

# FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

JULY 1, 1943, TO DECEMBER 31, 1943

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**MEMBERS OF THE FEDERAL TRADE COMMISSION AS OF  
DECEMBER 31, 1943**

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

Took oath of office November 14, 1927,<sup>2</sup> January 9, 1928, September 26, 1934,<sup>2</sup> and February 9, 1935.<sup>1</sup> Reappointment for third term confirmed July 15, 1941.

**CHARLES H. MARCH.**

Took oath of office February 1, 1929, and August 27, 1935.<sup>1</sup> Reappointment for third term confirmed September, 10, 1942.

**EWIN L. DAVIS.**

Took oath of office May 26, 1933, and August 31, 1939.<sup>1</sup>

**WILLIAM A. AYRES.**

Took oath of office August 23, 1934, and September 24, 1940.<sup>1</sup>

**ROBERT E. FREER.**

Took oath of office August 26, 1935, and September 19, 1938.<sup>2</sup> Reappointment for second term confirmed January 28, 1939.

**OTIS B. JOHNSON, *Secretary.***

Took oath of office August 7, 1922.

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<sup>1</sup> Second term.

<sup>2</sup> Recess appointment.

## ACKNOWLEDGMENT

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



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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, 1933, to District Court of the U. S. for the District of Columbia, and identified by abbreviation D. C. of D. C.); C. A. of (or for) D. C.—U. S. Court of Appeals for the District of Columbia (prior to June 7, 1934, Court of Appeals of the District of Columbia); D. C.—District Court. Hyphenated numbers refer to volume and page of the F. T. C. Reports, the numbers preceding the hyphen denoting the volume, the numbers following, the page.

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<sup>1</sup> Interlinear citations are to the reports of the National Reporter System and to 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.

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

- American Medicinal Products, Inc., et al.----- (D. C.) 30-1683; (C. C. A.) 36-136 F. (2d) 426. 1167.
- American Snuff Co.----- (C. C. A.) 13-607.  
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- American Steel and Wire Co., of N. J., The, (C. C. A.) 34-1862.  
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- American Tobacco Co.----- (D. C.) 5-558; (S. C.) 7-599;  
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- Aron, Morris, et al. (Globe Printing Co.)----- (D. C.) 36-1130.  
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- Arrow-Hart & Hegeman Electric Co.----- (C. C. A.) 17-658, 683; (S. C.)  
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- Atlas Health Appliance Co. (Jacob L. Gold- (D. C.) 31-1897.  
man).
- Avery Salt Co.----- (C. C. A.) 30-1667.
- Aviation Institute of U. S. A., Inc.----- (C. A. of D. C.) 21-1219.

<sup>3</sup> Interlocutory order. See also S. & D. 721.

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

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

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

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

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<sup>4</sup> Interlocutory order. See S. & D. 722.

<sup>5</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.



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

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

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

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

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

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<sup>35</sup> For interlocutory matter, see "Memoranda," 28-1954, or 1938 S. & D. 485.

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<sup>10</sup> For interlocutory order, see "Memoranda," 20-746, or S. & D. 724.

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

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

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

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

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

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

<sup>23</sup> 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.

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<sup>24</sup> 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.

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



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

<sup>27</sup> For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.

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

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<sup>29</sup> For interlocutory order, see "Memoranda," 28-1965 or 1938 S. & D. 495.

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

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

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

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

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

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

<sup>36</sup> For interlocutory order of lower court, see "Memoranda," 28-1966 or 1933. S. & D. 486.

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<sup>87</sup> For interlocutory order in proceeding terminating in decision in 281 Fed. 744 (4-614), see "Memoranda," 20-743 or S. & D. 715.

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

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<sup>88</sup> For interlocutory order of lower court, see "Memoranda," 28-1966 or 1938 S. & D. 486.

<sup>89</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

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<sup>4</sup> For interlocutory order, see "Memoranda," 28-1968 or 1938 S. & D. 490.

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

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



# FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1943, TO DECEMBER 31, 1943

IN THE MATTER OF

## FISHER NUT AND CHOCOLATE COMPANY

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

*Docket 4594. Complaint, Sept. 25, 1941—Decision, July 7, 1943*

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of assortments of candy and nut products so packed and assembled as to involve the use of games of chance in retail sale thereof, a typical assortment consisting of several tins of salted peanuts and a punch-board for use in their sale and distribution to consumers under a plan by which chance selection of certain numbers entitled purchaser, for the 2 cents paid, to a tin of peanuts, value of which was in excess thereof, and purchaser of last punch in each of the six sections into which board was divided received a tin, others receiving nothing for their money—

Sold to wholesalers such assortments, and thereby supplied to and placed in the hands of retail purchasers, who exposed and sold same to purchasing public, in accordance with aforesaid plan, the means of conducting lotteries in the sale and distribution of its said products, contrary to an established public policy of the United States Government, and in competition with many who refrain from use of any such method;

With result that many persons were attracted by its said plan and the element of chance involved therein, and were thereby induced to buy and sell its said products in preference to those of its aforesaid competitors; and with capacity and tendency thereby unfairly to divert trade in commerce to it from them:

*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 in commerce, and unfair acts and practices therein.

Before *Mr. John W. Addison*, trial examiner.  
*Mr. J. W. Brookfield, Jr.* for the Commission  
*Weinstein & Kline*, of Milwaukee, Wis., for respondent.

Complaint

37 F. T. C.

## 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 Fisher Nut and Chocolate 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Fisher Nut and Chocolate Co., is a corporation, organized and doing business under and by virtue of the laws of the State of Minnesota with its office and principal place of business located at 2327 Wycliff Street, St. Paul, Minn. Respondent is now and for more than 6 months last past has been engaged in the manufacture of candy and nut products and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be transported from its aforesaid principal place of business in the city of St. Paul, Minn., to purchasers thereof at their respective points of location in various States of the United States other than Minnesota and in the District of Columbia. There is now, and has been for more than 6 months last past, a course of trade by respondents in such candy and nut 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 has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy and nut products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy and nut products so packed and assembled as to involve the use of games of chance, gift enterprizes, or lottery schemes when sold and distributed to the consumer thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment includes several tins of salted peanuts and a punch board. Appearing on the face of the punch board is the following inscription:

1

## Complaint

FISHER'S VACUUM  
FRESH

2¢ per sale

(Depletion  
of can of  
peanuts)

Numbers 10, 20, 30, 110, 120, 130, 210

220, 230, 310, 320, 330 Each Receive

8 oz. Vacuum Pack

## FISHER'S PARTY PACK

Numbers 15, 25, 35, 115, 125, 135, 215

225, 235, 315, 325, 335 Each Receive

8 oz. Vacuum Pack

"SALTED IN THE SHELL" PEANUTS

LAST SALE IN EACH SECTION REC'S

8 oz. Vacuum Pack

"SALTED IN THE SHELL" PEANUTS

Said peanuts are distributed to the purchasing public by means of said punch board in the following manner: Sales are 2 cents each, and when a purchase is made, 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 and said numbers are arranged in 6 sections. The board bears a statement informing purchasers and prospective purchasers that said specified numbers entitle the purchaser thereof to receive a can of peanuts, and the last sale in each of the sections completely sold entitles the purchaser to receive a can of peanuts. A purchaser who does not qualify by obtaining one of the specified numbers or the last punch in a section receives nothing for his money. The peanuts are worth more than 2 cents a can, and the purchaser who obtains a number calling for a can of peanuts receives the same for 2 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a purchase or selection has been made and the particular punch separated from the board. The peanuts are thus distributed to members of the purchasing public wholly by lot or chance.

The respondent furnishes and has furnished various punch boards and push cards for use in the sale and distribution of its candy and other products by means of a game of chance, gift enterprise or lottery scheme. Such punch boards and push cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's candy and nut products, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale and distribution of its products 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 its candy and nut products and the sale of said candy and nut products 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.

PAR. 4. The sale of candy and nut products to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure candy and nut products at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy and nut products in competition with respondent as above alleged do not 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 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 nut products and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy and nut products in preference to candy and nut products of 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 a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from its said competitors who do not use the same or 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 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 25, 1941, issued and subsequently served its complaint in this proceeding on the respondent, Fisher Nut and Chocolate Co., a corporation, charging it with the use of unfair methods of competition in commerce and unfair 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 thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before a trial

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## Findings

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, this proceeding regularly came on for final hearing before the Commission upon said complaint, testimony, and other evidence, report of the trial examiner upon the evidence, and briefs filed 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, Fisher Nut and Chocolate Co., is a corporation, organized and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 2327 Wycliff Street, St. Paul, Minn. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture of candy and nut products and in the sale and distribution thereof to wholesale dealers and jobbers located in the various States of the United States. Respondent causes, and has caused, said products, when sold, to be transported from its aforesaid principal place of business in the city of St. Paul, Minn., to purchasers thereof at their respective points of location in various States of the United States other than Minnesota. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in such candy and nut products in commerce between and among the various States of the United States.

In the course and conduct of said business, respondent is, and has been, in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy and nut 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, respondent sells, and has sold, to wholesale dealers and jobbers certain assortments of candy and nut products so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumer thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

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This assortment includes several tins of salted peanuts and a punch board. Appearing on the face of the punch board is the following inscription:

	<b>FISHER'S VACUUM FRESH</b>	2¢ per sale
	Numbers 10, 20, 30, 110, 120, 130, 210 220, 230, 310, 320, 330 Each Receive 8 oz. Vacuum Pack	
(Depletion of can of peanuts)	<b>FISHER'S PARTY PACK</b> Numbers 15, 25, 35, 115, 125, 135, 215, 225, 235, 315, 325, 335 Each Receive 8 oz. Vacuum Pack	
	<b>"SALTED IN THE SHELL" PEANUTS</b> LAST SALE IN EACH SECTION REC'S 8 oz. Vacuum Pack	
	<b>"SALTED IN THE SHELL" PEANUTS</b>	

Said peanuts are distributed to the purchasing public by means of said punch board in the following manner: Sales are 2 cents each, and when a purchase is made, 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 and said numbers are arranged in 6 sections. The board bears a statement informing purchasers and prospective purchasers that said specified numbers entitle the purchaser thereof to receive a can of peanuts, and the last sale in each of the sections completely sold entitles the purchaser to receive a can of peanuts. A purchaser who does not qualify by obtaining one of the specified numbers or the last punch in a section receives nothing for his money. The peanuts are worth more than 2 cents a can, and the purchaser who obtains a number calling for a can of peanuts receives the same for 2 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a purchase or selection has been made and the particular punch separated from the board. The peanuts are thus distributed to members of the purchasing public wholly by lot or chance.

The respondent manufactures, sells, and distributes various assortments of candy and nut products involving a lot or chance feature, but such assortments and the method of sale and distribution thereof are similar to the one herein described, and vary only in detail.

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## Order

PAR. 3. Retail dealers who purchase respondent's candy and nut products expose and sell the same to the purchasing public in accordance with the sales plan hereinbefore described. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale and distribution of its products 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 its candy and nut products and the sale of said candy and nut products 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.

PAR. 4. The sale of candy and nut products to the purchasing public by the method or plan hereinabove set forth involves a game of chance or the sale of a chance to procure candy and nut products at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy and nut products in competition with respondent as above described do not 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 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 nut products and in the element of chance involved therein and are thereby induced to buy and sell said candy and nut products so packed and sold by the respondent in preference to candy and nut products of 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 a tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States to respondent from its said competitors who do not use the same or 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 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, answer of the re-

spondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondent, Fisher Nut and Chocolate Co., a corporation, has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, Fisher Nut and Chocolate 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 candy and nut products or other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy, nut products, or any other merchandise so packed or assembled that sales of said merchandise to the public are to be made or, due to the manner in which such candy, nut products, or other merchandise is packed or assembled at the time it is sold by respondent, 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, push or pull cards, punch boards, or other lottery devices, either with assortments of candy, nut products, or other merchandise or separately, which said push or pull cards, punch boards, or other lottery devices are to be used or may be used in selling or distributing said candy, nut products, or other merchandise to the public.

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  
LEKAS AND DRIVAS, INC.

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

*Docket 4815: Complaint, Aug. 14, 1942—Decision, July 7, 1943*

Where a corporation, engaged in the importation and sale of its "Aristocratic Imported Virgin Olive Oil" and "L. & D. Olive Oil", in advertisements in newspapers, periodicals, circulars, and other advertising literature, and by radio broadcasts—

- (a) Represented that its olive oil had value as a tonic and would invigorate and build up the vital organs; and that use thereof would promote and maintain health, and prevent such diseases as appendicitis, gallstones, and bladder infections; and
- (b) Represented that the nutritive value of its olive oil was three and one-half times greater than that of dried meat; that it contained 45 times more calories than fresh meat; that use thereof supplied substantial quantities of vitamins A, E, and F, and that it was second only to cod liver oil in vitamin A content;

The facts being that olive oil does not have therapeutic and medicinal values thus attributed to it, being practically a pure fat and acting as such in nutrition; it contains very small amounts of vitamin A and E, content of former being in no way comparable to that of cod liver oil or ranking second thereto; it has no therapeutic value in the treatment of any condition where use of such vitamins might be beneficial and no specific value in treatment of any disease or condition; vitamin F is not generally known or recognized by the medical or biochemical professions; and comparison of the nutritive value of olive oil with that of meat on the basis of caloric content is misleading, since it supplies only pure fat or fatty acids and food value of meat lies chiefly in its proteins; and

- (c) Represented that its olive oil, applied externally, would cure many skin irritations and relieve neuralgia and rheumatic aches;

The facts being the value obtained from external use thereof was that of a lubricant, and while it might be beneficial to the skin when a deficiency of natural oils existed, it has little or no therapeutic value in the treatment of skin irritations other than as a lubricant or as an oily base for other drugs, and none in the treatment or alleviation of pain resulting from neuralgia or rheumatism other than facilitating rubbing or massage;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby causing it to purchase substantial quantities of said product:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

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

*Mr. DeWitt T. Puckett* for the Commission.

*Mr. James Madison Blackwell* and *Mr. Louis S. Lewis*, 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 Lekas and Drivas, 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, Lekas and Drivas, Inc., a corporation organized under the laws of the State of New York, is now, and for several years last past has been, engaged in importing and selling olive oil. Respondent's olive oil is advertised and sold under the brand names "Aristocratic Imported Virgin Olive Oil" and "L. & D. Olive Oil." Respondent's principal office and place of business is at 19-21 Roosevelt Street, New York, N. Y.

In the course and conduct of its business as aforesaid, the respondent causes, and for several years last past has caused, its olive oil, when sold, to be transported from its said place of business in New York, to the purchasers thereof located in various 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 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 its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said product, by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States; and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as commerce is defined in the Federal Trade Commission Act.

## Complaint

Among, and typical of the false statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

There does exist, however, the elixir of health, and that is the Olive Oil, the good Olive Oil, as the "Aristocratic".

The "Aristocratic" and the "L and D" are the two famous brands of Olive Oil of the house of Lekas and Drivas, the brands of Olive Oil by means of which you secure perfect success in the preparation of your dishes, you secure health for yourself and for your family.

In many countries of the Mediterranean despite poverty and the lower standards of living, such ailments as appendicitis, gallstones and infections of the bladder are almost unknown. A general state of health prevails. This is attributed to the regular use of olive oil in the diet.

Olive oil has about three and one-half times more nutritive value than dried meat and about forty-five times more calories than fresh meat.

It contains vitamins A, E and F, and the percentage of its vitamin A content is second only to that of cod liver oil, the king of tonics.

When used regularly, olive oil helps to purify the entire system.

Grown-up persons find that olive oil massages cure many skin irritations, relieve neuralgia and even rheumatic aches.

Olive Oil is truly a prime essential to gracious and healthful living.

For radiant beauty olive oil has been the favorite of beauty specialists, since the time of ancient Greece—Internally it tones up vital organs. Externally it is the means to a skin as smooth as alabaster.

For the complexion \* \* \* stimulating.

PAR. 3. Through the use of the aforesaid representations and others of similar import not specifically set out herein the respondent has represented, among other things, that olive oil is the elixir of health and will promote and maintain health; that it will prevent such ailments as appendicitis, gallstones, and infections of the bladder; that it has three and one-half times more nutritive value than dried meat; that it contains a substantial amount of vitamin A; that it contains vitamins E and F; that it will purify the entire system; that, when applied, externally, it assures a smooth skin, stimulates the circulation, cures many skin irritations, and relieves neuralgia and rheumatic aches; and that it has a tonic effect upon the vital organs of the body.

PAR. 4. The representations set out and referred to herein are false and misleading. In truth and in fact, olive oil will not promote or maintain health. It is of no value in the prevention of appendicitis, gallstones, or infections of the bladder. It does not contain a substantial amount of vitamin A nor does it contain a demonstrable amount of vitamin E. There is no essential nutrition factor which is generally recognized and characterized by a majority of the medical or biochemical professions as "vitamin F," and olive oil does not contain a significant quantity of those substances sometimes erroneously designated by the name "Vitamin F." Olive oil will not purify or accomplish any specific effect upon the entire system. When

applied externally, it will not relieve neuralgia or rheumatic aches and is of no value in treating skin irritations or stimulating circulation other than to serve as an emollient and as a lubricant to facilitate massage. It is not a tonic and has no direct influence upon any of the vital organs of the body. The nutritive value of olive oil is not three and one-half times more than that of dried meat.

PAR. 5. The use by the respondent of the acts and practices herein set forth 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 an erroneous and mistaken belief that its said olive oil contains the substances and will accomplish the results set forth in its advertising matter, and to purchase substantial quantities of respondent's olive oil as a result of such mistaken and erroneous belief.

PAR. 6. The 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 August 14, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Lekas and Drivas, 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. After the issuance of said complaint, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed 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, Lekas and Drivas, Inc., a corporation, organized under the laws of the State of New York, is now, and for

## Findings

several years last past has been engaged in importing and selling olive oil. Respondent's olive oil is advertised and sold under the brand names "Aristocratic Imported Virgin Olive Oil" and "L. & D. Olive Oil." Respondent's principal office and place of business is at 19-21 Roosevelt Street, New York, N. Y.

In the course and conduct of its business as aforesaid, the respondent causes, and for several years last past has caused, its olive oil, when sold, to be transported from its said place of business in the State of New York to the purchasers thereof located in various other States of the United States. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said product in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated, and has caused the dissemination of, false advertisements concerning its said product by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated, and has caused the dissemination of, false advertisements concerning its said product by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of its said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in newspapers and periodicals, by circulars, leaflets, pamphlets, and other advertising literature, and by continuities broadcast from radio stations which have the power to, and do, convey the programs emanating therefrom to listeners located in various States of the United States other than the State from which said broadcasts originate, are the following:

There does exist, however, the elixir of health, and that is the Olive Oil, the good Olive Oil, as the "Aristocratic."

The "Aristocratic" and the "L and D" are the two famous brands of Olive Oil of the house of Lekas and Drivas, the brands of Olive Oil by means of which you secure perfect success in the preparation of your dishes, you secure health for yourself and for your family.

In many countries of the Mediterranean despite poverty and the lower standards of living, such ailments as appendicitis, gallstones and infections of the bladder are almost unknown. A general state of health prevails. This is attributed to the regular use of olive oil in the diet.

Olive oil has about three and one-half times more nutritive value than dried meat and about forty-five times more calories than fresh meat.

It contains vitamins A, E and F, and the percentage of its Vitamin A content is second only to that of cod liver oil, the king of tonics.

When used regularly, olive oil helps to purify the entire system. Grown-up persons find that olive oil massages cure many skin irritations, relieve neuralgia and even rheumatic aches.

Olive Oil is truly a prime essential to gracious and healthful living.

For radiant beauty olive oil has been the favorite of beauty specialists, since the time of ancient Greece—Internally it tones up vital organs. Externally it is the means to a skin as smooth as alabaster.

For the complexion \* \* \* stimulating.

PAR. 3. Through the use of the aforesaid representations and others of similar import not specifically set out herein, the respondent has represented that its olive oil has therapeutic value in the treatment and prevention of various diseases and conditions. In this connection the respondent represents that its olive oil has value as a tonic and will invigorate and build up the vital organs and that its use will promote and maintain health and prevent such diseases and conditions as appendicitis, gallstones, and infections of the bladder. By the same means the respondent further represents that its olive oil, when applied externally, will cure many skin irritations and relieve neuralgia and rheumatic aches. It is further represented by the respondent that the nutritive value of its olive oil is three and one-half times greater than that of dried meat and that it contains forty-five times more calories than fresh meat and that the use of said olive oil supplies substantial quantities of vitamins A, E, and F and is second only to cod liver oil in vitamin A content.

PAR. 4. The foregoing statements and representations, disseminated by the respondent in the manner hereinabove described, are false, misleading, and deceptive. Olive Oil does not have the therapeutic and nutritional value attributed to it by the respondent. It is practically a pure fat and acts as a fat in nutrition. Fatty acids, such as those supplied by butter, lard, and olive oil, are an essential part of the diet and, consequently, olive oil is of value when used with other foods so far as total nutrition is concerned.

