
|---------------------------------------|-----------------------------------------------------------------------------------|
| Composition----- | 1832, 1850, 1852 (02342), 1861 (02356) |
| Prices----- | 1811 |
| Qualities, properties or results----- | 1799, 1832, 1833 (02321), 1850, 1852 (02342), 1861 (02356), 1866 (02363), 1872 |
| Quality----- | 1832 |
| Safety----- | 1799 |
| Value----- | 1880 |

Enforcing and exacting, wrongfully, customer dealing:

Through—

| | |
|----------------------------------------------------------------------------------------------------|-------------|
| Representing, falsely or misleadingly, consignee obligations, when product sent, unordered----- | 1796 (2435) |
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Enforcing and exacting, wrongfully, payments:

Through—

| | |
|---------------------------------------------------------------------------------------------------------|--------------|
| Obligating customer for service and plan for which payment or obligation already made and incurred..... | Page 1769 |
| Securing assignments of future earnings on improper and unfair basis..... | 1769 |
| Simulating court summons or similar instruments..... | 1796 (2435) |

Furnishing means and instrumentalities of unfair or unlawful act or practice (*See, also*, Misbranding or mislabeling; Using lottery scheme, etc.; and, in general, Unfair methods, etc.):

Through—

Selling—

| | |
|------------------------------------|-------------|
| Lottery schemes, devices, etc..... | 1745 (2358) |
|------------------------------------|-------------|

Supplying—

| | |
|---------------------------------------------------------------------------------|-------------|
| Advertising, etc., calculated to mislead as to sample or order conformance..... | 1817 (2469) |
| Coloring ingredient calculated to mislead..... | 1786 (2419) |
| Labels, brands or trade indicia calculated to mislead..... | 1795 |

Misbranding or mislabeling:

As to—

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| Composition of product..... | 1748 |
| (2366), 1751 (2371), 1752 (2372), 1754, 1755 (2378), 1758 (2383), 1759 (2385), 1760, 1764, 1794 (2431), 1810 (2457), 1817 (2468), 1819 (2473), 1823, 1842 (02330) | |
| Through depictions..... | 1745 (2359), 1746 (2360, 2361), 1750 (2367), 1795, 1819 (2473) |
| Dealer being manufacturer..... | 1775 |
| Domestic importer and blender being foreign..... | 1752 (2372) |
| Domestic product being imported..... | 1815 (2466), 1816, 1842 (02330) |
| Through use of words "Bottled in U. S. A."..... | 1822 (2478) |
| Foreign office..... | 1822 (2478) |
| Foreign product being domestic— | |
| Through words "Made in U. S. A."..... | 1779 (2413), 1819 (2472) |
| Government specifications or standards conformance..... | 1747 (2363), 1748 (2366) |
| Guarantees..... | 1759 (2385), 1760 |
| Nature of— | |
| Manufacture or preparation of product..... | 1815 (2466), 1816 |
| Product..... | 1790 (2426), 1795, 1819 (2473) |
| By depiction..... | 1795 |
| Paris office or branch..... | 1790 (2426) |
| Patent rights..... | 1792 (2429), 1793 |
| Prices..... | 1796 (2434), 1803 (2445), 1839 (02324) |
| Qualities, properties or results of product— | |
| Cosmetic, toilet, and beautifying..... | 1790 (2426) |
| Medicinal, therapeutic, remedial, and healthful..... | 1790 (2426) |
| Nutritive..... | 1790 (2426) |
| Purity or sterility..... | 1757 (2380) |
| Water resisting..... | 1762 (2390), 1777 (2409), 1797 (2437) |
| Quality of product..... | 1810 (2457), 1812 (2460), 1819 (2473) |

STIPULATIONS

Misbranding or mislabeling—Continued.

As to—Continued.