Olive oil contains very small amounts of vitamins A and E. Its vitamin A content is in no way comparable to that of cod liver oil and it does not rank second to cod liver oil in vitamin A content. The use of olive oil will not supply substantial quantities of vitamins A or E and has no therapeutic value in the treatment of any condition where the use of such vitamins might be beneficial. Representations that respondent's olive oil has special therapeutic value or other beneficial properties because of a vitamin F content are deceptive and misleading, as vitamin F is not generally known or recognized by the medical profession or the biochemical profession.

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Olive Oil, when taken internally, does not have any specific therapeutic value in the treatment of any disease or condition. It is not a tonic and will not invigorate or build up the vital organs. The use of olive oil will not prevent appendicitis, gallstones, or infections of the bladder.

The value obtainable from the external use of olive oil is that of a lubricant. When a deficiency of natural oils exists the use of olive oil might be beneficial to the skin. However, it has little or no therapeutic value in the treatment of irritations of the skin other than to serve as a lubricant or as an oily base for other drugs. It has no value in the treatment or alleviation of pain resulting from neuralgia or rheumatism other than the beneficial effects which might be obtained from the rubbing or massage facilitated by the use of olive oil as a lubricant.

Since olive oil supplies only pure fat or fatty acids and since the food value of meat consists chiefly in protein, it is misleading to compare the nutritive value of olive oil with meat on the basis of caloric content.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as hereinbefore described, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's olive oil has therapeutic value in the treatment and prevention of various diseases and conditions and has value as a tonic which will invigorate and build up the vital organs, and causes such members of the purchasing public to purchase substantial quantities of respondent's olive oil because of such erroneous and mistaken belief.

## 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, testimony and other evidence in support of, and in opposition to, the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent Lekas and Drivas, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of olive oil, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or through inference,

(a) That respondent's olive oil, when taken internally, has any specified therapeutic value in the treatment or prevention of any disease or condition.

(b) That respondent's olive oil is a tonic or that its use will invigorate or build up vital organs.

(c) That respondent's olive oil will have any value in preventing appendicitis, gallstones, or infections of the bladder.

(d) That respondent's olive oil, when applied externally, has any therapeutic value in the treatment of irritations of the skin other than that supplied by a lubricant.

(e) That respondent's olive oil has any therapeutic value in the treatment or alleviation of pain resulting from neuralgia or rheumatism other than the beneficial effects which might be obtained from the rubbing or massage facilitated by the use of olive oil as a lubricant.

(f) That the nutritional value of olive oil is comparable to, or of greater value than, dried or fresh meat.

(g) That respondent's olive oil supplies substantial quantities of vitamins A or E or that it has any therapeutic value in the treatment of any condition where the use of such vitamins might be beneficial.

(h) That respondent's olive oil contains vitamin F.

2. 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 respondent's olive oil, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions, thereof.

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



## Complaint

## IN THE MATTER OF

MAURICE J. KELLNER, DOING BUSINESS AS M. J.  
KELLNER, BROKER, ETC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 2 (c) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

*Docket 4796. Complaint, Aug. 6, 1942—Decision, July 8, 1943*

Where an individual, engaged as a broker of general food products and other miscellaneous merchandise, and also as a jobber thereof—

Received and accepted from numerous sellers in other states on purchases on his own account for resale, brokerage fees or allowances or discounts in lieu thereof:

*Held*, That in receiving and accepting such brokerage fees or allowances, or discounts in lieu thereof, from sellers upon his purchases in interstate commerce, as aforesaid, he violated the provisions of Subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

*Mr. E. S. Ragsdale* for the Commission.

*Gottlieb & Schwartz* and *Libit & Lindauer*, of Chicago, Ill., for respondent.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Maurice J. Kellner, is an individual, doing business under the name and style of M. J. Kellner, broker, M. J. Kellner Brokerage Co., Illinois Brokerage Co. and O-K Sales Co., having his principal office and place of business located at 8th and Madison Streets, Springfield, Ill.

PAR. 2. The respondent is now and for many years prior hereto has been engaged in business as a broker of general food products and other miscellaneous merchandise and has conducted such business under the name and style of M. J. Kellner, broker, M. J. Kellner Brokerage Co., Illinois Brokerage Co. and O-K Sales Co.

PAR. 3. The respondent is now and for many years prior hereto has also been engaged in business as a jobber of general food products and other miscellaneous merchandise and has also conducted such jobbing enterprises under the name and style of M. J. Kellner, broker,

M. J. Kellner Brokerage Co., Illinois Brokerage Co. and O-K Sales Co.

PAR. 4. The respondent since June 19, 1936, has made many purchases of general food products and other miscellaneous merchandise for his own account, for resale, from numerous sellers located in States other than the State of Illinois, and pursuant to said purchases such general food products and other miscellaneous merchandise have been shipped and transported by the respective sellers thereof from the States in which such sellers are located across State lines either to the respondent or pursuant to respondent's instructions and directions to respective purchasers to whom such general food products and other miscellaneous merchandise have been sold by said respondent.

PAR. 5. In the course and conduct of respondent's business as a jobber, he purchases such general food products and other miscellaneous merchandise for his own account in commerce as aforesaid under the name and style of M. J. Kellner, broker, M. J. Kellner Brokerage Co., Illinois Brokerage Co., and O-K Sales Co., and has been and is now receiving and accepting from numerous sellers of said general food products and other miscellaneous merchandise so purchased, brokerage fees or allowances or discounts in lieu thereof on purchases of said general food products and other miscellaneous merchandise for his own account.

PAR. 6. The aforesaid acts of respondent constitute a violation of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936.

#### 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 an Act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C. title 15, sec. 13), the Federal Trade Commission on the 6th day of August, 1942, issued and thereafter served its complaint in this proceeding upon respondent Maurice J. Kellner, an individual doing business as M. J. Kellner, broker, M. J. Kellner Brokerage Co., Illinois Brokerage Co., and O-K Sales Co., charging the respondent with violation of the provisions of subsection (c) of section 2 of the said act. After the issuance and service 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, and expressly waiving the filing of briefs and oral argument, 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, makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Maurice J. Kellner, is an individual, doing business under the names M. J. Kellner, broker, M. J. Kellner Brokerage Co., Illinois Brokerage Co., and O-K Sales Co.; having his principal office and place of business located at Eighth and Madison Streets, Springfield, Ill.

PAR. 2. The respondent is now and for many years prior hereto has been engaged in business as a broker of general food products and other miscellaneous merchandise, and has conducted such business under the names M. J. Kellner, broker, M. J. Kellner Brokerage Co., Illinois Brokerage Co., and O-K Sales Co.

PAR. 3. The respondent is now and for many years prior hereto has also been engaged in business as a jobber of general food products and other miscellaneous merchandise, and has conducted such business enterprise under the names M. J. Kellner, broker, M. J. Kellner Brokerage Co., Illinois Brokerage Co., and O-K Sales Co.

PAR. 4. The respondent since June 19, 1936, has made many purchases of general food products and other miscellaneous merchandise for his own account, for resale, from numerous sellers located in States other than the State of Illinois, and pursuant to said purchases, such food products and other miscellaneous merchandise have been shipped and transported by the respective sellers thereof from the States in which such sellers are located across State lines either to the respondent or, pursuant to respondent's instructions and directions, to purchasers to whom such food products and other miscellaneous merchandise have been sold by said respondent.

PAR. 5. In the course and conduct of respondent's business as a jobber, he purchases such general food products and other miscellaneous merchandise for his own account in commerce, as aforesaid under the name M. J. Kellner, broker, M. J. Kellner Brokerage Co., Illinois Brokerage Co., and O-K Sales Co., and has been and is now receiving and accepting from numerous sellers of said general food products and other miscellaneous merchandise so purchased, broker-

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age fees or allowances or discounts in lieu thereof on purchases of said general food products and other miscellaneous merchandise for his own account.

## CONCLUSION

In receiving and accepting brokerage fees or allowances or discounts in lieu of brokerage fees from sellers upon his purchases in interstate commerce of food products and other miscellaneous merchandise, as set forth in the foregoing findings as to the facts, the respondent, Maurice J. Kellner, an individual doing business as M. J. Kellner, broker, M. J. Kellner Brokerage Co., Illinois Brokerage Co., and O-K Sales Co., has violated the provisions of subsection (c) of section 2 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 an Act of Congress 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 substitute 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 hearings as to said facts, and expressly waives the filing of briefs and oral argument; and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of subsection (c) of section 2 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 an Act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C. title 15, sec. 13) :

*It is ordered*, That the respondent, Maurice J. Kellner, individually, and trading as M. J. Kellner, broker, M. J. Kellner Brokerage Co., Illinois Brokerage Co., and O-K Sales Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of food products and other merchandise in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, broker-

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age or other compensation, or any allowance or discount in lieu thereof, upon purchases of food products or other merchandise made for respondent's own account.

*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  
**GUY C. BEALS, TRADING UNDER THE NAME INTERNA-  
 TIONAL TRUSTEES, AND SPIEGEL, INC.**

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

*Docket 4863. Complaint, Oct. 30, 1942—Decision, July 8, 1943*

Where (1) an individual, engaged in interstate sale and distribution of envelopes, printed form letters, and questionnaire forms for use in obtaining information concerning debtors of the purchasers thereof, including a mail order house, and which—calling for such information as the debtor's occupation, address, name of spouse, dependents, employer, income, insurance, home or car ownership, and personal references—displayed on form letter sent to debtor, trade namé "International Trustees," followed by "Fiduciary Agents" and address of said individual and such other matter as "Money is being held in trust for the above-named person. In order to deliver this money quickly, we must have the enclosed TRUSTEE QUESTION FORM filled out and returned to us at once. If you are this person—and we have every reason to believe you are—fill out the enclosed TRUSTEE QUESTION FORM immediately, and send it to us by return mail. Don't delay. You have real money waiting for you—if you are the person we are seeking. INTERNATIONAL TRUSTEES"; and in said "Trustee Question Form" set forth, under "A sum of money is being held for you," such questions as "Have you recently received any money?" and immediately preceding place for debtor's signature statement "I understand that if the information I have furnished corresponds with what you have in your possession the money you are holding in trust will be delivered to me promptly. Signed \_\_\_\_\_"; and (2) a Chicago mail order house, among other purchasers, engaged in sale of various articles on credit to purchasers in various States and in undertaking to effect collection of delinquent accounts, in which connection it employed aforesaid forms, etc.;

Making use of a scheme under which such mail order concern and other purchasers inserted in a form letter the name and last known address of a debtor, placed (1) letter, (2) questionnaire, and (3) a smaller return stamped envelope addressed to said "International Trustees," etc., in a large stamped envelope addressed to debtor and bearing in upper left corner the words "Return to International Trustees" and said individual's address, and forwarded all said material to said individual, who mailed the large envelopes with their contents at his post office, and returned in due course to said mail order concern and other purchasers the information secured through questionnaires, and sent usually to person replying the sum of 1 cent, together with slip stating "Attached above is the penny that was held in trust for you," and, "this is the full amount that was held in trust in your name";

Falsely represented thereby to the recipients of such material that they were beneficiaries of trust funds held by "International Trustees" as "fiduciary agents," and that the information was sought for the purpose of identifying the recipients as the proper beneficiaries to whom such funds should be

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paid; when in fact the sole purpose was to assist said mail order concern and other purchasers in the collection of delinquent accounts;

With effect of misleading and deceiving many persons with respect to the identity and business of said individual, and with respect to his purpose in seeking information; whereby such persons were caused to supply information which otherwise they would not have supplied:

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

Before *Mr. J. Earl Cox*, trial examiner.

*Mr. Randolph W. Branch* for the Commission.

*Comfort, Comfort & Irish*, of Des Moines, Ia., for Guy C. Beals.

## 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 Guy C. Beals, an individual, trading as International Trustees, and Spiegel, Inc., a corporation, 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, Guy C. Beals, is an individual, trading under the name "International Trustees," with an office and principal place of business at 217 East Third Street, Des Moines, Iowa.

Respondent, Spiegel, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with an office and principal place of business at 1061 West Thirty-fifth Street, Chicago, Ill.

PAR. 2. Respondent, Guy C. Beals, is now, and has been for more than 6 months last past, engaged in the business of selling and delivering to respondent, Spiegel, Inc., envelopes, printed form letters, and questionnaire forms, said letters and questionnaires being in the forms exemplified by copies thereof, marked respectively Exhibits A and B, attached hereto and by this reference incorporated herein and made a part hereof, designed and intended to be used, as hereinafter set forth, in obtaining information concerning alleged debtors of respondent, Spiegel, Inc. Respondent, Beals, causes the said envelopes, form letters and questionnaire forms to be transported from his aforesaid place of business in the State of Iowa to respondent, Spiegel, Inc., at its place of business in the State of Illinois. Respondent, Beals maintains, and at all times mentioned herein has maintained, a course of trade in the said envelopes, letters, and forms in commerce between the States of Iowa and Illinois.

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PAR. 3. Respondent, Spiegel, Inc., is now, and has been for more than 6 months last past, engaged in the business of selling at retail household furnishings and other merchandise of various sorts and kinds. The business of said respondent is what is generally known as a "mail order business," in the course and conduct of which orders for various articles are received through the mails from various persons located in States of the United States other than the State of Illinois, and the articles so ordered are caused to be transported by said respondent from its aforesaid place of business in the State of Illinois to the said persons ordering the same. Said respondent's business is extensive and it maintains, and at all times mentioned herein has maintained, a course of trade in its said wares in commerce between and among the various States of the United States and in the District of Columbia. In connection with a large number of its sales, said respondent extends credit to purchasers located in various States of the United States other than the State of Illinois. In many cases purchasers from respondent Spiegel, Inc., on credit fail to meet their obligations when due, and said respondent in such cases exerts itself affirmatively to effect collection of the amounts which it claims are due it from such purchasers. In the course of its efforts to collect, it frequently desires to ascertain the current locations and addresses of many of such purchasers, and for the purpose of so doing it employs the letters, forms, and envelopes acquired from respondent Beals, as hereinabove stated, in the manner hereinafter set forth.

PAR. 4. In the blank space below the heading in the letters exemplified by Exhibit A and upon the appropriate line in the questionnaire exemplified by Exhibit B, respondent Spiegel, Inc., inserts the names and such addresses as it has available of the persons concerning whom information is sought. The two documents are then placed together in large envelopes, upon which appear in the upper left-hand corners:

Return to  
INTERNATIONAL TRUSTEES  
215 East 3rd St.,  
Des Moines, Iowa.,

which respondent, Spiegel, Inc., has addressed to the said persons, together with stamped reply envelopes, addressed to

International Trustees,  
Des Moines,  
215 East Third St. Iowa.



The large envelopes, with the necessary postage attached, and their contents, are then sent by respondent, Spiegel, Inc., from its place of business in Chicago, Ill., to respondent, Beals, at Des Moines, Iowa, usually in bundles containing a number of such filled envelopes.

Upon the receipt of the said large addressed envelopes, with enclosures, by respondent, Beals at Des Moines, Iowa, said respondent causes them to be deposited in the United States mails.

The questionnaires returned to respondent, Beals at Des Moines, Iowa, are transmitted by him to respondent, Spiegel, Inc., at Chicago, Ill. Respondent, Beals also sends to many of those returning such questionnaires 1 penny each, together with a statement to the effect that this is the full amount held in trust for the recipient.

PAR. 5. By means of the aforesaid envelopes, form letters, and questionnaires respondent, Beals, has falsely represented, and has placed in the hands of respondent, Spiegel, Inc., means of falsely representing, and respondent, Spiegel, Inc., has falsely represented to alleged debtors of respondent, Spiegel, Inc., directly and by implication that said alleged debtors are beneficiaries of trust funds held by "International Trustees" as "Fiduciary Agents"; that the value of such beneficial interest is more than a trivial one, and that the information sought by means of said letters and questionnaires is for the purpose of identifying the recipients thereof as the proper beneficiaries.

The said representations are false and misleading. In truth and in fact respondent at no time was "fiduciary agent" or "trustee" for or of any trust funds, trivial or otherwise, for the alleged debtors of respondent, Spiegel, Inc., and the only sum for which respondent Beals ever assumed any obligation to any debtor of respondent, Spiegel, Inc., was 1 penny. The information called for by the said questionnaires was not sought for the purpose of identification of those to whom they were sent as beneficiaries of trust funds, but was sought solely for the purpose of assisting respondent, Spiegel, Inc., in collecting its alleged delinquent accounts.

PAR. 6. Through the use of the name "International Trustees" for, and through the use of the words "Fiduciary Agents" as descriptive of the enterprise, said respondents have represented directly and by implication that the said concern is in the business of acting in the capacities of trustee and fiduciary agent.

These representations are false and misleading. In truth and in fact the said respondent, Beals, in conducting his business under the name aforesaid and described as above, has nothing to do with trusts and does not act in the capacity of trustee or fiduciary agent, and the

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said name and description are merely disguises for the true nature of his business.

PAR. 7. The use as hereinabove set forth of the foregoing false and misleading statements, representations, name, and description has had the tendency and capacity to, and has, misled and deceived many persons to whom the said letters, questionnaires, and envelopes were sent into the erroneous and mistaken belief that said statements and representations were true, and that said name and description truthfully indicated and described the character of the enterprise, and by reason thereof to give information which they would not otherwise supply.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act.

"EXHIBIT A"

INTERNATIONAL TRUSTEES

(Fiduciary Agents)

217 East Third Street

Des Moines, Iowa.

Money is being held in trust for the above named person.

In order to deliver this money quickly, we must have the enclosed TRUSTEE QUESTION FORM filled out and returned to us at once.

If you are this person—and we have every reason to believe you are—fill out the enclosed TRUSTEE QUESTION FORM immediately, and send it to us by return mail. Don't delay.

There is no obligation or expense whatever on your part. The cash money we are holding in trust will be delivered to you at once, so hurry to fill out truthfully all the questions on the enclosed sheet.

We have information which makes us feel positive this money can be delivered to you at once, but we must have the question form filled out so that we, by reviewing this, can be positive you are the person entitled to the money.

As stated before, you need incur no expense whatever. Use the enclosed self-addressed envelope. It is stamped and requires no postage.

Fill out the enclosed TRUSTEE QUESTION FORM immediately, answering all questions, and rush it back to us right NOW.

You have real money waiting for you—if you are the person we are seeking.

INTERNATIONAL TRUSTEES.

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## Findings

## "EXHIBIT B"

\$            \$            \$            \$            \$            \$            \$

A SUM OF MONEY IS BEING HELD FOR

- 
1. Is the name shown above correct? Yes No
  2. Have you recently inherited any money? Yes No
  3. Have you been notified of an inheritance? Yes No
  4. Are you expecting a cash or property inheritance? Yes No
  5. What is your age?-----
  6. Occupation -----
  7. To what address should money be sent?-----
  8. If married, give husband's name or wife's maiden name.-----
  9. How many dependents?-----
  10. Are you employed? Yes No
  11. Name and address of present employer.  
-----  
-----
  12. How long with present employer?-----
  13. What is your weekly income from present employment?-----
  14. If insured, give name of company and address of local agent.-----  
-----
  15. Do you own your own home?-----
  16. Do you own a car? Yes No
  17. When were you born?-----  
Where?-----
  18. What was your mother's maiden name?-----
  19. In what country was she born?-----
  20. Give name and address of personal references.  
-----  
-----

I hereby affirm that all answers to the above questions are, to the best of my knowledge, truthful and complete. I understand that if the information I have furnished corresponds with what you have in your possession the money you are holding in trust will be delivered to me promptly.

Signed-----

IMPORTANT: Any additional information you believe would be helpful please write here.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 30, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Guy C. Beals, individual, trading under the name International Trustees, and Spiegel, Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Both respondents filed

answers to the complaint, the answer of respondent, Spiegel, Inc., 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. Thereafter, testimony and other evidence in support of the allegations of the complaint with respect to respondent, Beals were introduced by the attorney for the Commission, and in opposition thereto by the attorney for such respondent, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answers thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent Beals 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 make this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Guy C. Beals, is an individual, who prior to December 1942, traded under the name "International Trustees," with his office and principal place of business located at 217 East Third Street, Des Moines, Iowa.

Respondent, Spiegel, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business located at 1061 West Thirty-fifth Street, Chicago, Ill.

PAR. 2. Respondent, Guy C. Beals, was for some time immediately preceding December 1942, engaged in the business of selling and delivering to respondent, Spiegel, Inc., and other purchasers envelopes, printed form letters, and questionnaire forms. These letters and questionnaires were designed and intended for use in obtaining information concerning debtors of the purchasers. Respondent, Beals, caused his envelopes, form letters, and questionnaire forms, when sold, to be transported from his place of business in the State of Iowa to purchasers thereof, including respondent, Spiegel, Inc., located in other States of the United States. Respondent, Beals, maintained a course of trade in his envelopes, letters, and forms in commerce among and between various States of the United States.

PAR. 3. Respondent, Spiegel, Inc., is now, and for some time last past has been engaged in the business of selling at retail household furnishings and other merchandise of various kinds. The business

of this respondent is what is generally known as a "mail order business," in the course and conduct of which orders for various articles are received by respondent through the mails from various persons located in States of the United States other than the State of Illinois, and the articles so ordered are caused by respondent to be transported from its place of business in the State of Illinois to such purchasers. Respondent, Spiegel, Inc., maintains and has maintained a course of trade in its merchandise in commerce among and between the various States of the United States and in the District of Columbia.

In connection with a large number of its sales, respondent, Spiegel, Inc., extends credit to the purchaser, and in many cases such purchasers fail to meet their obligations when due, in which event respondent, Spiegel, Inc., undertakes to effect collection of the delinquent account. In the course of its efforts to collect, it frequently desires to ascertain the current locations and addresses of its debtors, as well as other information regarding such debtors, and for this purpose it has employed the letters, forms and envelopes acquired from respondent, Beals.

PAR. 4. The letters sold by respondent Beals and used by respondent Spiegel, Inc., and other purchasers were in the following form:

INTERNATIONAL TRUSTEES  
(Fiduciary Agents)  
217 East Third Street  
Des Moines, Iowa

Money is being held in trust for the above named person.

In order to deliver this money quickly, we must have the enclosed TRUSTEE QUESTION FORM filled out and returned to us at once.

If you are this person—and we have every reason to believe you are—fill out the enclosed TRUSTEE QUESTION FORM immediately, and send it to us by return mail. Don't delay.

There is no obligation or expense whatever on your part. The cash money we are holding in trust will be delivered to you at once, so hurry to fill out truthfully all the questions on the enclosed sheet.

We have information which makes us feel positive this money can be delivered to you at once, but we must have the question form filled out so that we, by reviewing this, can be positive you are the person entitled to the money.

As stated before, you need incur no expense whatever. Use the enclosed self-addressed envelope. It is stamped and requires no postage.

Fill out the enclosed TRUSTEE QUESTION FORM immediately, answering all questions, and rush it back to us right NOW.

You have real money waiting for you—if you are the person we are seeking.

INTERNATIONAL TRUSTEES.

Upon receiving these form letters from respondent, Beals, the purchaser inserted in each the name and last known address of the debtor,

and enclosed with the letter the questionnaire form which was also obtained from respondent, Beals and which read as follows:

\* \* \* \* \*

A SUM OF MONEY IS BEING HELD FOR

-----  
(Name of debtor)

1. Is the name shown above correct? Yes  No
2. Have you recently inherited any money? Yes  No
3. Have you been notified of an inheritance? Yes  No
4. Are you expecting a cash or property inheritance? Yes  No
5. What is your age?-----
6. Occupation-----
7. To what address should money be sent?-----
8. If married, give husband's name or wife's maiden name-----
9. How many dependents?-----
10. Are you employed? Yes  No
11. Name and address of present employer-----
12. How long with present employer?-----
13. What is your weekly income from present employment?-----
14. If insured, give name of company and address of local agent-----
15. Do you own your own home?-----
16. Do you own a car? Yes  No
17. When were you born?-----  
Where?-----
18. What was your mother's maiden name?-----
19. In what country was she born?-----
20. Give name and address of personal references-----

-----  
I hereby affirm that all answers to the above questions are, to the best of my knowledge, truthful and complete. I understand that if the information I have furnished corresponds with what you have in your possession the money you are holding in trust will be delivered to me promptly.

Signed-----

---

**IMPORTANT:** Any additional information you believe would be helpful please write here.

The letter and questionnaire were placed by the purchaser in an envelope supplied by respondent, Beals, which bore in the upper left corner the words:

## Findings

Return to

## INTERNATIONAL TRUSTEES

215 East 3rd St.

Des Moines, Iowa

There was also enclosed in the envelope a smaller, return envelope addressed to "International Trustees" at 215 East Third Street, Des Moines, Iowa. After addressing the large envelope to the debtor at his last-known address and affixing the required postage stamps to both the large envelope and the return envelope, all of the material was forwarded by the purchaser to respondent, Beals. Respondent, Beals, would then deposit the large envelopes with their contents in the United States mails at Des Moines, Iowa.

PAR. 5. Through the use of these envelopes, letters, and questionnaires, respondents represented to the recipients of such material that such recipients were beneficiaries of trust funds held by "International Trustees" as "fiduciary agents," and that the information sought through such letters and questionnaires was for the purpose of identifying the recipients as the proper beneficiaries to whom such funds should be paid.

PAR. 6. The evidence shows that many of the persons receiving such letters and questionnaires believed these representations and filled out and returned to respondent, Beals, the questionnaires enclosed in the letters. Upon receipt of the executed questionnaires at his place of business in Des Moines, Iowa, respondent, Beals, forwarded them to respondent, Spiegel, Inc., or other purchasers, and the information thus obtained by Spiegel, Inc., and other purchasers was used by them in the collection or attempted collection of the delinquent accounts. Respondent, Beals, usually forwarded to the person answering the questionnaire the sum of 1 cent, together with a card or slip of paper which bore the following:

Attached above is the penny that was held in trust for you. This is the full amount that was held in trust in your name.

PAR. 7. As indicated above, the representations made by respondents were wholly false and misleading. Respondent, Beals was in no sense a trustee or fiduciary agent and did not at any time hold trust funds for delivery to any person. The information sought through the letters and questionnaires was not for the purpose of locating or identifying any beneficiaries of trust funds, but was solely for the purpose of assisting respondent, Spiegel, Inc., and other purchasers of such material in the collection of delinquent accounts.

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PAR. 8. The Commission finds further that the use by respondents of these false and misleading representations, including the use by respondent, Beals of the trade name "International Trustees," had the tendency and capacity to and did mislead and deceive many persons with respect to the identity and business of respondent, Beals, and with respect to the purpose for which the information sought was desired by respondents. In consequence, such persons were caused to supply to respondents information which otherwise they would not have supplied.

## CONCLUSION

The 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, the answers of respondents (that of respondent, Spiegel, Inc., 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), testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent, Beals, and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That respondent, Guy C. Beals, individually, and trading under the name International Trustees, or trading under any other name, and 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 his envelopes, form letters, and questionnaires, or any other printed or written material of a substantially similar nature, do forthwith cease and desist from:

(a) Using the words "International Trustees," or any other word or words of similar import, to designate, describe, or refer to respondent's business; or otherwise representing, directly or by implication, that respondent acts in the capacity of a trustee.



(b) Using the words "Fiduciary Agents," or any other word or words of similar import, to designate, describe, or refer to respondent's business; or otherwise representing, directly or by implication, that respondent acts in the capacity of a fiduciary agent.

(c) Representing, directly or by implication, that the information sought through respondent's letters, questionnaires, or other material is for the purpose of determining whether the person concerning whom such information is sought is entitled to receive trust funds or any other property.

(d) Using, or placing in the hands of others for use, form letters, questionnaires, or other material, which represent, directly or by implication, that respondent's business is other than that of obtaining information for use in the collection of debts, or that the information sought through such letters, questionnaires, or other material is for any purpose other than for use in the collection of debts.

*It is further ordered,* That respondent, Spiegel, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale and distribution of respondent's merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, including the collection or attempted collection of the purchase price of such merchandise, do forthwith cease and desist from:

(a) Using any form letters, questionnaires, or any other printed or written material, which contain any representation prohibited in paragraph 1 hereof.

(b) Using, in connection with the collection or attempted collection of the purchase price of merchandise, any form letters, questionnaires, or any other printed or written material, which represent, directly or by implication, that the information sought through such means is for any purpose other than for use in the collection of debts.

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

## IN THE MATTER OF

## AMERICAN BUTTON MOULD MANUFACTURERS 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 4726. Complaint, Mar. 11, 1942—Decision, July 10, 1943*

Where six concerns, engaged in the manufacture of button and buckle molds and in interstate sale and distribution thereof to button or buckle manufacturers for conversion into the finished product, making about 75 percent of all such molds manufactured in New York State and about 50 percent of all those made in the United States, and prior to and but for the acts and practices below set forth in active and substantial competition with one another and with other members of the industry; acting during a somewhat demoralized condition in the industry, during which it was the practice of customer manufacturers to make arbitrary deductions from bills rendered on the excuse that the manufacturer could obtain the goods elsewhere at the lower price—

- (a) Held meetings and carried on discussions among themselves with respect to the stabilization of prices and particularly to fixing of discounts to be allowed and, as a result of a definite agreement and understanding reached among themselves, distributed a price list, including uniform discounts, to which for a time there was general adherence; and later
- (b) Formed a corporate association to take the place of the loose organization which had theretofore existed, for the purpose, principally, of assisting the members in fixing and maintaining agreed prices and discounts; and

Where said Association, following deviations on the part of some from established price and discount schedules, and the making of charges and counter-charges of "chiseling"—

- (c) Employed a certified public accountant to examine the books of all of the members, with one exception, to ascertain whether they had been maintaining established prices, and in the audit which revealed that some had not been doing so, set forth the amounts which should be paid by offending members to the other members by reason of such departures; and

Where said Association and its members—

- (d) Considered the question of requiring the posting of a bond or security by each member to guarantee compliance with agreement as to prices and discounts, and did agree that security should be given; and
- (e) Sought, through concerted action, to drive out of business any competitors who were not members and did not maintain established prices and discounts, and, in certain instances, drove competitors out of business through cooperatively reducing prices drastically on the particular types of molds sold by the competitor, with result that he found it impossible to continue in business; Capacity, tendency and effect of which understandings, agreements, combinations and conspiracies, and acts and things done pursuant thereto, were unduly to restrain and suppress competition in the sale and distribution of

## Complaint

said button and buckle molds in commerce, and to deprive the trade and purchasing public of the advantages which would flow from normal and unobstructed competition:

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

Before *Mr. Webster Ballinger*, trial examiner.

*Mr. Floyd O. Collins* for the Commission.

*Mr. Morris Adda*, of New York City, for the officers and members of said association.

## 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 individuals, corporations, and partnerships named in the caption hereof and hereinafter described and referred to as respondents have violated the provisions of section 5 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 in that respect as follows:

**PARAGRAPH 1.** The respondent, American Button Mould Manufacturers Association, Inc., hereinafter referred to as respondent "Association," is a membership corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its home address and principal place of business at 274 Madison Avenue, New York, N. Y.

The membership of respondent Association is composed of manufacturers of button molds and buckle molds (button and buckle parts), located in the State of New York.

Respondent, Isidore A. Weidhorn of 274 Madison Avenue, New York, N. Y., is named respondent herein as an individual and as president of the respondent Association.

Respondent, Sidney Baritz, is named respondent herein as an individual and as vice president of the respondent Association and his address is 274 Madison Avenue, New York, N. Y.

Respondent, Harry Chalfin, is named respondent herein as an individual and as treasurer of the respondent Association and his address is 274 Madison Avenue, New York, N. Y.

Respondent, Samuel Luloff, is named respondent herein as an individual and as secretary of the respondent Association and his address is 274 Madison Avenue, New York, N. Y.

**PAR. 2.** Respondent, Liberty Die and Button Mould 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 home office and principal place of business at 438 West Thirty-seventh Street, New York, N. Y.

The respondent, C & C Button & Trimming 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 home office and principal place of business located at 318 West Thirty-ninth Street, New York, N. Y.

The respondent, Jacob Rabinowitz, 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 336 West Thirty-seventh Street, New York, N. Y.

The respondents, Elias Jaffe, and Solomon Jaffe, are copartners trading and doing business under the partnership name of Jaffe & Jaffe. The address and principal place of business of said respondents is 249 West Thirty-ninth Street, New York, N. Y.

The respondent, Handy Button Machine Co. of New York, 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 313 West Thirty-seventh Street, New York, N. Y.

The respondent, Defiance Button Machine Co., 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 43 West Twenty-fourth Street, New York, N. Y.

All of the respondents named in this paragraph are members of the respondent Association and are hereinafter referred to as member respondents. Each of said respondents, individually and as members of said respondent Association, have taken and do now take an active part in all of the activities herein described.

PAR. 3. The individual respondents named in paragraph 1 hereof direct and control the policies of the respondent Association and have taken an active part in all of the unfair methods of competition and the unfair acts and practices herein set out.

The respondent, Samuel Luloff as secretary of respondent Association, planned and promulgated the acts and practices hereinafter alleged and advised and counselled with the other respondents in formulating and carrying out said plans and has taken an active part in compiling and distributing the price and discount lists hereinafter described and referred to and in other ways perfected the carrying out of the agreements and understandings hereinafter set forth.

PAR. 4. All of the said member respondents are now and have been for the past 3 years engaged in manufacturing button molds (button parts) and buckle molds (buckle parts) and sell said molds to button and buckle manufacturers who make from said molds completed or finished buttons and buckles and all of said respondents named in paragraph 2 hereof have for more than 5 years last past engaged in the sale and distribution of button molds and buckle molds in commerce among and between the various States of the United States and cause said products when sold to be shipped from their respective places of business through and into other States of the United States to the purchasers thereof.

PAR. 5. The said member respondents now constitute and have during all the times mentioned herein constituted substantially all of the manufacturers of button molds and buckle molds in the United States. Said respondents manufacture approximately 95 percent of the button molds and buckle molds manufactured in the State of New York and in the territory adjacent thereto and manufacture approximately 80 percent of the button molds and buckle molds manufactured in the United States. 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 acts herein alleged said respondents would be in actual and substantial competition with each other and with other members of the industry.

PAR. 6. Respondents have entered into and, for more than 3 years last past, have carried out and are now engaged in carrying out an unlawful understanding, agreement, combination, and conspiracy to suppress, stifle and restrict competition in price and otherwise between and among said respondents to establish and maintain among themselves a common course of action in restraint of trade, and to create a monopoly in the interstate sale and distribution of button molds and buckle molds in the several States and territories of the United States and in the District of Columbia.

Pursuant to and to effectuate said understanding, agreement, combination, and conspiracy and in furtherance thereof said respondents have cooperatively, concertedly and collusively adopted and carried out, among other methods, acts, and practices, the following things:

1. Fixed the prices to be charged by member respondents for button and buckle molds and said member respondents have sold and delivered said products at said prices.

2. Fixed identical or uniform discounts to be allowed by member respondents to purchasers and said member respondents have consistently allowed said discounts.

3. In meetings held and through correspondence and personal contact respondents have advised, conferred, and consulted with one another in compiling price lists in which said prices and discounts were quoted, and said member respondents have directly or through the respondent, Luloff, and respondent association compiled, published, and circulated to purchasers and prospective purchasers said price lists containing said prices and discounts with the understanding or agreement that said prices and discounts would be adhered to by said member respondents and where price changes and discount changes were contemplated said member respondents would give to each other advance notice of the contemplated changes.

4. In order to insure that each member respondent would adhere to and perform said agreements the member respondents agreed to execute indemnifying bonds containing provisions to the effect that if the maker of said bond should violate the terms of the price and discount agreement he should pay to any party or parties to the agreement who had suffered any loss of trade thereby an amount sufficient to compensate such party or parties for such loss.

5. Said member respondents further agreed that they would have their books audited by disinterested parties and if it should be determined that any one of them had violated the terms of said price or discount agreement and had sold their products for less than agreed upon, or allowed discounts greater than those agreed upon, the member respondent so violating said agreement would pay to any member respondent such damages as may have been sustained on account of such violation.

6. Member respondents agree to cut prices and have cut prices on certain products which were comparable to products manufactured and sold by nonmember competitors, to a point where the competitors would be unable to manufacture and sell their products except at a loss.

7. Member respondents agree to refuse to sell and have refused to sell to button manufacturers and buckle manufacturers who purchase button molds and buckle molds from competitors of said member respondents.

PAR. 7. The capacity, tendency, and effect of such combinations, understandings, and agreements, and the methods, acts, and practices of the respondents set out herein, and many others similar thereto not specifically named, are and have been to monopolize the said business of manufacturing and selling button molds and buckle molds and to unreasonably lessen, eliminate, restrain, and suppress competition in the manufacture and sale of said products in interstate commerce; have been to enhance the price to the purchasers of said products; have

been 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 and free and fair competition in said industry; and have been to otherwise operate as a restraint of trade and a detriment to 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. 8. 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 respondents in the sale of button molds and buckle molds in commerce within the intent and meaning of the Federal Trade Commission Act, and have placed in respondents the power to control and enhance prices, have unreasonably restrained such commerce in the manufacture and sale of button molds and buckle molds, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 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 11, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorneys for the respondents, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (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, American Button Mould Manufacturers Association, Inc., hereinafter referred to as "respondent Association" or as "the Association," is a membership 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 274 Madison Avenue, New York, N. Y. The membership of the Association is composed of manufacturers of button molds and buckle molds (button and buckle parts) located in the State of New York.

Respondent, Isadore A. Weidhorn, was from the date of the incorporation of the Association, in July 1937, until December 1940, president of the Association. In December 1940, respondent, Weidhorn, resigned from his office and since that time has not been connected with the Association nor with any concern engaged in the manufacture of button or buckle molds.

Respondent, Sidney Baritz, was vice president of the Association from the date of its incorporation until December 1940, when he succeeded to the presidency upon the retirement of respondent, Weidhorn, and has continued in that office since that date.

Respondent, Harry Chalfin, is now and at all times mentioned herein has been treasurer of the Association.

Respondent, Samuel Luloff, is now and at all times mentioned herein has been secretary of the Association.

The following named respondents, hereinafter referred to as "member respondents," are and since July 1937, have been members of respondent Association, all of them having participated in the organization of the Association:

Respondent, Liberty Die and Button Mould 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 at 438 West Thirty-seventh Street, New York, N. Y.

Respondent, C & C Button & Trimming 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 318 West Thirty-ninth Street, New York, N. Y.

Respondent, Jacob Rabinowitz, 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 336 West Thirty-seventh Street, New York, N. Y.

Respondents, Elias Jaffe and Solomon Jaffe, are copartners, trading and doing business under the name of Jaffe & Jaffe, with their office and principal place of business located at 249 West Thirty-ninth Street, New York, N. Y.



Respondent, Handy Button Machine Co., of New York, 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 313 West Thirty-seventh Street, New York, N. Y.

Respondent, Defiance Button Machine Co., 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 43 West Twenty-fourth Street, New York, N. Y.

The individual respondents named above, who are joined in this proceeding both as individuals and as officers of the Association, direct and control or have directed and controlled the policies and practices of the Association. Each of the member respondents has participated actively in the activities of the Association.

PAR. 2. All of the member respondents are now and for a number of years last past have been engaged in the manufacture of button molds and buckle molds, and in the sale and distribution of such products to button and buckle manufacturers, who cover the molds with cloth or other material and otherwise convert the molds into finished buttons and buckles for use on wearing apparel and upholstery. The member respondents cause and have caused their products, when sold, to be transported from their respective places of business in the State of New York to purchasers thereof located in various other States of the United States. Each member respondent maintains and has maintained a course of trade in its products in commerce among and between the various States of the United States.

PAR. 3. The member respondents constitute the major portion of all of the manufacturers of button molds and buckle molds in the United States. They manufacture approximately 75 percent of all the button molds and buckle molds manufactured in the State of New York, and approximately 50 percent of all of the button molds and buckle molds manufactured in the United States. Prior to the adoption of the policies and practices hereinafter described, the member respondents were in active and substantial competition with one another and with other members of the industry engaged in the sale and distribution of button molds and buckle molds in commerce among and between the various States of the United States, and but for such policies and practices the member respondents would now be in such active and substantial competition with one another and with other members of the industry.

PAR. 4. New York City is the center of the button and buckle mold industry in the United States. The molds are made of metal and are of various kinds and sizes. For a number of years preceding the year

1937, the industry was in a somewhat demoralized condition. Many of the concerns engaged in the making of buttons and buckles were small and poorly financed, and it was frequently very difficult if not impossible to obtain reliable credit information regarding them. The list prices for button and buckle molds had become fairly uniform, and the customary or standard discount quoted by the manufacturers to their customers was "2-10-EOM," which meant a discount of 2 percent if the account was paid within 10 days or at the end of the month. It was the practice of the button and buckle manufacturers, however, to apply arbitrary discounts or make arbitrary deductions from the bill, and to tender to the mold manufacturer in full settlement of the account an amount which was substantially less than the amount stipulated in the bill. Frequently, deductions amounting to as much as 20 percent would be made by the purchaser.

The excuse given by the purchaser to the mold manufacturer for these arbitrary discounts or deductions was that the purchaser could obtain the goods from another mold manufacturer at the lower price. Because of the conditions prevailing in the industry and the aggressive competition which existed among the mold manufacturers, the seller found himself in the dilemma of having to accept the amount tendered or losing his customer to a competitor. Usually, the seller chose the first of these alternatives and accepted the amount offered.