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| Source of origin of product— | |
| Government..... | 1747 (2363) |
| Maker..... | 1751 (2371) |
| Place..... | 1751 |
| (2371), 1752 (2372), 1779 (2413), 1795, 1804 (2448), 1805, 1812 | |
| (2460), 1815 (2466), 1816, 1819 (2472), 1822 (2478), 1842 (02330) | |
| Specifications or standards conformance— | |
| Government..... | 1747 (2363), 1748 (2366) |
| Style or type of product..... | 1812 (2460), 1815 (2466), 1816 |
| Tests— | |
| Impartial and authorized agency or "certified"..... | 1759 (2385) |

Misrepresenting business status, advantages, or connections:

As to—

| | |
|------------------------------------------------------------------------|--------------------------|
| Assembler being manufacturer..... | 1810 (2457) |
| Blender and compounder being refiner..... | 1818 (2471) |
| Building, plant or premises and equipment..... | 1832 |
| By depictions..... | 1737 (2352), 1815 (2465) |
| Comparative merit..... | 1755 (2379) |
| Connections and arrangements with others— | |
| Advertising agencies..... | 1784 (2416) |
| Association of Western Union Employees..... | 1794 (2432) |
| "Beauty University"..... | 1786 (2420) |
| Employment and positions..... | 1762 (2391) |
| Exclusive distributor..... | 1873 |
| Important outlets or users..... | 1739 (2354) |
| Institutions of old and outstanding character..... | 1769, 1772 |
| Manufacturing concerns..... | 1762 (2391) |
| Press..... | 1821 (2475) |
| Well-known concern..... | 1737 (2352) |
| "World's leading authority"..... | 1880 |
| Correspondence school being— | |
| Association of members of industry..... | 1772 |
| Engineering or technical school..... | 1739 |
| (2354), 1753 (2375), 1762 (2391), 1767 (2398) | |
| Healing Ministry..... | 1855 (02346) |
| Institute..... | 1769, 1772 |
| Local..... | 1753 (2375) |
| Resident school, or having laboratories, shop facilities, | |
| etc..... | 1769, 1772 |
| Student or vocational service organization..... | 1741 |
| Dealer being— | |
| Breeder..... | 1774 (2403), 1776 (2405) |
| College or institution of higher learning..... | 1785 |
| Correspondence school..... | 1785 |
| Institute..... | 1798, 1799, 1845 (02336) |
| Manufacturer or producer..... | 1737, (2352), 1745 |
| (2357), 1759 (2384), 1766 (2394), 1775, 1788 (2422), 1799, 1808, 1856. | |
| Packer..... | 1815 (2465) |

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Misrepresenting business status, advantages, or connections—Continued.

As to—Continued.

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| Dealer owning or operating laboratory..... | 1786 |
| (2420), 1790 (2427), 1814 (2463), 1846 | |
| Direct selling..... | 1737 (2352), 1840 (02327) |
| Disinterest and independence of action..... | 1741 |
| Domestic importer and blender being foreign..... | 1752 (2372) |
| Educational..... | 1834 |
| Employment or placement service..... | 1762 (2391), 1794 (2432) |
| Factories..... | 1788 (2422) |
| Financial position..... | 1826 (02309) |
| Foreign office..... | 1788 (2422), 1801 (2441), 1822 (2478) |
| Government connection..... | 1755 (2379) |
| Health and research department..... | 1834 |
| History..... | 1741, 1755 |
| (2379), 1762 (2391), 1772, 1812 (2461), 1815 (2465), 1827 (02311) | |
| Identity..... | 1737 (2352), 1796 (2435) |
| Location or place..... | 1810 (2457), 1818 (2471) |
| Methods and policies..... | 1741 |
| Nature of product dealt in..... | 1878 |
| Nature, purpose, or scope..... | 1741, |
| 1784 (2416), 1799, 1834, 1868 (02366) | |
| Operations..... | 1868 (02366) |
| Paris office or branch..... | 1790 (2426) |
| Personnel or staff..... | 1741, 1767 (2398), 1769, 1772, 1785, 1834 |
| Salesmen as "registrars"..... | 1741 |
| Printer being photographer or engraver..... | 1818 (2470) |
| Private business being— | |
| Educational organization..... | 1799, 1855 (02346) |
| Health organization..... | 1834 |
| Student or vocational service organization..... | 1741 |
| Publisher and dealer being institute..... | 1799 |
| Publisher being— | |
| Association of food chemists..... | 1799 |
| Manufacturer..... | 1799 |
| Retailer being wholesaler..... | 1812 (2461), 1840 (02327), 1861 (02355) |
| Seller being— | |
| Collection agency or credit bureau of nation-wide extent..... | 1796 (2435) |
| Employer..... | 1739 |
| (2354), 1743, 1761 (2389), 1762 (2391), 1767 (2398), 1772 | |
| Expert..... | 1875 (02373) |
| Seller's title or qualifications, generally..... | 1784 (2416) |
| Size..... | 1811, 1849, 1855 (02347) |
| Success or standing..... | 1739 (2354), 1741, 1755 |
| (2379), 1762 (2391), 1767 (2398), 1772, 1848, 1857, 1868 (02366) | |
| Time in business..... | 1812 (2461) |
| Unique nature, situation or powers..... | 1739 (2354), |
| 1755 (2379), 1778 (2412), 1832, 1848, 1855 (02346), 1868 (02366) | |