PAR. 5. In an effort to meet this situation, the member respondents began early in 1937 to hold meetings and carry on discussions among themselves with respect to the stabilization of prices, and particularly with respect to the fixing of the discounts which should be allowed. Something in the nature of a loose organization or unincorporated association appears to have been formed by the member respondents at that time. Shortly thereafter, a price list was distributed among the button and buckle manufacturers either by the various member respondents direct or through their organization. This price list was effective March 1, 1937. It did not bear the name of any specific mold manufacturer but was a general list for the use of all of the member respondents. In addition to listing prices, the price list also fixed the discount at "2 percent 10 days, E. O. M." The evidence shows that after this price list was distributed, button and buckle manufacturers who made inquiry of the various member respondents with respect to prices and discounts were uniformly told by the member respondents to refer to the general price list. Salesmen of the member respondents who called on the trade carried no separate price lists of their respective houses but sold according to the general price list. There appears to be no doubt that this price list was the result of a definite agreement and understanding among the member respondents.

PAR. 6. The respondent Association was organized by the member respondents in July 1937, to take the place of the loose organization which had existed theretofore. The ostensible purposes of the Association, as set forth in the articles of incorporation, were somewhat varied and numerous, but it seems clear from the record that its principal purpose, aside from the obtaining and supplying of credit information, was to assist the member respondents in fixing and maintaining agreed prices and discounts governing the sale of their products.

PAR. 7. During the year 1937 the member respondents adhered generally to the agreed prices and discounts, but in 1938 some of them began to deviate from the established schedules and to allow discounts in excess of those which had been agreed upon. Charges and countercharges of "chiseling" were made from time to time among the members of the Association until in February 1939, the Association employed a certified public accountant to examine the books of all of the member respondents except Defiance Button Machine Company for the purpose of ascertaining whether these concerns had been maintaining the established prices. This audit revealed that some of the member respondents had not been maintaining the prices and discounts, and the audit set forth the various amounts which should be paid by the offending members to the other members because of such departures. Insofar as the record discloses, however, these payments were never made.

Consideration was also given by the Association and its members, in the early part of 1939, to the matter of requiring the posting of a bond or security by each member to guarantee compliance with the agreement as to prices and discounts. The record indicates that it was agreed that such security should be given, but it appears that the agreement was never consummated and the security was never actually posted.

PAR. 8. In addition to fixing prices and discounts, respondents also sought through concerted action to drive out of business any competitors who were not members of the Association and did not maintain such prices and discounts. In at least two instances, competitors were driven out of business or forced to sell out to certain of the member respondents. To bring about this result, the member respondents cooperatively reduced prices drastically on these particular types of molds by the competitor and, in consequence, the competitor found it impossible to continue in business.

PAR. 9. The Commission therefore finds that the respondents entered into understandings, agreements, combinations, and conspiracies to restrict and restrain competition in the sale of button and buckle

molds, and that each of the respondents acted in concert and in cooperation with one or more of the other respondents in doing and carrying out the acts and practices herein described, in furtherance of such understandings, agreements, combinations, and conspiracies.

PAR. 10. The Commission finds further that the capacity, tendency, and effect of such understandings, agreements, combinations, and conspiracies, and of the acts and things done by the respondents pursuant thereto and in furtherance thereof, are and have been unduly to lessen, restrain, and suppress competition in the sale and distribution of button and buckle molds in commerce, as "commerce" is defined in the Federal Trade Commission Act, and to deprive the trade and the purchasing public of the advantages which would flow from normal and unobstructed competition in the sale and distribution of such products in such commerce.

#### CONCLUSION

The 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, the answer of respondents, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondents, American Button Mould Manufacturers Association, Inc., a corporation, and its officers; Isidore A. Weidhorn, Sidney Baritz, Harry Chalfin, and Samuel Luloff, individually, and as officers of said Association; Liberty Die & Button Mould Co., Inc., C. & C. Button & Trimming Co., Inc., Jacob Rabowitz, Inc., Handy Button Machine Co. of New York, Inc., and Defiance Button Machine Co., corporations, and their respective officers, and Elias Jaffe and Solomon Jaffe, individually, and as copartners trading as Jaffe and Jaffe, or trading under any other name (hereinafter referred to as member respondents); and respondents' agents, representatives, and employees, directly or through any corporate or other

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device, in connection with the offering for sale, sale, and distribution of button molds and buckle molds in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, agreement, understanding, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

1. Fixing, establishing, or maintaining prices, discounts, or terms of sale for button and buckle molds, or adhering to or promising to adhere to the prices, discounts, or terms of sale so fixed.

2. Holding meetings for the purpose of agreeing upon prices to be charged or discounts to be allowed by the member respondents in the sale of their products.

3. Compiling or distributing price lists showing prices or discounts cooperatively fixed or determined.

4. Executing or agreeing to execute indemnifying bonds guaranteeing or purporting to guarantee the observance by the member respondents of any agreement with respect to prices or discounts.

5. Causing the books of any member respondent to be examined for the purpose of ascertaining whether such member has adhered to prices or discounts theretofore agreed upon by respondents.

6. Cooperatively reducing prices or allowing discounts for the purpose of forcing competitors of the member respondents out of business or compelling such competitors to sell their business to any member respondent.

*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  
SAMUEL PERLOFF, ET AL., TRADING AS ATLANTIC  
PACKING COMPANY, ETC.

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

*Docket 4822. Complaint, Aug. 25, 1942—Decision, July 10, 1943*

Where four partners, engaged as wholesalers in competitive interstate sale and distribution of food products under various trade names—  
Represented that they packed various items dealt in by them, by using on labels for dry packaged commodities and on certain canned goods, in addition to general trade names, the words "Atlantic Packing Co., Philadelphia, Pa.—Distributors";  
The facts being that some 15 dry commodities packed by them constituted a very small part only of their total business, and, as respects their canned goods, obtained by them from other sources, they were not packers, with whom dealers in substantial numbers deal directly in preference to distributors merely;  
With tendency and capacity to mislead and deceive a substantial number of dealers in said respects, thereby causing them to purchase said products; whereby substantial trade was diverted unfairly to said partners from competitors who did not misrepresent their business status or origin of their products:  
*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

As respects contention that inclusion of word "Distributors" in legend "Atlantic Packing Co., Philadelphia, Pa.—Distributors," employed on labels of certain commodities dealt in by users of said trade name, who in fact packed only a part of the various products thus labeled, was sufficient to apprise prospective purchasers of the fact that the users were merely distributors rather than packers of the canned goods so labeled, and that such use of the word "Distributors" corrected any erroneous impression which might otherwise be conveyed through use of trade name in question: said position was not well taken, as prospective purchasers could reasonably conclude that said sellers were both the packers and distributors of the products, it also being impossible, since same words appeared on labels for both the dry commodities which they did pack and the canned goods which they did not, to determine from the label whether they packed or merely distributed the particular item.

Before *Mr. Clyde M. Hadley*, trial examiner.  
*Mr. B. G. Wilson* for the Commission.  
*Sanders, Gravelle, Whitlock & Howrey*, of Washington, D. C., 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 Samuel Perloff, Harry Perloff, Earl Perloff, and Morris Perloff, individuals, and copartners, trading as Atlantic Packing Co. and as Atlantic Packing Co., Distributors, 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, Samuel Perloff, Harry Perloff, Earl Perloff, and Morris Perloff, as individuals, and as copartners, are now and for some time last past have been trading as Atlantic Packing Co. and as Atlantic Packing Co., Distributors, having their principal office and place of business located at 919 North Front Street, Philadelphia, Pa. Respondents are now and for some time last past have been engaged in the wholesale distribution of canned foods in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The respondents now cause, and have caused, said canned foods, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof at their respective points of location in various other States of the United States other than the State of Pennsylvania and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said foods in commerce between and among the various States of the United States and in the District of Columbia.

Respondents are, and for some time last past have been, in substantial competition with corporations, other partnerships and individuals engaged in the wholesale distribution of like or similar canned foods and said competitors sell and distribute their food commodities 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 business, as aforesaid, by the use of the word "Packing," which appears in their trade name, on their business stationery, on the labels affixed to the containers of their various canned food commodities, and in various other ways, respondents represent, and have represented, to their prospective customers and furnished, and have furnished, their customers the means of representing to their vendees and to the ultimate consuming public that they are the "packers" of their various canned food com-

modities and that they are engaged in the food packing business. In truth and fact, the said respondents sell and distribute food commodities which are prepared and packed in plants, factories, and establishments which the said respondents do not actually own and operate or directly and absolutely control.

PAR. 4. For a long period of time the word "Packing" when used in connection with the wholesale food distribution business and with the foods pertaining thereto has had, and still has, a definite and significant meaning to the minds of wholesalers and retailers engaged in such business and to the ultimate purchasing public, to wit; to indicate that the food thus designated is actually prepared and packed by those concerns who use this word in any description of their respective businesses. A substantial portion of the purchasing public prefer to deal directly with concerns which prepare and pack their foods rather than with food brokers or wholesalers who merely resell food which has been prepared and packed by others, believing that by dealing with the former they secure a more uniform quality and better prices than by dealing with the latter.

PAR. 5. Among respondents' aforesaid competitors there are corporations, other partnerships and individuals engaged in the business of preparing and packing food commodities who truthfully represent themselves as "packers" or "packing companies." There are also among the aforesaid competitors of the respondents food wholesalers and brokers who do not prepare and pack their food commodities and who in no way misrepresent the nature or character of the business they are engaged in.

PAR. 6. The use by the respondents 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 public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondents' food commodities because of such erroneous beliefs. As a result, trade is being, and has been, diverted unfairly to respondents from their aforesaid competitors and 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. 7. The aforesaid acts and practices of the respondents, acting individually and in concert with one another, 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 August 25, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Samuel Perloff, Harry Perloff, Earl Perloff, and Morris Perloff, individuals and copartners trading as Atlantic Packing Co., and as Atlantic Packing Co., Distributors, 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 that act. After the filing of respondents' answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission before a trial examiner of the Commission theretofore duly designated by it (no testimony or other evidence being offered on behalf of respondents), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, briefs in support of and in opposition to the complaint, 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 respondents, Samuel Perloff, Harry Perloff, Earl Perloff, and Morris Perloff, are copartners doing business under the various trade names hereinafter referred to, with their principal office and place of business located at 919 North Front Street, Philadelphia, Pa. Respondents are now and for a number of years last past have been engaged in the wholesale distribution of food products, including canned foods.

**PAR. 2.** In the course and conduct of their business respondents cause and have caused their food products, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States. Respondents maintain and have maintained a course of trade in their products in commerce among and between various States of the United States.

**PAR. 3.** Respondents are and have been in substantial competition with other copartnerships and individuals, and with corporations, engaged in the sale and distribution of food products in commerce among and between various States of the United States.

PAR. 4. In addition to their main place of business in Philadelphia, respondents also maintain branch houses in Chester, Wilkes-Barre, and Shenandoah, Pa. The principal trade name used by respondents for all their business operations is Perloff Brothers. However, they also use for the branch in Chester the name Chester Wholesale Grocery, and for the branches in Wilkes-Barre and Shenandoah the name Black Diamond Wholesale Grocery Co. Respondents' business is exclusively wholesale, all of their sales being made to dealers.

Respondents do not pack any of the canned goods sold by them, but they do pack in their Philadelphia establishment some 15 dry commodities, including rice, barley, lima beans, Morrow beans, kidney beans, lentils, and black-eyed peas. These dry commodities are packed in small pasteboard packages or cartons, which are in turn packed in cases for shipment to the trade. This feature of respondents' business constitutes only a very small part of their total volume of business.

In addition to the general trade names referred to above, respondents have also used on certain of their labels the words "Atlantic Packing Co., Philadelphia, Pa., Distributors." These words are used not only on the labels for the dry commodities packaged by respondents, but also on some of the canned goods, including fruits, vegetables, sardines, etc.

PAR. 5. The Commission is of the opinion and finds that while the name "Atlantic Packing Co." may properly be used by respondents in connection with the dry commodities which are packed by them, the name is erroneous and misleading as applied to those items which respondents do not pack, as the word "Packing" in the name constitutes a representation that such items are packed by respondents. All of respondents' canned goods are obtained by them from other sources, the labels for such products being supplied by respondents to the respective packers of the goods.

It is urged by respondents that the use of the word "Distributors" in connection with the trade name on the labels is sufficient to apprise prospective purchasers of the fact that respondents are merely distributors rather than packers of the canned goods, and that the use of this word corrects any erroneous impression which might otherwise be conveyed through the use of the trade name. The Commission is of the opinion, however, that this position is not well taken, as prospective purchasers could reasonably conclude that respondents are both the packers and the distributors of the products. Moreover, as the same words appear on the labels for both the dry commodities which are packed by respondents and the canned goods which are not packed by them, it is impossible for the prospective purchaser to de-

termine from the label whether the particular item is packed by respondents or merely distributed by them.

PAR. 6. There is a preference on the part of a substantial number of dealers for dealing with packers direct, rather than with concerns which do not pack their products but are merely distributors.

PAR. 7. The Commission finds further that the use by respondents of the name "Atlantic Packing Co." in connection with any products not packed by them has the tendency and capacity to mislead and deceive a substantial number of dealers with respect to respondents' business status and the origin of respondents' products, and the tendency and capacity to cause such dealers to purchase respondents' products as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been diverted unfairly to the respondents from their competitors, among whom are those who do not misrepresent their business status or the origin of their products.

#### CONCLUSION

The 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 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, the answer of respondents, testimony and other evidence in support of the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it (no testimony or other evidence having been offered on behalf of respondents), report of the trial examiner upon the evidence, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondents, Samuel Perloff, Harry Perloff, Earl Perloff, and Morris Perloff, individually, and trading as Atlantic Packing Co., and as Atlantic Packing Co., Distributors, or trading under any other name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' food products 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 trade name "Atlantic Packing Co.," or any trade name containing the word "Packing" or any other word of similar import, in connection with any product which is not in fact packed by respondents.

2. Representing, directly or by implication, that any product is packed by respondents when such is not the fact.

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

## Complaint

## IN THE MATTER OF

## AMERICAN RUG &amp; CARPET 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 4499. Complaint, May 10, 1941—Decision, July 13, 1943*

Where a corporation, engaged in competitive interstate sale and distribution of rugs closely resembling Orientals, having their origin in Persia or Iran, including those known as "Sarouk," "Kashan," "Ardabil," and "Ardavan"—  
 Made use of names "Imperial Saroukan," "Iran Kashan," and "Imperial Ardavan" to designate certain of its said products in invoices to dealers and in otherwise referring thereto, and in labels attached thereto conspicuously displayed the name, together with a depiction of Oriental scenes;

The facts being that said rugs, while so closely simulating the true handmade Oriental with its distinctive knotting and other characteristics, as to be indistinguishable therefrom by a large portion of the purchasing public, were woven on power looms in the United States;

With tendency and capacity to mislead prospective purchasers into the mistaken belief that such representations were true and that aforesaid rugs were genuine Orientals, and thereby induce their purchase; and with result of placing in the hands of retailer purchasers thereof means of deceiving the public in the particulars aforesaid; whereby trade was unfairly diverted to it from competitor dealers in truthfully represented Orientals and domestics:

*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 in commerce and unfair and deceptive acts and practices therein.

*Mr. Randolph W. Branch* for the Commission.

*Hartman & Craven*, 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 American Rug & Carpet 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:

PARAGRAPHS 1. Respondent, American Rug & Carpet Co., Inc., is a corporation, organized and existing under the laws of the State of New York and having an office and principal place of business at 105 Madison Avenue, city and State of New York.

PAR. 2. Respondent, is now, and has been for more than three years last past, engaged in the business of distributing and selling rugs. In the course and conduct of its business, respondent sells said rugs to various wholesale and retail dealers, and causes such rugs, when sold, to be transported from its aforesaid place of business in the State of New York to 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 rugs in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, and with firms, partnerships, and individuals also engaged in the sale and distribution of rugs in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent either the place or method of manufacture of their products and who do not furnish their dealer-customer with means or instrumentalities for deceiving the public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient, or more particularly in certain parts of southwestern Asia, by hand, of pleasing texture and original and beautiful design and having a pile of wool or silk and wool, and threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. Oriental rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof there is a substantial demand on the part of many of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business and for the purpose of inducing the purchase of said rugs, respondent has engaged in the practice of describing and designating certain of its rugs, which closely resemble true Oriental rugs in appearance, by the names "Imperial Saroukan," "Iran Kashan," and "Imperial Ardavan."

There are true Oriental rugs known as "Sarouk," "Kashan," "Ardabil," and "Ardavan," and "Iran" is the modern name for Persia, which is a place of origin of genuine Oriental rugs. The use by the respondent of the designations "Imperial Saroukan," "Iran Kashan," and "Imperial Ardavan" has the capacity and tendency to create the mistaken and erroneous belief that the rugs so designated are in fact genuine Oriental rugs. Respondent uses said names to designate the

said rugs in invoices to dealers and in otherwise referring to the same in the sale thereof to dealers.

To the various rugs designated by respondent as above set forth, it firmly attaches labels upon which the particular name conspicuously appears, together with depictions of Oriental scenes. All of said labels are plainly discernible to members of the purchasing public when said rugs are displayed for sale by retail dealers.

In truth and in fact respondent's rugs hereinabove referred to are woven on power looms in the United States. They are not made by hand and the individual threads are not knotted in the distinctive manner of the true Oriental rug. They do not possess all the characteristics of true Oriental rugs but do in fact so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public and, in consequence, are readily accepted as being true Oriental rugs.

PAR. 6. The use by respondent of the designations, depictions, and representations as set forth herein in connection with the offering for sale and sale of its said rugs has had, and now has, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices place in the hands of retail dealers who purchase said rugs and resell the same to the purchasing public, means and instrumentalities for misleading and deceiving the public in the particulars aforesaid.

As a result of respondent's said acts and practices, trade has been unfairly diverted to respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of rugs of various kinds, including both genuine Oriental and domestic rugs, who truthfully represent their products as set forth in paragraph 3 hereof. 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. 7. 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 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 May 10, 1941, issued, and on May

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12, 1941, served its complaint in this proceeding upon respondent, American Rug and Carpet Co., Inc., 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 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 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, American Rug & Carpet Co., Inc., is a corporation, organized and existing under the laws of the State of New York and having its office and principal place of business at 105 Madison Avenue, city and State of New York.

PAR. 2. Respondent is now, and has been for more than three years last past, engaged in the business of distributing and selling rugs. In the course and conduct of its business, respondent sells said rugs to various wholesale and retail dealers, and causes such rugs, when sold, to be transported from its aforesaid place of business in the State of New York to 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 rugs in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been at all times mentioned herein, in substantial competition with other corporations, and with firms, partnerships, and individuals also engaged in the sale and distribution of rugs in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent either the place or method of manufacture of their products and who do not furnish their dealer-customers with means or instrumentalities for deceiving the public.



PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient, or more particularly in certain parts of southwestern Asia, by hand, of pleasing texture and original and beautiful design and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. Oriental rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof there is a substantial demand on the part of many of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business and for the purpose of inducing the purchase of said rugs, respondent has engaged in the practice of describing and designating certain of its rugs, which closely resemble true Oriental rugs in appearance, by the names "Imperial Saroukan," "Iran Kashan," and "Imperial Ardavan."

There are true Oriental rugs known as "Sarouk," "Kashan," "Ardabil," and "Ardavan," and "Iran" is the modern name for Persia, which is a place of origin of genuine Oriental rugs. The use by the respondent of the designations "Imperial Saroukan," "Iran Kashan," and "Imperial Ardavan" has the capacity and tendency to create the mistaken and erroneous belief that the rugs so designated are in fact genuine Oriental rugs. Respondent uses said names to designate the said rugs in invoices to dealers and in otherwise referring to the same in the sale thereof to dealers.

To the various rugs designated by respondent as above set forth, it firmly attaches labels upon which the particular name conspicuously appears, together with depictions of Oriental scenes. All of said labels are plainly discernible to members of the purchasing public when said rugs are displayed for sale by retail dealers.

In truth and in fact respondent's rugs hereinabove referred to are woven on power looms in the United States. They are not made by hand and the individual threads are not knotted in the distinctive manner of the true Oriental rug. They do not possess all the characteristics of true Oriental Rugs but do in fact so closely simulate true Oriental rugs in appearance as to be indistinguishable from them by a large portion of the purchasing public and, in consequence, are readily accepted as being true Oriental rugs.

PAR. 6. The use by respondent of the designations, depictions, and representations as set forth herein in connection with the offering for sale and sale of its said rugs has had, and now has, the tendency and capacity to mislead purchasers and prospective purchasers thereof

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into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices place in the hands of retail dealers who purchase said rugs and resell the same to the purchasing public, means and instrumentalities for misleading and deceiving the public in the particulars aforesaid.

As a result of respondent's said acts and practices, trade has been unfairly diverted to respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia, of rugs of various kinds, including both genuine Oriental and domestic rugs, who truthfully represent their 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, American Rug and Carpet 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 rugs in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Saroukan," or "Iran" or any other combination of words or syllables, coined or otherwise, which are indicative of the Orient to designate or describe rugs which are not in fact made in the Orient and which do not possess all the essential characteristics and structure of Oriental rugs.

2. Using the words "Kashan," "Ardavan," or "Sarouk" or any other name of any genuine Oriental rug, alone or in combination with other

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words or syllables, coined or otherwise, to designate or describe rugs which are not in fact made in the Orient and which do not possess all the essential characteristics and structure of the particular Oriental rugs indicated by the use of such name.

*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

## RHODE ISLAND PLUSH MILLS, 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 AN ACT OF CONGRESS APPROVED OCT. 14, 1940

*Docket 4881. Complaint, Dec. 30, 1942—Decision, July 13, 1943*

Where a corporation, engaged in the manufacture and interstate sale and distribution of textile fabrics of woolen and cotton, woolen and rayon, or cotton and rayon, which, designed for use in the manufacture of women's coats, were so constructed as to simulate the color, pattern, and texture of the peltries of the Karakul breed of sheep or lambs, or fabrics made from the highly prized fleece thereof—

(a) Represented that its fabrics and coats or garments made therefrom were made from such peltries or fleece, through supplying to manufacturers and retailers for use thereon, or paying for, labels bearing names such as "Bakahara-Lam," "Allapo-Curl," "Arabakurl," "Bokahara-Curl," and "Mara-Kurl," associated in sound and appearance with said breed's countries;

With tendency and capacity to mislead and deceive the purchasing public into the belief that said fabrics or garments were in fact made from Karakul peltries or fleece, markedly preferred by a substantial part of such public over garments made of ordinary woolen or mixed fabrics; and

Where said corporation, engaged in sale and distribution of wool products under the Wool Products Labeling Act in that aforesaid fabrics were composed in part of wool, reprocessed wool, or reused wool as there defined, and of other fibers also—

(b) Sold the same misbranded in violation thereof in that they did not have on or affixed thereto a stamp, tag, label, or other means of identification showing the percentages of the total fiber weight with respect to wool, reprocessed wool, reused wool, nonwool fibers, and aggregate thereof, addition of nonfibrous loading, and proper identification of the manufacturer or seller:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

*Mr. B. G. Wilson* for the Commission.

*Edwards & Angell*, of Providence, R. I., 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 Rhode Island Plush Mills, Inc., a corporation, hereinafter referred to as respondent, has

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violated the provisions of said act and the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, 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, Rhode Island Plush Mills, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island with its offices and principal place of business at 1112 River Street, Woonsocket, R. I.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, sale, and distribution of certain textile fabrics which are designed for use in the manufacture of women's coats. Said fabrics resemble or simulate in appearance the peltries of the Karakul breed of sheep or lambs or fabrics made from the fleece of such sheep or lambs.

Respondent causes and has caused said products, when sold by it, to be transported from its place of business in the State of Rhode Island to various purchasers thereof at their respective points of location in various States of the United States other than the State of Rhode Island and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in its said fabrics in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its fabrics, respondent supplies manufacturers and retail dealers with various labels to be attached to coats and other garments manufactured from its said fabrics.

Among the trade names used by the respondent on said labels are the following: "Bokahara-Lam," "Allapo-Curl," and "Arabakurl." Other labels attached to coats and other garments manufactured from its fabrics and paid for by the respondent bear the names, "Bokahara-Curl," "Mara-Kurl," "Uralaine," "Artic-Kurl," and "Kurlymo." All of said labels are used on fabrics which are manufactured by respondent so as to resemble and simulate in appearance the color, pattern, and texture of the peltries of the Karakul breed of sheep or lambs or fabrics made from the fleece of such sheep or lambs.

The foregoing trade names have the sound and appearance of various names which are associated in the minds of the purchasing public with countries where the Karakul breed of sheep or lamb is found.

PAR. 4. The aforesaid textile fabrics, as manufactured and sold by respondent, are so constructed as to have the appearance of the highly

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prized fleece of the young of the Karakul breed of sheep and from their appearance said fabrics convey the impression and induce the belief among prospective purchasers that said fabrics and the garments made therefrom are in fact made from the peltries of the Karakul breed of sheep or lamb or from the fleece from such sheep or lamb.

When textile fabrics simulating or resembling the peltries of animals bear labels which suggest such animals or the country of their origin are unaccompanied by words disclosing that such products are in fact made of fabrics rather than peltries, such practice has the tendency and capacity to confuse, mislead, and deceive the purchasing public into the belief that such fabrics and the garments made therefrom are in fact made from the peltries or from the fleece of such animals.

Through the use of the aforesaid labels and through the use of other words of similar meaning not herein set out, the respondent represents and has represented that its fabrics and the garments made therefrom are made from the peltries of the Karakul breed of sheep and lambs or from the fleece taken from such animals.

PAR. 5. The foregoing labels are false, misleading, and deceptive. In truth and in fact none of respondent's fabrics or the garments made therefrom are composed of the peltries of the Karakul breed of sheep or lambs or of fleece taken from such animals. All of said products are fabrics composed of woolen fibers and cotton fibers, or woolen fibers and rayon fibers, or cotton fibers and rayon fibers.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for coats and other garments made from the peltries of the Karakul breed of sheep or lamb and from the fleece of such animals over garments made from fabrics composed of ordinary woolen fibers or composed of a mixture of ordinary wool and other fibers.

PAR. 7. Through the use of the acts and practices hereinabove alleged, the respondent places in the hands of the manufacturers, jobbers, and retail dealers, a means and instrumentality whereby such manufacturers, jobbers, and retail dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 8. The said fabrics sold and distributed by the respondent since July 15, 1941, as aforesaid, are wool products within the intent and meaning of the Wool Products Labeling Act of 1939, in that such fabrics are composed in part of wool, reprocessed wool, and reused wool, as those terms are defined in said act. Said wool products contain fibers other than wool, reprocessed wool, or reused wool.

Said wool products, when sold and distributed by the respondent in said commerce, as aforesaid, were misbranded in violation of the

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Wool Products Labeling Act of 1939, in that said wool products did not have on or affixed thereto a stamp, tag, label, or any other means of identification, or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percent or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (c) the name of the manufacturer of the wool product, or a registered number in lieu thereof as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product; (d) the percentages in words and figures plainly legible, by weight of the wool contents of said wool product where said wool product contained a fiber other than wool.

PAR. 9. The aforesaid acts, practices, and methods 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 the 30th day of December 1942 issued and subsequently served its complaint in this proceeding upon respondent, Rhode Island Plush Mills, 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, and the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the treasurer for respondent corporation and Richard P. Whiteley, assistant 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. In said stipulation respondent expressly waived the filing of a report upon the evidence by a trial examiner. Thereafter, this proceeding

regularly came on for final hearing before the Commission upon 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, Rhode Island Plush Mills, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, with its offices and principal place of business at 1112 River Street, Woonsocket, R. I.

PAR. 2. Respondent is now and for some time last past has been engaged in the manufacture, sale, and distribution of certain textile fabrics which are designed for use in the manufacture of women's coats. Said fabrics resemble or simulate in appearance the peltries of the Karakul breed of sheep or lambs or fabrics made from the fleece of such sheep or lambs.

Respondent causes and has caused said products, when sold by it, to be transported from its place of business in the State of Rhode Island to various purchasers thereof at their respective points of location in various States of the United States other than the State of Rhode Island and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in its said fabrics in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its fabrics, respondent supplies manufacturers and retail dealers with various labels to be attached to coats and other garments manufactured from its said fabrics.

Among the trade names used by the respondent on said labels are the following: "Bokahara-Lam," "Allapo-Curl," and "Arabakurl." Other labels attached to coats and other garments manufactured from its fabrics and paid for by the respondent bear the names, "Bokahara-Curl," "Mara-Kurl." All of said labels are used on fabrics which are manufactured by respondent so as to resemble and simulate in appearance the color, pattern, and texture of the peltries of the Karakul breed of sheep or lambs or fabrics made from the fleece of such sheep or lambs.

The foregoing trade names have the sound and appearance of various names which are associated in the minds of the purchasing



public with countries where the Karakul breed of sheep or lamb is found.

PAR. 4. The aforesaid textile fabrics, as manufactured and sold by respondent, are so constructed as to have the appearance of the highly prized fleece of the young of the Karakul breed of sheep and from their appearance said fabrics convey the impression and induce the belief among prospective purchasers that said fabrics and the garments made therefrom are in fact made from the peltries of the Karakul breed of sheep or lamb or from the fleece from such sheep or lamb.

When textile fabrics simulating or resembling the peltries of animals bear labels which suggest such animals or the country of their origin are unaccompanied by words disclosing that such products are in fact made of fabrics rather than peltries, such practice has the tendency and capacity to confuse, mislead, and deceive the purchasing public into the belief that such fabrics and the garments made therefrom are in fact made from the peltries or from the fleece of such animals.

Through the use of the aforesaid labels and through the use of other words of similar meaning not herein set out, the respondent represents and has represented that its fabrics and the garments made therefrom are made from the peltries of the Karakul breed of sheep and lambs or from the fleece taken from such animals.

PAR. 5. The foregoing labels are false, misleading, and deceptive. In truth and in fact none of respondent's fabrics or the garments made therefrom are composed of the peltries of the Karakul breed of sheep or lambs or of fleece taken from such animals. All of said products are fabrics composed of woolen fibers and cotton fibers, or woolen fibers and rayon fibers, or cotton fibers and rayon fibers.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for coats and other garments made from the peltries of the Karakul breed of sheep or lamb and from the fleece of such animals over garments made from fabrics composed of ordinary woolen fibers or composed of a mixture of ordinary wool and other fibers.

PAR. 7. Through the use of the acts and practices hereinabove described, the respondent places in the hands of the manufacturers, jobbers, and retail dealers, a means and instrumentality whereby such manufacturers, jobbers, and retail dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 8. The said fabrics sold and distributed by the respondent since July 15, 1941, as aforesaid, are wool products within the intent and meaning of the Wool Products Labeling Act of 1939, in that such

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fabrics are composed in part of wool, reprocessed wool, and reused wool, as those terms are defined in said act. Said wool products contain fibers other than wool, reprocessed wool, or reused wool.

Said wool products, when sold and distributed by the respondent in said commerce, as aforesaid, were misbranded in violation of the Wool Products Labeling Act of 1939, in that said wool products did not have on or affixed thereto a stamp, tag, label, or any other means of identification, or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percent or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of non-fibrous loading, filling, or adulterating matter; (c) the name of the manufacturer of the wool product, or a registered number in lieu thereof as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product; (d) the percentages, in words and figures plainly legible, by weight of the wool contents of said wool product where said wool product contained a fiber other than wool.

PAR. 9. The record indicates that since September 1, 1941, respondent has affixed labels, tags, or other means of identification to its products which are designed for use in the manufacture of women's coats, in compliance with the provisions of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder.

## CONCLUSION

The aforesaid acts and practices of 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 and the Wool Products Labeling Act of 1939.

## 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 by the respondent herein and Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue

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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 and the Wool Products Labeling Act of 1939.

*It is ordered,* That the respondent, Rhode Island Plush Mills, Inc., a corporation, and 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 textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Bokahara Lam," "Allapo-Curl," "Arabakurl," "Bokahara-Curl," "Mara-Kurl," or any similar term, to designate fabrics which resemble or simulate in appearance the color, pattern, or texture of peltries of the Karakul breed of sheep or lambs, or fabrics made from the fleece of such sheep or lambs.

2. Representing or implying in any manner that textile fabrics are made from the fleece of the Karakul breed of sheep or lamb, when such is not the fact.

*It is further ordered,* That the respondent, Rhode Island Plush Mills, Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction of textile fabrics into commerce, or the sale, transportation, or distribution of textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding fabrics which contain, purport to contain, or in any way are represented as containing, wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, by failing to place on or affix to said fabrics a stamp, tag, label, or other means of identification showing:

(a) The percentage of the total fiber weight of the fabric, exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percent or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of the said fabric of nonfibrous loading, filling, or adulterating matter.

(c) The name of the manufacturer of the said fabric; or the manufacturer's registered identification number and the name of a subsequent seller of the fabric; or the name of one or more persons subject

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to section 3 of said Wool Products Labeling Act of 1939 with respect to such fabric.

(d) The percentages, in words and figures plainly legible, by weight of the wool contents where said fabric contains a fiber other than wool.

Subsections (a), (b), (c), and (d) of this order are subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and are not to be construed as limiting applicable provisions of said act or said rules and regulations.

*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

JOHN H. FLING AND WILLIAM B. MAHANEY, TRADING  
AS CENTRAL 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 4948. Complaint, Apr. 19, 1943—Decision, July 13, 1943*

Where two individuals, engaged in the competitive interstate sale and distribution of smokers' articles, sporting goods, novelties, and other merchandise so assorted, packed, and assembled as to involve use of a lottery scheme and game of chance in sale thereof to the purchasing public; a typical assortment including two rifles, a cigarette lighter, camera, lantern, fountain pen and pencil set, shotgun, duck call, and a flashlight, together with a punchboard, for sale under a plan—as stated thereon—by which persons punching by chance certain specified numbers, and for the 5 cents charged, were awarded one of said articles, others receiving nothing—

Sold such assortments to purchasers and consignees, by whom they were exposed and sold to the public in accordance with aforesaid sales plan involving sale of chances to procure merchandise at much less than the normal retail price thereof; and thereby supplied to and placed in the hands of said purchasers and consignees means of conducting lotteries on the sale of their merchandise, contrary to an established public policy of the United States Government;

With the result that many persons were attracted by such sales plan and the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that of competitors who did not use such methods, and with tendency and capacity unfairly to divert trade from competitors aforesaid:

*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 in commerce and unfair acts and practices therein.

*Mr. J. W. Brookfield, Jr.* for the Commission.

*Ryland, Stinson, Mag & Thomson*, 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 John H. Fling and William B. Mahaney, individuals, trading as Central Sales 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, John H. Fling and William B. Mahaney, are individuals, doing business under the firm name and style

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of Central Sales Co., with their principal office and place of business located at 108 West Nineteenth Street, Kansas City, Mo. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of smokers' articles, sporting goods, novelties, and other merchandise.

PAR. 2. In the course and conduct of their said business respondents cause, and have caused, their merchandise to be transported from their principal place of business in Kansas City, Mo., into the several States of the United States, other than the State of Missouri, for sale in said other States, and respondents sell, and have sold, in said States other than Missouri, the merchandise so transported. In said business respondents are engaged in competition with other individuals, firms, and corporations selling similar merchandise and offering the same for sale to customers located in the several States of the United States and in the District of Columbia.

PAR. 3. Respondents accomplish the distribution and sale of their said merchandise by the following method, among others:

Respondents and their agents transport the merchandise by automobile from Kansas City, Mo., to various places in States of the United States other than Missouri, and there place said merchandise in the hands of various consignees of respondents for sale on behalf of respondents at retail. Said consignees, upon selling the consigned merchandise and collecting the purchase price therefor (which price is fixed by respondents), retain an agreed commission as compensation for their services and pay the balance of the proceeds of such sales to respondents.

PAR. 4. A substantial portion of the merchandise, which respondents and their agents transport and sell as aforesaid, is assorted, packed, and assembled so as to involve or make use of lottery schemes and games of chance in connection with and to promote the sale thereof to the purchasing public. The following description of one of such merchandise assortments with its accompanying lottery scheme illustrates the method of sale used by respondents:

This assortment is composed of a number of articles of merchandise including two rifles, a cigarette lighter, camera, lantern, fountain pen and pencil set, shotgun, duck call, and a flashlight, together with a punchboard. The punchboard bears a legend to the effect that persons punching certain specified numbers are awarded one of the articles of merchandise. Purchasers pay 5 cents a punch and those who do not punch one of the specified numbers calling for the award of one of the articles of merchandise received nothing for their purchase money. The numbers are effectively concealed from purchasers and prospective purchasers until the punches are separated from the

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board. Whether a person who punches the board receives an article of merchandise or nothing for his purchase money is thus determined wholly by lot or chance.

Respondents furnish, and have furnished, various punchboards to purchasers and consignees for use in connection with, and to promote, the sale and distribution of respondents' merchandise by means of a game of chance or lottery scheme. Such punchboards are similar to the one herein described and vary only in detail.

PAR. 5. Purchasers and consignees of respondents' merchandise expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supply to, and place in the hands of said purchasers and consignees, the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth.

PAR. 6. The sale of merchandise to the purchasing public by the method or plan employed by respondents, as hereinabove described, involves a game of chance or the sale of a chance to procure merchandise at prices much less than the normal retail price thereof. Many persons are attracted by such sales plan or method and in the element of chance involved therein, and are thereby induced to buy and sell respondents merchandise in preference to merchandise of competitors of respondents who do not use the same or equivalent methods. The use of such methods by respondents has a tendency and capacity unfairly to divert trade to respondents from their said competitors who do not use the same or equivalent methods, and is a practice contrary to an established public policy of the Government of the United States.

PAR. 7. 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 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 19, 1943, issued and thereafter served its complaint in this proceeding upon respondents, John H. Fling and William B. Mahaney, individuals, trading as Central Sales Co., charging them with the use of unfair methods of competition and unfair acts and practices in commerce in violation of the provisions of said act. On June 18, 1943, the respondents filed their answer, in which answer they admitted all 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. Respondents, John H. Fling and William B. Mahaney, are individuals, doing business under the firm name and style of Central Sales Co., with their principal office and place of business located at 108 West Nineteenth Street, Kansas City, Mo. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of smokers' articles, sporting goods, novelties, and other merchandise.

PAR. 2. In the course and conduct of their said business respondents cause and have caused their merchandise to be transported from their principal place of business in Kansas City, Mo., into the several States of the United States other than the State of Missouri for sale in said other States, and respondents sell and have sold in said States other than Missouri the merchandise so transported. In said business respondents are engaged in competition with other individuals, firms, and corporations selling similar merchandise and offering the same for sale to customers located in the several States of the United States and in the District of Columbia.

PAR. 3. Respondents accomplish the distribution and sale of their said merchandise by the following method, among others:

Respondents and their agents transport the merchandise by automobile from Kansas City, Mo., to various places in States of the United States other than Missouri, and there place said merchandise in the hands of various consignees of respondents for sale on behalf of respondents at retail. Said consignees, upon selling the consigned merchandise and collecting the purchase price therefor (which price is fixed by respondents), retain an agreed commission as compensation for their services and pay the balance of the proceeds of such sales to respondents.

PAR. 4. Prior to December 31, 1942, a substantial portion of the merchandise which respondents and their agents transported and sold as aforesaid was assorted, packed, and assembled so as to involve or make use of lottery schemes and games of chance in connection with and to promote the sale thereof to the purchasing public. The following description of one of such merchandise assortments with



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its accompanying lottery scheme illustrates the method of sale used by respondents:

This assortment was composed of a number of articles of merchandise, including two rifles, a cigarette lighter, camera, lantern, fountain pen and pencil set, shotgun, duck call, and a flashlight, together with a punchboard. The punchboard bore a legend to the effect that persons punching certain specified numbers would be awarded one of the articles of merchandise. Purchasers paid 5 cents a punch, and those who did not punch one of the specified numbers calling for the award of one of the articles of merchandise received nothing for their purchase money. The numbers were effectively concealed from purchasers and prospective purchasers until the punches were separated from the board. Whether a person who punched the board received an article of merchandise or nothing for his purchase money was thus determined wholly by lot or chance.

Respondents furnished various punchboards to purchasers and consignees for use in connection with and to promote the sale and distribution of respondents' merchandise by means of a game of chance or lottery scheme. Such punchboards were similar to the one herein described and varied only in detail.

PAR. 5. Purchasers and consignees of respondents' merchandise exposed and sold the same to the purchasing public in accordance with the sales plan aforesaid. Respondents thus supplied to and placed in the hands of said purchasers and consignees the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth.

PAR. 6. The sale of merchandise to the purchasing public by the method or plan employed by respondents, as hereinabove described, involved a game of chance or the sale of a chance to procure merchandise at prices much less than the normal retail price thereof. Many persons were attracted by such sales plan or method and the element of chance involved therein, and were thereby induced to buy and sell respondents' merchandise in preference to merchandise of competitors of respondents who did not use the same or equivalent methods. The use of such methods by respondents had the tendency and capacity unfairly to divert trade to respondents from their said competitors who did not use the same or equivalent methods, and was a practice contrary to an established public policy of the Government of the United States.

## CONCLUSION

The aforesaid acts and practices of respondents, as herein found, were all to the prejudice and injury of the public and of respondents'

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competitors, and constituted unfair methods of competition in commerce and unfair 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 of the material allegations of fact set forth in the 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 its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondents, John H. Fling and William B. Mahaney, individually, and trading as Central Sales Co., or trading under any other name, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of smokers' articles, sporting goods, novelties, 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 any merchandise so packed and assembled that sales of such merchandise to the public are to be made or, due to the manner in which such merchandise is packed and assembled at the time it is sold by respondents, 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 push or pull cards, punchboards or other lottery devices, either with assortments of merchandise or separately, which are to be used or may be used in selling and distributing respondents' merchandise or any merchandise to the public.