STIPULATIONS

Misrepresenting prices. (*See also*, Offering deceptive, etc.):

As to—

| | Page |
|-----------------------------------------------------------------|--------------------------|
| Amount charged— | |
| By depiction | 1737 (2351) |
| Comparative advantages..... | 1846, 1855 (02347), 1877 |
| Coverage or applicability..... | 1737 (2351), 1758 (2382) |
| Exaggerated, fictitious being regular..... | 1758 |
| (2382), 1761 (2387, 2389), 1790 (2427), 1796 (2434, 2435), 1803 | |
| (2445), 1807 (2454), 1839 (02324) | |
| Nature as— | |
| Saving..... | 1811 |
| Share of expense..... | 1868 (02366) |
| Regular being— | |
| Made possible only by large orders, cooperation, etc.. | 1761 (2387) |
| Special introductory..... | 1874 |
| Special reduced, or to be increased..... | 1758 |
| (2382), 1761 (2387), 1790 (2427), 1828 (02313) | |
| Regular, or increased, being special reduced..... | 1772, 1810 (2458) |
| Retail being wholesale..... | 1812 (2461) |

Misrepresenting product or service. (*See also*, Advertising falsely, etc.;

Misbranding or mislabeling; and, in general, Unfair methods, etc.):

As to—

| | |
|----------------------------------------------------------------|---------------------------------------|
| Comparative merits..... | 1743 |
| Composition..... | 1766 (2394), 1786 (2419), 1819 (2473) |
| Earnings or profits..... | 1739 (2354), 1743, |
| 1753 (2375), 1755 (2379), 1762 (2391), 1767 (2398), 1769, 1772 | |
| Government— | |
| Jobs..... | 1755 (2379) |
| Selection..... | 1758 (2382) |
| Indorsements or approval— | |
| Government..... | 1758 (2382) |
| Jobs and employment..... | 1755 (2379) |
| Nature..... | 1765, 1767 (2398), 1769, 1772, 1785 |
| Old, made-over, second-hand, or obsolete being new..... | 1774 (2402) |
| Opportunities..... | 1739 (2354), 1743, |
| 1753 (2375), 1755 (2379), 1762 (2391), 1767 (2398), 1769, 1772 | |
| Qualities, properties, or results— | |
| Educational and informative..... | 1739 |
| (2354), 1762 (2391), 1767 (2398), 1769, 1772 | |
| Functional effectiveness and scope, in general..... | 1743 |
| Quality..... | 1769, 1772, 1801 (2440) |
| Quantity..... | 1748 (2365) |
| Scientific or relevant facts..... | 1739 |
| (2354), 1743, 1755 (2379), 1769, 1772 | |
| Success, use or standing..... | 1762 |
| (2391), 1767 (2398), 1769, 1772, 1785 | |
| Testimonials..... | 1739 (2354) |
| Value..... | 1765, 1769, 1772 |

Neglecting, unfairly or deceptively, to make material disclosure:

As to—

| | |
|-----------------------------------------------------------------|--------------------------------|
| Composition..... | 1764, 1817 (2468), 1819 (2473) |
| Cost additionally required for customer-purchaser objective.... | 1739 |
| | (2354) |

STIPULATIONS

Neglecting, unfairly or deceptively, to make material disclosure—Contd.