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 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

## DEARBORN SUPPLY COMPANY

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

*Docket 3593. Complaint, Sept. 17, 1938—Decision, July 14, 1943*

Where a corporation, engaged in offer, sale, and distribution of its "Mercolized Wax or "Mercolized Wax Cream" cosmetic; in advertisements thereof—

Failed to reveal facts material in the light of the representations therein made:

i. e., (1) that it should not be applied at any one time to an area larger than the face and neck, that too frequent applications and use over excessive periods of time should be avoided, that adequate rest periods between series of treatments should be observed, that it should not be used where the skin was cut or broken, and that in all cases a proper patch test should be made to determine whether the patient was allergic or sensitive to the preparation; or (2) to caution public that it should be used only as set forth in directions which sufficiently apprised reader of precautions necessary to avoid injurious effects;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that preparation in question was safe for indiscriminate use, thereby causing its purchase thereof, whereby substantial trade was diverted unfairly to it from competitors:

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

Before *Mr. Arthur F. Thomas* and *Mr. Edward E. Beardon*, trial examiners.

*Mr. C. S. Cox*, *Mr. John W. Carter, Jr.*, and *Mr. Carrel F. Rhodes*, for the Commission.

*Mr. Louis A. Spies* and *Nash & Donnelly*, of Washington, D. C., and *Mr. Thomas A. Brennan*, 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 the Dearborn Supply 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:

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PARAGRAPH 1. Respondent, Dearborn Supply Co., is a corporation, created and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 2350 Clybourn Avenue, Chicago, Ill.

PAR. 2. Respondent is now and for more than 12 years last past has been engaged in the business of compounding, distributing, and selling a line of cosmetics under various names, some of which are: "Mercolized Wax," "Parker-Belmont Beauty Cream," "Powdered Saxolite," "Powdered Tarkroot" and "Phelactine." Respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to its 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 cosmetics 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 partnerships and individuals engaged in the sale and distribution of cosmetics 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 cosmetics, 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 statements and representations concerning the character and nature of said cosmetics and concerning the results obtained from their use. By the means and in the manner aforesaid, the respondent makes, among others, statements concerning its products as hereinafter set forth:

(a) Among, and typical of, the representations made by respondent concerning its product "Mercolized Wax" are the following:

Pure Mercolized Wax.

Pure Mercolized Wax Beautifies the Skin. Bleaches—Cleanses—Nourishes, Softens and Protects.

You will find only Mercolized Wax \* \* \* actually absorbs the discolored outer scales in tiny flake-like particles clearing away the grimy, dirt-laden surface skin.

Free your skin of blemishes and all discolorations that mar its natural loveliness with our Mercolized Wax.

Mercolized Wax brings to you a simple, natural way of beautifying the skin and keeping it young. \* \* \* contains active ingredients that actually absorb the surface skin with all its discolorations and blemishes. \* \* \* Gradually you will notice the new clearness and smoothness of your skin.

## Complaint

Soon the entire discolored outer layer of skin will have disappeared and fresh underskin which forms your new complexion appears soft, white and youthfully beautiful. Mercolized Wax brings out the hidden beauty in your skin.

There is only one way to completely beautify a discolored blemished complexion and that one way is to take off the worn-out surface skin by absorbing it with pure Mercolized Wax.

Coarseness, roughness and other blemishes that rob the skin of youthful beauty are dissolved with the surface skin.

Mercolized Wax will convert a faded, worn-out, or discolored complexion into one of captivating loveliness.

It \* \* \* lubricates \* \* \*.

It clears away freckles, tan, oiliness, sunburn or any other blemishes.

Invisible particles of aged skin are freed and all defects such as blackheads, tan, freckles and large pores disappear.

Make yours a beautiful skin with Mercolized Wax Cream.

Is your skin clear, smooth and young looking? It Should be and it Can be.

\* \* \* Eagerly and deftly Mercolized Wax Cream goes about its task of flaking off, superficially discolored outer layer of skin, revealing the young, fresh looking underskin. It really helps the skin to renew itself. Your skin emerges from a series of Mercolized Wax Cream applications looking more like its radiant, natural, beautiful self than it has looked in many a day. \* \* \*

Complete renovation of the complexion in from one to three weeks should result from following the above instructions closely.

Mercolized Wax Cream keeps your skin young looking. \* \* \* This simple all-in-one cleansing, softening and beautifying cream has been a favorite for over a quarter of a century with lovely women the world over.

This simple all-purpose beauty aid is the only cream necessary for the proper care of your skin.

(b) Among, and typical of, the representations made by respondent concerning its product "Parker-Belmont Beauty Cream" are the following:

Wonderful oxygen cream bleaches skin.

Parker-Belmont Beauty Cream beautifies any skin.

A skillful scientific blending of creams for bleaching, pore-deep cleansing, clearing, softening, lubricating and all-around beautifying.

Parker-Belmont Beauty Cream whitens skin quickly.

Dark skin is lightened and whitened two or three shades.

This single cream is a blend of all the creams your skin requires.

Parker-Belmont Beauty Cream normalizes a dry to too oily skin. It is soothing to sensitive tissues.

(c) Among, and typical of, the representations made by respondent concerning its products "Powdered Saxolite" are the following:

Saxolite Astringent is a refreshing skin tonic. Smoothes out wrinkles and age lines. Refines coarse pores. Eliminates oiliness.

Gives your skin a fresh, clean, lively appearance.

(d) Among, and typical of, the representations made by respondent concerning its product "Powdered Tarkroot" are the following:

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A Tarkroot Beauty Mask revives and refreshes a fatigued, drooping face more quickly and completely than anything else can.

It is beneficial for almost every condition such as age lines, wrinkles, enlarged pores, blackheads and other surface blemishes.

Wrinkles and age lines are smoothed out. Relaxed, sagging contours are pulled up into proper position. The circulation is aroused to nourish the drooping tissues. Pores are purged of all impurities.

Tarkroot Beauty Mask wakes up dull skin!

Tarkroot Face Rester relieves facial fatigue.

The quickest way to renew your complexion is to give yourself a facial pack treatment with Tarkroot Beauty Mask.

Beautify your skin with Tarkroot Face Mask.

Tarkroot performs a four-purpose plan of beautifying by tightening, refining, purifying and stimulating.

(e) Among, and typical of, the representations made by respondent concerning its product "Phelactine" are the following:

Try Phelactine Depilatory, removes superfluous hair gently. Leaves skin smooth, soft and hair-free. Simple to use.

Try Phelactine—the "different" hair remover.

Excellent for removing superfluous hair from your face. Quicker to use.

All of said statements, together with other statements of similar import and meaning, appearing in respondent's advertising literature, disseminated as aforesaid, purport to be descriptive of respondent's products and of their effectiveness in use. In all of its advertising literature, respondent, directly and by inference, through the statements and representations herein set out and through other statements and representations of similar import and effect, represents that the product "Mercolized Wax" is a "wax"; that said preparation absorbs the surface skin and surface discolorations, blemishes, and impurities; that it removes all coarseness, roughness, blackheads, tan, freckles, sunburn, and large pores from the skin and cleanses, softens, bleaches, lubricates, and protects the skin; that it is a natural way to make the skin beautiful; that it nourishes the skin, helps the skin renew itself, and is an all-in-one cleansing, softening, and beautifying cream and an all-purpose beauty aid.

In the manner aforesaid, respondent represents that the product "Parker-Belmont Beauty Cream" is a skillful, scientific blend of creams for pore-deep cleansing, clearing, softening, lubricating, and all-around beautifying of the skin; that it is an oxygen cream that bleaches the skin, making the skin lighter by two or three shades; and that it is a blend of all the creams a skin requires and that it normalizes either a dry or an oily skin.

In the manner aforesaid, respondent represents that its product "Saxolite Astringent" is a skin tonic which smoothes out wrinkles

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and age lines, refines coarse pores, eliminates oiliness, giving the skin a fresh, clear, lively appearance.

In the manner aforesaid, the respondent represents that its product "Powdered Tarkroot," when used as a "beauty mask," will revive and refresh a "fatigued" and "drooping" face more quickly and completely than other products, smoothing out wrinkles and age lines, pulling "relaxed" and sagging contours into proper position, purging the pores of all impurities, and arousing the circulation so as to nourish the "drooping" tissues; that said product beautifies the skin by tightening, purifying, refining, and stimulating, and is the quickest way to "renew" the complexion.

In the manner aforesaid, the respondent represents that its product "Phelactine" is "different" from other hair removers; that it is quicker and simpler to use, removing superfluous hair gently, leaving the skin smooth, soft, and hair free.

PAR. 5. Respondent's representations and implications as to the value and usefulness of said products are false or grossly exaggerated and greatly exceed those which might truthfully be made for said products. In truth and in fact the product "Mercolized Wax" is not a wax and said product does not absorb the surface skin and surface discolorations, blemishes, and impurities; it does not remove all coarseness, roughness, blackheads, tan, freckles, sunburn, and large pores from the skin; it does not cleanse, soften, bleach, lubricate, and protect the skin; it is not a natural way to make the skin beautiful; and it does not nourish the skin, help the skin renew itself, and it is not an all-in-one cleansing, softening, and beautifying cream or an all-purpose beauty aid. In truth and in fact the product "Parker-Belmont Beauty Cream" is not a skillful or scientific blend of creams, nor is it efficacious for pore-deep cleansing, clearing, softening, lubricating, and for all-around beautifying of the skin; it is not an oxygen cream and it will not bleach the skin, making it two or three shades lighter and it is not a "blend of all the creams" the skin requires, nor does it normalize either a dry or an oily skin. In truth and in fact the product "Saxolite Astringent" is not a skin tonic nor will it smooth out wrinkles or age lines, refine coarse pores, eliminate oiliness or give the skin a fresh, clean, lively appearance. In truth and in fact the product "Tarkroot Beauty Mask" when used as a "beauty mask" will not revive and refresh a "fatigued" and "drooping" face more quickly and completely than will other products; nor will it smooth out wrinkles and age lines or pull "relaxed" and sagging contours into the proper position or purge the pores of all impurities, and it will not arouse the circulation so as to nourish

the "drooping" tissues or beautify the skin by tightening, purifying, refining, and stimulating and it is not the quickest way to, nor does it, "renew" the complexion. In truth and in fact the product "Phelactine Depilatory" is not different from any number of hair removers on the market and is no quicker or simpler to use and it does not remove superfluous hair gently, leaving the skin smooth, soft, and hair free.

In truth and in fact the product "Mercolized Wax" has a tendency to cause removal of the surface skin but leaves the skin with deeper hues and blemishes than those present originally and constant and continuous use of this product not only accentuates the blemishes present in the surface skin but may, under certain conditions, be harmful to the user thereof because of the ingredients from which said product is 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 a cosmetic.

PAR. 7. There are among the competitors of the respondent many who distribute and sell cosmetics in said commerce who do not in any manner misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 8. The use of each and all of the false and misleading representations and implications made and used by the respondent in designating and describing its said products and their effectiveness when used, and said false advertisements as hereinabove alleged, has had and now has a tendency and capacity to, and does mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that all of said representations and implications are true. As a result of such erroneous and mistaken belief a number of the consuming public have purchased a substantial volume of respondent's said products with the result that trade in said commerce has been diverted unfairly to the respondent from its competitors who truthfully advertise their respective products and the effectiveness thereof when used, and thereby 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 respondent 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.



## REPORT, SUPPLEMENTAL 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 subsequently served its complaint in this proceeding upon the respondent, Dearborn Supply Co., 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 that act. On October 26, 1938, the respondent filed its answer to the complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by the respondent and W. T. Kelley, chief counsel for the Commission, subject to the approval of the Commission, might be taken as the facts in the proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon such 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, the proceeding regularly came on for hearing before the Commission upon the complaint, answer, and stipulation (the stipulation having been approved, accepted and filed); and the Commission, having duly considered the matter, on August 15, 1939, made its findings as to the facts and its conclusion based thereon and issued its order requiring the respondent to cease and desist from the practices charged in the complaint.<sup>1</sup>

Subsequently, the respondent filed a petition with the Commission requesting that certain portions of the stipulation, findings as to the facts, and order to cease and desist be modified or set aside; and the Commission, having duly considered such petition, on October 16, 1939, issued its order modifying the stipulation, findings as to the facts, and order to cease and desist by striking therefrom certain portions with respect to the harmful potentialities of respondent's cosmetic preparation designated "Mercolized Wax," and directing that the proceeding be reopened solely for the purpose of taking testimony in support of and in opposition to the allegations of the complaint with respect to the injurious effects which might result from the use of such preparation. In all other respects the stipulation, findings as to the facts, and order to cease and desist were left in full force and effect. Thereafter, hearings were held before trial examiners of the Commission theretofore duly designated by it, at which hearings testimony and other evidence were introduced in

<sup>1</sup> See 29 F. T. C. 648.

support of and in opposition to such allegations of the complaint, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the proceeding came on for hearing before the Commission on such testimony and other evidence, report of the trial examiners upon the evidence, briefs in support of and in opposition to such allegations of the complaint, and oral argument; and the Commission, having duly considered the matter and being fully advised in the premises, makes this its supplemental findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The preparation here involved is a cosmetic preparation, formerly designed by respondent as "Mercolized Wax" but now designated by it as "Mercolized Wax Cream." The specific ingredient of the preparation which forms the subject of the present inquiry is ammoniated mercury. When respondent first put the preparation on the market, in 1926, the amount of ammoniated mercury used was 8.75 percent, which was continued until January 1933, at which time the amount was reduced to approximately 6 percent. In July 1936, the percentage was again reduced to 3.1 percent, and in January 1940, a further reduction was made to 3.007 percent.

PAR. 2. During the course of the hearings a number of expert witnesses were introduced, both on behalf of the Commission and on behalf of respondent, and a substantial volume of testimony was taken. The witnesses included physicians, dermatologists, pathologists, and pharmacologists, and all of them appear to have been thoroughly qualified in their respective fields. In addition to the oral testimony, respondent also introduced in evidence reports showing the results of certain experiments and tests performed both on human beings and on animals to ascertain the effect of the external application of ammoniated mercury. After careful consideration of the entire record, the Commission is of the opinion that the following conclusions may reasonably be drawn from the evidence. On some of these points the evidence is without conflict, and on those points where there is a conflict, the Commission is of the opinion that the conclusions are dictated by the substantial weight of the evidence.

PAR. 3. The effects produced by the external application of ammoniated mercury to the human body fall into two classifications, local effects and systemic effects. With respect to the local effects, it is recognized by medical and scientific opinion that the principal property of ammoniated mercury is that of an irritant. The action of the drug is keratolytic—that is to say, its tendency is to break down

and separate the tissues of the outer layer of the skin, and in consequence, it promotes or hastens the exfoliation or peeling off of the outer layer. While the drug appears to have been in somewhat more general use among physicians and dermatologists in the past than at present, it is still used and prescribed frequently for certain skin disorders.

Whether harmful effects may be expected to result from the application to the skin of a preparation containing ammoniated mercury is dependent upon a number of factors, including the amount of ammoniated mercury in the preparation, the frequency of application, the length of the period over which the treatment extends, the duration of the rest period between series of treatments, the area of the skin to which the preparation is applied, the condition of the skin, particularly with respect to whether it is cut or broken, and the sensitivity or reaction of the patient. Where the amount of ammoniated mercury is excessive, the application frequent, the period of use extended, proper rest periods not observed, or the area large, the use of ammoniated mercury is likely to result in erythema, oedema, inflammation, irritation, or other manifestations of dermatitis, and this is particularly true where the skin is already cut or broken at the time of the application. While these results are much more likely to occur in the case of those persons who are allergic or sensitive to ammoniated mercury, the factor of allergy or sensitivity is not always controlling. In more than a negligible number of instances such results occur even where no prior sensitivity existed. In some cases this is due to the fact that the use of ammoniated mercury causes the development of a condition of sensitivity where none existed previously.

With respect to the percentage of ammoniated mercury which may safely be used in a cosmetic preparation, the record does not afford an absolute answer. It seems fairly clear, however, that the danger point is around 3 percent to 5 percent, the other factors being favorable.

PAR. 4. With respect to the inquiry as to whether harmful systemic results follow the external use of ammoniated mercury, the answer turns upon two points: first, whether the drug is absorbed into the system, and second, if absorption does take place, whether the effect is cumulative. That some degree of absorption does take place seems established by the record. Whether the amounts absorbed accumulate in the body depends largely upon the efficiency of the organs of elimination, particularly the renal organs. If these organs are functioning efficiently, the amount which will be retained in the system may be regarded as negligible. Conversely, if the organs of elimination are not functioning effectively, substantial amounts of the drug are likely

to be retained in the system. In such event, the principal danger is to the kidneys, particularly in those cases where a nephritic condition is present. The effect of ammoniated mercury in such cases is to aggravate the nephritis.

PAR. 5. During recent years respondent has revised and amplified its directions for the use of its preparation, and the directions now enclosed in each package of the preparation read as follows:

## DO NOT RUB IN

### DIRECTIONS

for using

### MERCOLIZED WAX CREAM

as a

### BLEACH AND SKIN BEAUTIFIER

Before you retire for the night, wash the face with warm water and soap. Rinse well and pat dry with a soft towel. Then apply a thin film of Mercolized Wax Cream, smoothing it on evenly. Do not rub it in the skin or get it near the eyes or cuts. The next morning wash it off with soap and water. Continue nightly applications for 30 days. After a few applications the outer, darker, duller skin begins to flake off, which lasts for a few days, exposing a lighter, younger, fairer skin. Bleaching activity follows and continues with the application of Mercolized Wax Cream.

If irritation or redness of the skin appears after a few applications, discontinue using Mercolized Wax Cream for a day or two and apply Parker Belmont Beauty Cream or any good cold cream. Then re-apply Mercolized Wax Cream.

### CAUTION

Mercolized Wax Cream is different from ordinary cold creams, cleansing creams, etc. It is for adults and is medicated. It should not be used recklessly or applied on an area of the body larger than face and neck at one time. Use it according to the above directions. Continued use for a prolonged period of time may cause local irritation or inflammation. One jar usually gives sufficient bleaching effect to last for a period of two months. Therefore the complete treatment should not be repeated oftener than every three months. Where nephritis exists this product should not be used.

### HYPERSENSITIVITY (ALLERGY)

Some people are hypersensitive to one or more substances such as foods, pollens, chemicals, etc. To determine sensitivity to Mercolized Wax Cream before using as a bleach or freckle lightener—apply a thin layer to the unbroken skin at the elbow crease or side of neck, covering an area the size of a twenty-five cent piece, 24 hours before you intend to use Mercolized Wax Cream. If following this test there appears at the site of the application redness, burning, itching or small blisters within 24 hours, you are sensitive to the ingredients of Mercolized Wax Cream and should not use it.

## Order

The Commission is of the opinion that, in view of the fact that the amount of ammoniated mercury in respondent's preparation has been reduced to approximately 3 percent, these directions are sufficient in substance to apprise persons examining them of the precautions which must be observed in the use of the preparation if injurious effects are to be avoided. Respondent's advertisements, however, make no reference to these precautions nor to the injurious effects which are likely to result from the indiscriminate use of the preparation, nor is there any statement in the advertisements referring to the directions for use and cautioning the public that the preparation should be used only as directed. The Commission is therefore of the opinion and finds that the advertisements constitute false advertisements in that they fail to reveal facts material in the light of the representations made therein, and material with respect to consequences which may result from the use of the preparation under the conditions prescribed in the advertisements or under such conditions as are customary or usual.

PAR. 6. The Commission finds further that the use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparation is safe for indiscriminate use, and the tendency and capacity to cause such portion of the public to purchase respondent's preparation as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been and is being diverted unfairly to respondent from its competitors.

## CONCLUSION

The 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

## SUPPLEMENTAL ORDER TO CEASE AND DESIST

This proceeding having heretofore been reopened by the Commission for the purpose of taking testimony and other evidence in support of and in opposition to certain allegations of the complaint, and such testimony and other evidence having thereafter been introduced before trial examiners of the Commission theretofore duly designated by it; and the proceeding having come on for hearing before the Commission on such testimony and other evidence, report of the trial

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examiners upon the evidence, briefs in support of and in opposition to such allegations of the complaint, and oral argument; and the Commission having made its supplemental findings as to the facts and its conclusion that such allegations of the complaint have been sustained and that the respondent has, in respect thereof, violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondent, Dearborn Supply Co., a corporation, 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 respondent's cosmetic preparation designated "Mercolized Wax" or "Mercolized Wax Cream," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to reveal that said preparation should not be applied to an area of the skin larger than the face and neck at any one time, that too frequent applications and use over excessive periods of time should be avoided, that adequate rest periods between series of treatments should be observed, that the preparation should not be used where the skin is cut or broken, and that in all cases a proper patch test should be made to determine whether the patient is allergic or sensitive to the preparation; provided, however, that such advertisement need contain only the statement, "CAUTION: Use only as directed," if and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label and in the labeling, contain warnings to the above effect.

2. 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 of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to comply with the requirements set forth in paragraph 1 hereof.

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

## Syllabus

IN THE MATTER OF  
THE CEMENT INSTITUTE ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC.  
2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED

*Docket 3167. Complaint, July 2, 1937—Decision, July 17, 1943*

As respects the multiple basing point pricing system as applied by the cement industry, the recognized principle of economics, that uniformity of price tends to result from free competition in the case of a standardized article sold to well informed buyers, does not serve to explain the identical delivered prices of the producers of cement, many sales of which, under the resulting price pattern, have the characteristic of dumping, and the principle cannot explain uniformity of identical offers or sealed bids. Furthermore, it is also true that uniformity of price in a given market is equally consistent with free competition or with monopoly. And when—as in the sale of cement—the price is established by the seller, the price leadership of the governing base mill is accepted by other sellers and there is no bargaining between buyers and sellers, prices are not the result of market action in a true economic sense, but merely expressions of a noncompetitive or monopolistic price structure.

As regards the cement industry's multiple basing point pricing system, under which (1) each mill shrinks its mill net by the amount necessary for it to match the delivered prices established pursuant to said system, each mill or producer waiving its advantage in its natural sales territory in return for reciprocal waiver by the other producers; which (2) tends toward maintaining a price level sufficiently high to permit separate producers to sell cement outside the territory naturally tributary to their respective mills; and under which (3) in the face of a total productive capacity for the industry long substantially in excess of total consumption, the producers, in the 1932 and 1933 depression years, following a decline in consumption to less than 30 percent of capacity, made numerous substantial increases in their base prices, many of which were still in effect, unchanged, in 1938, and, in the case of others, with few exceptions, showed only minor readjustments since early in 1933; and prices, remained unchanged over varying numbers of years and showed a high degree of rigidity; general conditions shown to exist by producers' testimony and other evidence in explanation of the above situation—including evidence concerning the use of cement in connection with other materials, as well as that relating to shifting location of demand for cement—tended to coincide with, rather than contradict, the direct proof of restraints imposed on competition by them.

The failure of Congress in the Robinson-Patman Act to define price as mill net—  
or the amount recovered by the cement mills after freight and other charges,  
under their multiple basing point plan of identical delivered prices—does not  
avoid the necessity of having some definite concept of price in carrying out  
the administrative duty of preventing price discrimination under the statute,

and the contention that the history of the act shows an intention on the part of Congress to legalize price discriminations involved in said system, must be rejected. To accept such a contention would attribute to Congress the contradictory intention of prohibiting discriminations that fail to make due allowance for differences in cost of delivery and, at the same time, legalizing them; and would be to recognize the right of a combination engaged in suppressing price competition to define and treat the word "price" in a manner that promotes and is inextricably interwoven with its price fixing objectives.

Where (1) an unincorporated trade association which was organized in 1929 to promote the interests of its members, including practically all domestic producers of Portland cement; followed a 1916 association active until shortly before the 1924 Supreme Court decision in *U. S. v. Cement Mfrs. Protective Assn.*, 268 U. S. 588; was a repository of the authority delegated when partial self-government for the cement industry was authorized under the National Industrial Recovery Act, and controlled the administration of the N. R. A. code for the industry, subject to such limitations as were imposed by the National Recovery Administration; and supplied with an effective vehicle for the promulgation, expression and execution of collective plans and purposes said industry—control of a large portion of which was concentrated in relatively few individuals, directly and through intercorporate relationships; members of which had, by understanding and agreement, developed over many years substantial uniformity of action with respect to practically every marketing procedure involving price or other competition; and in which long pursued competitive restraints had fostered a philosophy of maintaining equality and keeping step, as opposed to a rivalry of excelling in quality, price or terms; (2) the officials and agents of said association or "institute"; and (3) some 75 member corporations who produced and distributed more than three-fourths of the Portland cement made in this country—

- (a) Entered into, cooperated in and carried out planned and common courses of action, understandings and combinations to quote and sell cement at prices calculated and determined in accordance with a multiple basing point delivered price system developed over a period of some 30 years or more, the operative formula of which was that the delivered price at any location should be the lowest combination of base price plus all rail freight; under which nonbase mills quoted and sold at delivered prices determined by lowest combination of base price plus freight from base mills, and which inevitably resulted over an indefinite period of time in identical delivered prices for cement by all sellers at any given location and through its self perpetuating operation in said respect made unnecessary renewed understandings or agreements; and

Where said trade association, its officers and member producers; in connection with and in support of aforesaid system, understandings and undertakings—

- (b) Maintained and operated two freight rate bureaus and published rate books which were used—as were those previously secured from other sources—to provide common freight rate factors for pricing purposes, and thus be able to quote identical delivered prices for cement at all destinations; and regularly made use of all-rail freight rates in calculating delivered prices, even though shipment was made by water transportation or by motor truck at different rates;



## Syllabus

- (c) In connection with Government business, determined delivered prices to be bid in accordance with aforesaid formula of lowest combination of base price plus freight; derived so-called f. o. b. prices, use of which automatically produced identical delivered prices, through deducting from said identical delivered prices, reached as aforesaid, particular mill's freight to destination concerned; and, as respects territory where Government land grant rates on Government shipments destroyed uniformity of destination costs through application thereof to aforesaid "f. o. b." prices, interchanged land grant rate information and reached understandings as to rates and prices to be used; under the National Recovery Administration code, filed and systematically disseminated destination prices, thereby facilitating the making of identical Government bids; defeated the Government's policy of deducting commercial freight in land grant rate territory, using said special rates, and awarding bid on basis of lowest delivered price thus arrived at, through insertion in Government bids of the so-called "control clause" under which, in its final form, the Government was limited to deducting from destination cost to it, the lowest rate, whether the actual commercial freight rate, or special Government rate; for 2 or 3 years after the N. R. A. period undertook, for same purpose as with the commercial rates, ascertainment and dissemination of special land grant rates; and through the perfection of their pricing formula and multiple basing point price system in producing identical delivered prices, dealt on an identical base with state governments and the federal government, as well as other purchasers, without systematic exchange of basing point prices or changes therein, which, made known through notice to customers, common customers, and salesmen in the field, became also promptly known to and understood by other producers concerned;
- (d) Made use of the means inherent within the multiple basing point delivered price system and necessary to its successful maintenance, to force recalcitrants, including producers, who prefer more independence of action, wish to exploit natural advantages or desire to break away from the system in seeking particularly attractive business, to adhere thereto, through the imposition by the price leaders and larger chain mills of a punitive base price at the mill of the producer concerned, whereby latter's mill net was absolutely fixed; without usually affecting the mill net or more than a portion of the business of the former, and with possibly only insignificant effect in the case of a large producer with mills at many points; tended thereby to localize the price cuts made and place the maximum effect thereof upon the recalcitrant and impose upon him a much greater loss than that to the producer imposing such disciplinary action; and subjected to such action and failure to increase base prices in harmony with increases elsewhere, State, and other mills which failed to conform to competitors' views of proper practices in the sale of cement, including such matters as secret rebates representing freight advantage deducted from open quotation; price cutting—and particularly during the depression years; and other departures due to benefits of water transportation, or unacceptable practices on the part of producers' customer-dealers in delivering cement into other than the dealer's own locality, etc.;
- (e) Through cooperation among themselves and with other interested groups, including officials of railroads and traffic associations, and those of dealers, took active steps to eliminate the trucking of cement, which some dealers, contractors and other purchasers began to make use of for reasons of economy

or convenience, and which it was desired to eliminate on account of its destructive effect on the delivered price system, through various restrictive activities, including the addition of a 15-cent per barrel charge to the mill base price for delivery to trucks at the mill; conferences directed to the discontinuance, discouragement and prohibition of the practice; and its characterization as an unfair method of competition, following the inclusion of a similar provision in the N. R. A. Code for the industry and the invalidation of the act by the Supreme Court; with result that a large number of mills during the course of the years completely discontinued permitting the practice, while others imposed a penalty in the form of an additional price, or permitted it at full rail destination price, or otherwise in one way or another discouraged it and took action against it;

- (f) Undertook, through understandings and agreements, to prevent purchasers making diversion in transit which interfered with maintenance of uniform delivered prices at each destination, and by means of which purchasers—who under said price system generally paid the freight charges directly to the railroad and paid to the cement producer or shipper the derived f. o. b. or base price—were often able to secure their cement at a lower cost, through making a purchase at the delivered price in effect at some destination where the destination price, under said formula, included a freight factor higher than freight charge to the purchaser's true destination, and causing railroad to divert thereto the shipment, whereby amount received by seller was not changed but purchaser's total payment was less; in various ways, including provisions in codes of ethics before, during and after the N. R. A., standard sales contracts, and provisions in bills of lading worked out with the railroads sought to discourage and prevent the practice; and finally adopted custom of themselves prepaying freight charges on all shipments, whereby diversion of shipments by the consignee to his advantage in price was made impossible thereafter;
- (g) Cooperatively checked so-called "specific job contracts" under which the producers undertook delivery of a specified quantity of cement, at a specified price over a stated period of time, for dealers or contractors, and which presented possibility, in event the purchaser had contracted with one or more manufacturers for more cement than was needed for the job, and in event of price advance of using the excess to his profit, thus affecting the producers' ability to control the delivered price of cement established pursuant to said basing point formula; and having collected and furnished to members information relative to excess quantities of cement thus contracted for and duplications of contracts for specific jobs, took collective action and exerted pressure of collective opinion to bring about their cancelation, and disapproved and banned the practice in question before, during, and after the N. R. A. period;
- (h) Affirmed in broad terms in their code of ethics, and carried forward the substantial uniformity and standardization theretofore achieved by the producer members and prior organizations in the matter of terms and conditions, necessary to complete and total price uniformity and as a supplement to their said delivered price system; including such matters as specifications, costs of testing, standard approved contracts, package charges and rebates, and ultimately discontinued differential to dealers, employed as a means of price cutting; sold to dealers on the same basis as to manufacturers and those consumers accepted as direct customers; and made uniform

- terms with respect to cloth sacks, packages, and refunds for good bags returned;
- (i) In connection with harmonizing production with shipments, with a view to maintaining a price level considered satisfactory, among other activities extending over a long period, inculcated a philosophy of maintaining a static condition in the production of cement, to the extent of preserving the individual manufacturer's proportion of the total business and acceptance of the theory of dividing available business among producers in accordance with some predetermined formula; considered and pushed various plans directed to this end; and by agreement carried on an extensive program of cooperatively collecting and disseminating figures showing production, shipment and stock on hand, which not only included totals but also revealed to each member the figures for each of the other members, so that each member was thereby informed of the exact position of each of his competitors; with result that there was a substantial restraint upon the price, production and sales policies of the producers concerned and a tendency to substitute collective opinion for individual judgment; and during and after the N. R. A. period offered organized opposition to the entry of new production and new competition;
- (j) In connection with distribution of cement to and through dealers—through whom producers distributed a large proportion of their product—and irregularities in price or otherwise in the sale of said product involved therein, which tended to disrupt uniformity of price or terms, sought means of eliminating or avoiding such disturbances through agreements and understandings among the producers and their association and with groups of dealers and dealer organizations, to secure uniformity in their dealer policies, to minimize competitive conflicts between themselves and dealers, as well as among dealers, to reduce inequalities in sales by individual dealers, and to minimize price competition among dealers; settled on the practice of giving no discount to dealers, after unsatisfactory experiences with use of discounts and differentials as a means of cutting prices by dealers, and in some cases by manufacturers in cooperation with them; in order to control competition between dealers and manufacturers and among dealers, undertook to sell only to and through dealers, with certain exceptions which they defined, including federal and State governments and their contractors—except in the case of work located entirely within cities or villages—and railroads and concrete product manufacturers; and defined what should constitute a dealer; and, following the rejection of such provisions by the N. R. A., continued in other ways such definition and division of sales;
- (k) In connection with aforesaid division of business put into effect new dealer policies, which provided that sales of cement to the Federal Government for emergency or unemployment relief agencies—such as the Works Progress Administration, Civilian Conservation Corps, and Federal Emergency Relief Administration—should be made by dealers; with result, by reason of said change in a long established practice of selling direct to federal agencies, that the Government, unable to make purchases of cement for such uses directly from the producers, was obliged to purchase its cement requirements in those categories from dealers, at prices including the dealer mark-up and higher by that amount than would have been the case in direct purchases from producers; it was prevented from taking advantage of land grant rates:

in order to reduce its delivered cost of cement; and the sources from which purchases might be made were limited;

- (l) To meet the competition encountered from time to time from imported cement in some of the larger seaport cities and adjacent territory, established arbitrary prices or price zones in the territory affected by the lower prices quoted on the foreign cement, while maintaining higher prices elsewhere under their delivered price system; for a time established a boycott of dealers handling foreign cement in the Boston and New York territory, who, in order to buy cement from the domestic producers during said time, had to discontinue handling the foreign product and agree not to handle it thereafter; and, in the case of a number, maintained a cooperative system of watching the business place of certain importers of the foreign product, in order to check on the trucks of dealers hauling such cement from the importer's warehouse, with the result that dealers in said cities who continued to handle the foreign product were unable to purchase cement from any producer herein concerned; and, after the expiration of the N. R. A. Code, again established arbitrary prices in the areas affected by the imported product, filing notices thereof with the trade practice committee of the association which sent them immediately and before their effective date, to association members doing business in the territory involved;
- (m) Through collective action made the sale of cement—which in cases of different producers, had actually exceeded the minimum agreed requirements by margins ranging all the way up from a small amount to more than 100 percent—subject only to standard specifications of three specified organizations, one of which was dominated by representatives of the producers concerned; resisted other specifications; and gave much publicity to claims that the quality of all cement is practically identical, refraining almost completely from advertising quality differences in cements and brands, of which, in general, dealers and ordinary purchasers are not aware and knowledge of which would tend toward making it impossible for the producers involved to maintain uniform prices for their product; and
- (n) Automatically and inevitably discriminated in price between customers, in violation of section 2 (a) of the Clayton Act as amended through the application of their said multiple basing point price system, under which (1) there were almost as many true sale prices, i. e., the mill nets, as there were customers' locations; (2) higher mill nets were always exacted from customers closer freightwise to the seller than from those at more distant points; (3) each mill knew that in reciprocity for its omission to offer a competitive price to customers located in areas adjacent to its mill, where it had a natural advantage and received its highest actual price, other producers would reciprocally waive their advantages in other areas, in order that there might not anywhere be genuine competition in price; (4) the variation in mill net discriminations was so wide, ranging from a fraction of a cent to amounts substantially in excess of \$1 per barrel, and commonly amounting to 25 cents to 50 cents per barrel that it would be impossible for any of the producer-sellers habitually and openly to obtain them in the form of f. o. b. mill prices, and any attempt to do so would undoubtedly arouse a storm of protest; (5) such discriminations enabled the producers involved to eliminate price competition and were intended so to do; (6) were not made in good faith to meet an equally low price of a competitor, but, on the contrary, with their systematic variations and pattern—the mathematical counterpart

of the delivered price pattern resulting from said system and expression of the effort of each to match the delivered prices of others—were made in order that the delivered prices of all producers selling in any given location might be equally high and equally low; and (7) the delivered prices, if treated as true prices, would not reflect due allowance for differences in the cost of delivery and could not, under the formula, do so in all cases where the point of shipment was not that of the governing base mill upon which the delivered price was calculated;

Effect of which systematic discriminations by each producer among its various customers, as the necessary result of the use of said system, had been and might be substantially to lessen competition, and tend to create a monopoly in the sale and distribution of said product and to injure, destroy and prevent competition with those who grant and exact such discriminations, saved neither by the making of due allowance only for the differences of cost of delivery or other permitted differentials under subsection (a) of the Act, nor by being made in good faith to meet an equally low price of a competitor under subsection (b); and

Capacity, tendency, and effect of which combination and acts and practices performed thereunder and in connection therewith, as above set out, had been and might be to—

- (1) Hinder, lessen, restrain and suppress competition in the sale and distribution of cement in and among the several states, deprive purchasers of cement, both private and governmental, of the benefits of competition in price, and systematically maintain artificial and monopolistic methods and prices in the sale and distribution of such product, including common rate factors used and useful in the pricing thereof;
- (2) Prevent purchasers from utilizing motor trucks or water carriers for the transportation of cement and from obtaining benefits which might accrue therefrom;
- (3) Require that purchases of cement be made on a delivered price basis and prevent and defeat efforts of purchasers to avoid such requirement;
- (4) Frequently deprive agencies of the Federal Government of the benefits of the lower land grant rates, and require certain of its agencies to purchase their requirements of cement through dealers at higher prices than were available in direct purchases from manufacturers;
- (5) Establish and maintain an agreed classification of customers who might purchase cement from manufacturers thereof, maintain uniform terms and conditions of sale, and hinder and obstruct the sale of imported cement through restraints upon those who deal therein; and
- (6) Otherwise promote and maintain the multiple basing point delivered price system of the producers concerned and their association, and obstruct and defeat any form of competition which threatened or tended to threaten the continued use and maintenance of said system and the uniformity of prices created and maintained by its use:

*Held*, (1) That said combination and acts and practices of said producers and their association, and its officers pursuant thereto, as above set forth, constituted unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act; and

- (2) That their discriminations in price as aforesaid set out, constituted violations of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

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

*Mr. Walter B. Wooden*, Assistant Chief Counsel, and *Mr. Everette A. MacIntyre* and *Mr. Lynn C. Paulson*, Special Attorneys, for the Commission.

*Donovan, Leisure, Newton & Lumbard*, of New York City and Washington, D. C., for The Cement Institute, S. W. Storey, G. H. Reiter, the vice-president, treasurer and trustees of said Institute, and AsH Grove Lime & Portland Cement Co., Castalia Portland Cement Co., Coplay Cement Manufacturing Co., Cumberland Portland Cement Co., Dewey Portland Cement Co., Federal Portland Cement Co., Inc., Georgia Cement & Products Co., Hawkeye Portland Cement Co., Hercules Cement Corp., Hermitage Portland Cement Co., Keystone Portland Cement Co., Kosmos Portland Cement Co., Lawrence Portland Cement Co., Missouri Portland Cement Co., Nazareth Cement Co., Oregon Portland Cement Co., Petoskey Portland Cement Co., Pittsburgh Plate Glass Co., Portland Cement Co. of Utah, Valley Forge Cement Co., Vulcanite Portland Cement Co., Wabash Portland Cement Co., and West Penn Cement Co., and along with—

*Bulkley, Ledyard, Dickinson & Wright*, of Detroit, Mich., for Aetna Portland Cement Co.;

*Porter & Taylor*, of New York City, for Alpha Portland Cement Co.;

*Lewis & Grant*, of Denver, Colo., for Arkansas Portland Cement Co., Colorado Portland Cement Co., Nebraska Cement Co., Oklahoma Portland Cement Co., Three Forks Portland Cement Co., and Union Portland Cement Co.;

*Harrington, Huxley & Smith*, of Youngstown, Ohio, for Bessemer Limestone & Cement Co.;

*Call, Murphey & Davis*, of Los Angeles, Calif., for California Portland Cement Co.;

*Sidley, McPherson, Austin & Burgess*, of Chicago, Ill., for Consolidated Cement Corp., Florida Portland Cement Co., Signal Mountain Portland Cement Co., and Trinity Portland Cement Co.;

*Burt, Carson & Shadrach*, of Canton, Ohio, for Diamond Portland Cement Co.;

*Strange, Myers, Hinds & Wight*, of New York City, for Edison Cement Corp.;

*Barnes, Biddle & Myers*, of Philadelphia, Pa., for Giant Portland Cement Co.;

*Mr. J. Edward Singleton*, of Glen Falls, N. Y., for Glen Falls Portland Cement Co.;

*Milbank, Tweed & Hope*, of New York City, for Great Lakes Portland Cement Corp., and Lehigh Portland Cement Co.;

## Appearances

*Vinson, Thompson, Meek & Scherr*, of Huntington, W. Va., for Green Bag Cement Co. of West Virginia;

*Wright, Gordon, Zachry, Parlin & Cahill*, of New York City, for Green Bag Cement Co. of Pennsylvania;

*Davis, Heil & Davis*, of Spokane, Wash., for Idaho Portland Cement Co.;

*Chadbourne, Wallace, Parke & Whiteside*, of New York City, for International Cement Corporation;

*Thompson, Hine & Flory*, of Cleveland, Ohio, for Medusa Portland Cement Co.;

*Brown & Brown*, of Wichita, Kans., for Monarch Cement Co.;

*Mr. William D. Burnett*, of Los Angeles, Calif., for Monolith Portland Cement Co., and Monolith Portland Midwest Co.;

*Stokely, Scrivner, Dominick & Smith*, of Birmingham, Ala., for National Cement Co.;

*Beekman, Bogue, Stephens & Black* and *Mr. Eugene W. Leake*, of New York City, for North American Cement Corporation;

*Weter, Roberts & Schefelman*, of Seattle, Wash., for Northwestern Portland Cement Co.;

*Smith & Feeney*, of Mason City, Ia., for Northwestern States Portland Cement Co.;

*Clark, Klein, Brucker & Waples*, of Detroit, Mich., for Peerless Cement Corporation;

*Shearman & Sterling*, of New York City, for Pennsylvania-Dixie Cement Corporation;

*Crenshaw, Hansell & Gunby*, of Atlanta, Ga., for Southern States Portland Cement Co.;

*Mr. Richard F. Burges*, of El Paso, Tex., for Southwestern Portland Cement Co.;

*Witherspoon & Witherspoon*, of Spokane, Wash., for Spokane Portland Cement Co.;

*Reed, Smith, Shaw & McClay*, of Pittsburgh, Pa., for Standard Portland Cement Co.;

*Mr. E. G. Miller*, of Portsmouth, Ohio, for Superior Cement Corporation;

*Cates, Smith & Long*, of Knoxville, Tenn., for Volunteer Portland Cement Co.;

*Mr. E. H. Molthan*, of Philadelphia, Pa., for Whitehall Cement Manufacturing Co.; and

*Cowell & Frankhouser*, of Coldwater, Mich., for Wolverine Portland Cement Co.;

*Chickering & Gregory* and *Mr. Walter C. Fox, Jr.*, of San Francisco, Calif., for Calaveras Cement Co.;

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*Beaumont, Smith & Harris*, of Detroit, Mich., for Huron Portland Cement Co.;

*Zimmerman & Norman*, of Chicago, Ill., for Marquette Cement Manufacturing Co.;

*Pillsbury, Madison & Sutro*, of San Francisco, Calif., for Pacific Portland Cement Co.;

*Little, Leader, LeSourd & Palmer*, of Seattle, Wash., for Superior Portland Cement, Inc.;

*Knapp, Cushing, Hershberger & Stevenson*, of Chicago, Ill., for Universal Atlas Cement Co.;

*Morrison, Hohfeld, Foerster, Shuman & Clark*, of San Francisco, Calif., for Santa Cruz Portland Cement Co., and along with—

*O'Melveny & Myers*, of Los Angeles, Calif., for Riverside Cement Co.; and

*Earl & Hall & Gerdes*, of San Francisco, Calif., for Yosemite Portland Cement Corp.