As to—Continued.

Page

Money-back guarantee----- 1794 (2432)

Old, made-over, second-hand, or obsolete product being new----- 1774
(2402)

Price eventually required in completion of transaction----- 1765

Quality of product----- 1801 (2440)

Terms and conditions—

C. O. D. payment, without inspection----- 1765

Refunds----- 1769

Offering deceptive inducements to purchase. (*See also*, Misrepresenting prices; and, in general, Unfair methods, etc.):

Through—

Representing or offering, falsely or misleadingly—

Free—

Product----- 1845 (02336), 1853, 1854 (02344)

Price of which included in charge or service otherwise demanded----- 1765,
1780, 1790, (2427), 1807 (2454), 1810 (2458), 1825
(02306), 1834, 1840 (02327), 1855 (02347), 1873, 1879
(02380)

Samples----- 1839 (02325), 1875 (02374), 1879 (02380)

Service—

Paid for by charges otherwise demanded----- 1834

Supplies, advisory service, etc----- 1845
(02336), 1857, 1874, 1875 (02374)

Trial offers----- 1828 (02313)

Guarantees, refunds or replacements----- 1743,
1748 (2366), 1755 (2379), 1759 (2385), 1760, 1762 (2391), 1767
(2398), 1769, 1774 (2403), 1780, 1784 (2417), 1790 (2427),
1794 (2431, 2432), 1797 (2436), 1799, 1844, 1845 (02335), 1857,
1862, 1873, 1875 (02373, 02374), 1877Jobs and employment----- 1739 (2354), 1741, 1755 (2379), 1761
(2389), 1762 (2391), 1767 (2398), 1769, 1772, 1826 (02309), 1857

Sample or order conformance----- 1766 (2394), 1817 (2469)

Special or limited offers or selection----- 1758
(2382), 1761 (2387), 1762 (2391), 1765, 1767 (2398), 1772,
1780, 1790 (2427), 1810 (2458), 1828 (02313), 1855 (02346,
02347), 1857, 1873, 1874

On pretext—

"Lucky" blanks, etc----- 1765

Rigid policy or standing of seller----- 1741

Terms and conditions—

In general----- 1765

Cash return----- 1743

C. O. D. payment, without inspection----- 1765

Compensation's conditions----- 1879 (02380)

Costs----- 1780

Employment service----- 1794 (2432)

Equipment----- 1772

Establishment in business----- 1780

STIPULATIONS

Offering deceptive inducements to purchase. (*See also*, in general, Unfair methods of competition, etc.)—Continued.

Through—Continued.

Representing or offering, falsely or misleadingly—Continued.

Terms and conditions—Continued.

| Free— | Page |
|--------------------------------------------------------------------------|------------------------------------------|
| Product..... | 1853, 1854 (02344), 1855 (02347) |
| Price of which included in charge or service otherwise demanded..... | 1840 (02327) |
| Samples..... | 1825 |
| (02306), 1839 (02325), 1875 (02374), 1879 (02380) | |
| Service..... | 1834 |
| Supplies, advisory service, etc.... | 1845 (02336), 1857, 1874 |
| Guarantees..... | 1780, 1875 (02374) |
| Insurance..... | 1829 |
| Losses..... | 1743 |
| Nature or value of product..... | 1849 |
| Purchasing..... | 1825 (02306) |
| Refunds..... | 1767 (2398), 1769, 1784 (2417) |
| "Reward for promptness"..... | 1826 (02309) |
| Risks..... | 1780 |
| Sales assistance..... | 1784 (2417) |
| Special privileges or standing..... | 1821 (2475) |
| Values..... | 1780 |
| Undertakings, in general..... | 1739 |
| (2354), 1741, 1769, 1772, 1794 (2432), 1834 | |
| Publishing, improperly, confidential or restricted Government matter.... | 1787 |
| Securing agents or representatives falsely or misleadingly: | |
| Through misrepresenting as to— | |
| Earnings or profits..... | 1780, |
| 1790 (2427), 1807 (2454), 1825 (02306), 1839 (02325), 1843 | |
| (02332), 1849, 1855 (02347), 1874, 1879 (02380). | |
| Opportunities..... | 1825 |
| (02306), 1839 (02325), 1840 (02327), 1843 (02332), 1849, 1855 | |
| (02347), 1874, 1879 (02380). | |
| Terms and conditions— | |
| Compensation's conditions..... | 1879 (02380) |
| Establishment in business..... | 1780 |
| Free— | |
| Product..... | 1853, 1855 (02347) |
| Price of which included in charge or service otherwise demanded..... | 1840 (02327) |
| Sample..... | 1825 (02306), 1839 (02325), 1879 (02380) |
| Supplies, advisory service, etc..... | 1874 |
| Nature or value of product..... | 1849 |
| Purchasing..... | 1825 (02306) |
| Special offers or prices..... | 1790 (2427) |
| Values..... | 1780 |
| Unfair methods of competition, etc., condemned. <i>See—</i> | |
| Advertising falsely or misleadingly. | |
| Aiding, assisting, or abetting unfair or unlawful act or practice. | |
| Assuming or using misleading trade or corporate name. | |

STIPULATIONS

| | Page |
|--------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| Unfair methods of competition, etc., condemned—Continued. | |
| Claiming or using indorsements or testimonials falsely or misleadingly. | |
| Coercing and intimidating. | |
| Disparaging or misrepresenting competitors or their products. | |
| Enforcing and exacting, wrongfully, customer dealing. | |
| Enforcing and exacting, wrongfully, payments. | |
| Furnishing means and instrumentalities of unfair or unlawful act or practice. | |
| Misbranding or mislabeling. | |
| Misrepresenting business status, advantages, or connections. | |
| Misrepresenting prices. | |
| Misrepresenting product or service. | |
| Neglecting, unfairly or deceptively, to make material disclosure. | |
| Offering deceptive inducements to purchase. | |
| Publishing, improperly, confidential or restricted Governmental matter. | |
| Securing agents or representatives falsely or misleadingly. | |
| Using lottery scheme in merchandising. | |
| Using misleading trade name, mark or brand. | |
| Unfair or deceptive acts, practices, or methods, etc., condemned. <i>See</i> | |
| Unfair methods of competition, etc. | |
| Using lottery scheme in merchandising. (<i>See also</i> , Aiding, etc.; Furnishing, etc.) | 1748 (2364), 1766 (2395), 1767 (2397), 1778 (2411), 1779 (2414), 1802, 1803 (2443), 1806 (2451), 1807 (2454), 1814 (2462, 2464), 1820, 1855 (02347) |
| Using misleading trade name, mark or brand: | |
| As to— | |
| Composition of product | 1745 (2359), 1746 (2360, 2361), 1748 (2366), 1751 (2371), 1752 (2372), 1764, 1784 (2417), 1795, 1798, 1823, 1847, 1849, 1859 (02353) |
| Domestic product being imported | 1849 |
| Nature of product | 1786 (2420), 1795, 1850 |
| Qualities, properties or results of product— | |
| Air conditioning | 1806 (2450) |
| Cosmetic, toilet and beautifying | 1780, 1789 (2425), 1790 (2426), 1847, 1848 |
| Durability or permanence | 1866 (02362) |
| Functional effectiveness and scope, in general | 1875 (02373) |
| Medicinal, therapeutic, remedial, and healthful | 1780, 1847, 1850, 1866 (02364) |
| Nutritive | 1780, 1789 (2425), 1790 (2426) |
| Preventive or remedial | 1847 |
| Renewing and restoring | 1780 |
| Quality of product | 1812 (2460) |
| Size | 1809 |
| Source or origin of product— | |
| Maker | 1751 (2371), 1862 |
| Place | 1751 (2371), 1752 (2372), 1795, 1812 (2460), 1827 (02311), 1849 |
| Type | 1812 (2460) |