## COMPLAINT

Pursuant to the provisions of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, and commonly known as the Federal Trade Commission Act, the Commission having reason to believe that the respondents herein named have violated the said act of Congress, 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 such respect in count I hereof.

Also pursuant to the provisions 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," commonly known as the Clayton Act, as amended by an act of Congress approved June 19, 1936, commonly known as the Robinson-Patman Act, the Commission having reason to believe that the respondents herein named have violated the said act of Congress, as so amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission issues this its complaint stating its charges in such respect in count II hereof.



## Complaint

## COUNT I

## CHARGE UNDER FEDERAL TRADE COMMISSION ACT

*Description of the Respondents*

PARAGRAPH 1. The respondent, The Cement Institute, hereinafter referred to merely as "Institute," is an unincorporated association which includes as its members producers of Portland cement, hereinafter referred to merely as "cement," located in all sections of the United States. The membership of the Institute comprises practically every producer of cement in the United States. It is a trade association formed for the promotion of the mutual interests of its members. The Institute was organized in October 1929; it operates through its officers, trustees, committees, bureaus, and other agents. Its membership is divided into northeastern, southeastern, Chicago, and Kansas City divisions, each with its office. It has freight rate bureaus located at Bethlehem, Pa., and Chicago, Ill.

Respondents, S. W. Storey and G. H. Reiter, are respectively, the president and secretary of the Institute. Respondents, vice-president, treasurer, and trustees, whose names are not known to the Commission, hold the said respective offices in the said Institute.

Respondent, Aetna Portland Cement Co., is a corporation, the place of whose incorporation is not known to the Commission, with its principal place of business at Detroit, Mich.

Respondent, Alpha Portland Cement Co., is a New Jersey corporation, having its principal place of business at Easton, Pa. ?

Respondent, Arkansas Portland Cement Co., is an Arkansas corporation, having its principal place of business at Denver, Colo.

Respondent, Ash Grove Lime & Portland Cement Co., is a Maine corporation, having its principal place of business at Kansas City, Mo. //

Respondent, Beaver Portland Cement Co., is an Oregon corporation, having its principal place of business at Portland, Oreg.

Respondent, Bessemer Limestone & Cement Co., is an Ohio corporation, having its principal place of business at Youngstown, Ohio.

Respondent, Calaveras Cement Co., is a Delaware corporation, having its principal place of business at San Francisco, Calif.

Respondent, California Portland Cement Co., is a California corporation, having its principal place of business at Los Angeles, Calif.

Respondent, Castalia Portland Cement Co., is a Pennsylvania corporation, having its principal place of business at Pittsburgh, Pa.

Respondent, Colorado Portland Cement Co., is a Colorado corporation, having its principal place of business at Denver, Colo.

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Respondent, Consolidated Cement Corporation, is a Delaware corporation, having its principal place of business at Chicago, Ill.

Respondent, Coplay Cement Manufacturing Co., is a Pennsylvania corporation, having its principal place of business at Coplay, Pa.

Respondent, Cumberland Portland Cement Co., is a Delaware corporation, having its principal place of business at Cowan, Tenn.

Respondent, Dewey Portland Cement Co., is a West Virginia corporation, having its principal place of business at Kansas City, Mo.

Respondent, Diamond Portland Cement Co., is an Ohio corporation, having its principal place of business at Middle Branch, Ohio.

Respondent, Edison Cement Corporation, is a New Jersey corporation, having its principal place of business at New York, N. Y.

Respondent, Federal Portland Cement Co., Inc., is a New York corporation, having its principal place of business at Buffalo, N. Y.

Respondent, Florida Portland Cement Co., is a Delaware corporation, having its principal place of business at Chicago, Ill.

Respondent, Georgia Cement & Products Co., is a Georgia corporation, having its principal place of business at Atlanta, Ga.

Respondent, Giant Portland Cement Co., is a Delaware corporation, having its principal place of business at Philadelphia, Pa.

Respondent, Glens Falls Portland Cement Co., is a New York corporation, having its principal place of business at Glens Falls, N. Y.

Respondent, Great Lakes Portland Cement Corporation, is an Indiana corporation, having its principal place of business at Buffalo, N. Y.

Respondent, Green Bag Cement Co. of West Virginia, is a corporation, the place of whose incorporation is not known to the Commission, with its principal place of business at Pittsburgh, Pa.

Respondent, Green Bag Cement Co. of Pennsylvania, is a corporation, the place of whose incorporation is not known to the Commission, with its principal place of business at Pittsburgh, Pa.

Respondent, Hawkeye Portland Cement Co., is a West Virginia corporation, having its principal place of business at Des Moines, Iowa.

Respondent, Hercules Cement Corporation, is a Pennsylvania corporation, having its principal place of business at Philadelphia, Pa.

Respondent, Hermitage Portland Cement Co., is a Delaware corporation, having its principal place of business at Nashville, Tenn.

Respondent, Huron Portland Cement Co., is a Michigan corporation, having its principal place of business at Detroit, Mich.

Respondent, Idaho Portland Cement Co., is an Idaho corporation, having its principal place of business at Inkom, Idaho.

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Respondent, International Cement Corporation, is a Maine corporation, having its principal place of business at New York, N. Y.

Respondent, Keystone Portland Cement Co., is a Pennsylvania corporation, having its principal place of business at Philadelphia, Pa.

Respondent, Kosmos Portland Cement Co., is a Kentucky corporation, having its principal place of business at Louisville, Ky.

Respondent, Lawrence Portland Cement Co., is a Pennsylvania corporation, having its principal place of business at Siegfried, Pa.

Respondent, Lehigh Portland Cement Co. is a Pennsylvania corporation, having its principal place of business at Allentown, Pa. ✓

Respondent, Marquette Cement Manufacturing Co. is an Illinois corporation, having its principal place of business at Chicago, Ill. ✓

Respondent, Medusa Portland Cement Co., is an Ohio corporation, having its principal place of business at Cleveland, Ohio.

Respondent, Missouri Portland Cement Co. is a Missouri corporation, having its principal place of business at St. Louis, Mo.

Respondent, Monarch Cement Co. is a Kansas corporation, having its principal place of business at Humboldt, Kans.

Respondent, Monolith Portland Cement Co., is a Nevada corporation, having its principal place of business at Los Angeles, Calif.

Respondent, Monolith Portland Midwest Co., is a corporation, the place of whose incorporation is not known to the Commission, with its principal place of business at Los Angeles, Calif.

Respondent, National Cement Co., is an Alabama corporation, having its principal place of business at Birmingham, Ala.

Respondent, Nazareth Cement Co., is a Pennsylvania corporation, having its principal place of business at Nazareth, Pa.

Respondent, Nebraska Cement Co., is a Nebraska corporation, having its principal place of business at Denver, Colo.

Respondent, North American Cement Corporation, is a Delaware corporation, having its principal place of business at Albany, N. Y.

Respondent, Northwestern Portland Cement Co., is a Washington corporation, having its principal place of business at Seattle, Wash.

Respondent, Northwestern States Portland Cement Co., is a West Virginia corporation, having its principal place of business at Mason City, Iowa.

Respondent, Oklahoma Portland Cement Co., is an Oklahoma corporation, having its principal place of business at Denver, Colo.

Respondent, Oregon Portland Cement Co., is a Nevada corporation, having its principal place of business at Portland, Oreg.

Respondent, Pacific Portland Cement Co., is a California corporation, having its principal place of business at San Francisco, Calif.

*Some other*

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Respondent, Peerless Cement Corporation, is a Michigan corporation, having its principal place of business at Detroit, Mich.

Respondent, Pennsylvania-Dixie Cement Corporation, is a Delaware Corporation, having its principal place of business at New York, N. Y.

Respondent, Petoskey Portland Cement Co., is a Delaware corporation, having its principal place of business at Petoskey, Mich.

Respondent, Pittsburgh Plate Glass Co., is a Pennsylvania corporation, having its principal place of business at Pittsburgh, Pa.

Respondent, Portland Cement Co. of Utah, is a Wyoming corporation, having its principal place of business at Salt Lake City, Utah.

Respondent, Riverside Cement Co., is a Delaware corporation, having its principal place of business at Los Angeles, Calif.

Respondent, Santa Cruz Portland Cement Co., is a California corporation, having its principal place of business at San Francisco, Calif.

Respondent, Signal Mountain Portland Cement Co., is a Delaware corporation, having its principal place of business at Chicago, Ill.

Respondent, Southern States Portland Cement Co., is a Georgia corporation, having its principal place of business at Rockmart, Ga.

Respondent, Southwestern Portland Cement Co., is a West Virginia corporation, having its principal place of business at El Paso, Tex.

Respondent, Spokane Portland Cement Co., is a Washington corporation, having its principal place of business at Spokane, Wash.

Respondent, Standard Portland Cement Co., is an Ohio corporation, having its principal place of business at Cleveland, Ohio.

Respondent, Superior Cement Corporation, is a corporation, the place of whose incorporation is not known to the Commission, with its principal place of business at Portsmouth, Ohio.

Respondent, Superior Portland Cement, Inc., is a Washington corporation, having its principal place of business at Seattle, Wash.

Respondent, Three Forks Portland Cement Co., is a Montana corporation, having its principal place of business at Denver, Colo.

Respondent, Trinity Portland Cement Co., is a corporation, the place of whose incorporation is not known to the Commission, having its principal place of business at Chicago, Ill.

Respondent, Union Portland Cement Co., is a corporation, the place of whose incorporation is not known to the Commission, having its principal place of business at Denver, Colo.

Respondent, Universal Atlas Cement Co., is an Indiana corporation, having its principal place of business at Chicago, Ill.

Respondent, Valley Forge Cement Co., is a Pennsylvania corporation, having its principal place of business at Catasauqua, Pa.

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Respondent, Volunteer Portland Cement Co., is a Delaware corporation, having its principal place of business at Knoxville, Tenn.

Respondent, Vulcanite Portland Cement Co., is a New Jersey corporation, having its principal place of business at Philadelphia, Pa.

Respondent, Wabash Portland Cement Co., is an Indiana corporation, having its principal place of business at Detroit, Mich.

Respondent, West Penn Cement Co., is a Pennsylvania corporation, with its principal place of business at Butler, Pa.

Respondent, Whitehall Cement Manufacturing Co., is a Pennsylvania corporation, having its principal place of business at Philadelphia, Pa.

Respondent, Wolverine Portland Cement Co., is a Michigan corporation, having its principal place of business at Coldwater, Mich.

Respondent, Yosemite Portland Cement Corporation, is a Delaware corporation, having its principal place of business at Merced, Calif.

All of the above-named corporate respondents are producers of cement and members of the Institute. Many of them have mills in more than one locality. They are hereinafter collectively referred to as "producing respondents."

*Interstate Character of Producing Respondents' Commerce*

PAR. 2. Producing respondents in the regular course of their business in the sale and distribution of cement cause the same to be shipped and transported from the various points of its production in certain respective States through and into other States of the United States. They are in competition among themselves except insofar as such competition has been hindered, lessened, restricted or restrained as alleged in paragraphs 4 to 7, inclusive, hereof. The Institute is not engaged in commerce but is engaged in aiding producing respondents in carrying out said unlawful methods as alleged herein, which directly and substantially affect competition among its members.

*The Industry*

PAR. 3. Cement is a standard commodity made in standardized specifications not differing substantially among producers in quality except as between recognized and standardized grades thereof. Its production belongs to the class of heavy-goods industries. The carriage charges, for an overwhelming proportion of the sales of cement, constitute a substantial part of the cost to the customer.

Limestone and shale, from which cement is made, and the necessary fuels are found in numerous parts of the country. Cement is produced in widely separated portions of the country and in all sections

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thereof, including the following States named in approximately the order of the volume of their production, namely: Pennsylvania, California, New York, Illinois, Michigan, Ohio, Missouri, Texas, Iowa, Kansas, Tennessee, and Alabama. It is also produced in Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, South Dakota, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

During the period from 1920 to 1930, inclusive, the production of cement varied from over 99 million barrels to 178 million barrels, and the value thereof from over \$187,000,000 to over \$288,000,000. Thereafter the production in barrels and value was greatly reduced to a minimum of about 64 million barrels with a valuation of about \$85,000,000 in 1933. The recent trend of production has been strongly upward.

More than one-third of the cement produced in the United States is purchased and used for the building, construction, reconstruction, and repair of highways, and more than one-fourth in the erection of buildings. Cement is purchased by contractors for such jobs and projects in great quantities, by Federal and State Governments and by counties, highway districts and other quasi-municipal bodies having taxing powers.

*Respondents' Combination Generally Stated*

PAR. 4. For more than 8 years last past, respondents have maintained and now have in effect a combination among themselves to hinder, lessen, restrict, and restrain competition in price, among producing respondents in the course of their aforesaid commerce among the States. The said combination is made effective by mutual understanding or agreement to employ, and by the actual employment of, the methods and practices set forth in paragraphs 5 to 7 inclusive, of this count.

*The Basing Point System*

PAR. 5. (a) Among other methods employed by producing respondents in pursuance of the combination alleged in paragraph 4 hereof, said respondents, at almost all times and with respect to most of their sales, have cooperatively employed what is known as a multiple basing point system of pricing. Thereunder, all cement, wherever produced, is sold only at delivered prices.

(b) Under the said multiple basing point system, for any destination of cement in the United States there is a governing basing point. There are in the cement industry within the United States approx-

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imately 60 basing points, each with its base price. In arriving at a delivered cement price for any destination, the first matter to be ascertained is what basing point governs such destination. This is determined by calculating and comparing the sum of two factors for each basing point likely to govern the destination in question. These factors are the base price and the rate of all-rail freight from each respective basing point to such destination. Whatever basing point proves to have a lower total of these two factors than the corresponding total of the same factors for any other basing point governs the price at the destination in question.

(c) Under said pricing system, each producing respondent, whether its mill be located at a basing point or not, quotes and charges to any given destination in the United States, where it desires to make a sale, a delivered price derived by the use of a formula. Such formula is: the prevailing base price at the governing basing point plus the all-rail rate of freight from said governing basing point to the location of the customer. The said multiple basing point system is hereinafter referred to as "said pricing system."

(d) The result is the quoting of a delivered price by every producing respondent identical with the delivered price quoted by all other respondents which seek business at any given destination point in the United States.

*How the System Operates*

PAR. 6. The following are illustrative examples of many instances of identical bids received by various branches of the Federal Government from producing respondents.

On June 5, 1934, there were submitted to the War Department for use in the construction of a project for the United States at Fort Peck, Mont., which required 600,000 barrels of cement, 10 identical bids of \$2.7054 per barrel by 10 different producers variously located.

On June 12, 1935, there were submitted to the Department of Justice for use in construction of United States Industrial Reformatory at Chillicothe, Ohio, 14 identical bids by 14 different producers variously located, on an indefinite quantity of cement.

On July 25, 1935, there were submitted to the War Department for delivery at Kansas City, Mo., three identical bids by three different producers variously located, on a quantity of 600,000 barrels of cement.

On September 6, 1935, there were submitted for use in the construction of the United States Northeastern Penitentiary at Lewisburg, Pa., requiring 264 barrels of cement, 15 identical bids by 15 different producers variously located.

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On October 18, 1935, there were submitted to the War Department for delivery at Vicksburg, Miss., 17 identical bids by 17 different producers variously located, on a quantity of 57,000 barrels of cement.

On November 8, 1935, there were submitted to the Bureau of Supplies and Accounts, Navy Department, 18 identical bids by 18 different concerns variously located. (Quantity not known.)

On February 13, 1935, there were submitted to the War Department for use in construction for the United States at Eastport, Maine, on a project requiring 5,000 barrels of cement, 15 identical bids by 15 different producers variously located.

On March 27, 1936, there were submitted to the War Department at New York, N. Y., 16 identical bids by 16 different producers variously located, on a quantity of 16,000 barrels of cement.

On April 23, 1936, there were submitted to the War Department for delivery at Tucumcari, N. Mex., 11 identical bids by 11 different producers, variously located, on a quantity of 6,000 bags of cement.

On June 22, 1936, there were submitted to the Department of Agriculture for use of the Soil Conservation Service, for delivery at Polkton, N. C., 12 identical bids by 12 different producers variously located, on a quantity of 400 barrels of cement.

On June 22, 1936, there were submitted to the same department for use of the same service at Greensboro, N. C., 12 identical bids by 12 different producers variously located, on the same quantity of cement.

On June 25, 1936, there were submitted to the Forestry Service of the Department of Agriculture for use at Tallahassee, Fla., nine identical bids by nine different producers variously located, on a quantity of 6,360 bags of cement.

On July 26, 1936, there were submitted to the War Department for delivery at West Point, N. Y., 17 identical bids by 17 different producers variously located, on a quantity of 7,000 barrels of cement.

On September 8, 1936, there were submitted to the War Department for use by the United States at Fort George G. Meade, Md., requiring an indefinite quantity of cement, 15 identical bids by 15 different producers variously located.

On October 23, 1936, there were submitted to the War Department, for use of the United States at Fort Devers, Mass., requiring 225 barrels of cement, seven identical bids by seven different producers variously located.

The foregoing instances of uniformity in delivered prices under the said pricing system are typical of bids submitted to the Federal Government except for the fact that occasionally there are instances of



price variation in bids made to branches of the Federal Government. In some of such instances, producing respondents have alleged that such price differences were made in error and have requested and have been granted permission to withdraw such bids. The foregoing examples, however, are alleged as actual instances and as typical of the uniformity of bids presented to the Federal Government as respects a majority of the volume of cement purchases by the United States.

Likewise, private buyers as a rule encounter no variation in delivered prices as regards the great preponderance of sales made to them.

The degree of identity of quotations and delivered prices made pursuant to proposals and awards for delivery of cement to states and municipal and quasi-municipal corporations approximates the degree of identity of delivered prices to the various branches of the Federal Government. In the great majority of instances, state and local authorities receive bids entirely identical.

A great number of examples of responses to proposals issued by branches of state governments, counties and quasi-municipal corporations showing entire lack of competition in delivered prices on the part of producing respondents could be given. The following tabulation shows 14 cases of identical bids actually received by a single branch of but one State Government.

State Highway Commission (Oklahoma)—Tabulation of bids on cement purchased from Jan. 1, 1936 to Sept. 1, 1936

Date	Amount	Bidders	Destination	Price bid	
1-6-36	450 bbls.-----	Ash Grove Lime & Cement Co.....	Boise City.....	3.03 \$1,363.50	
		Monarch Cement Co.....		3.03 1,363.50	
		Universal Atlas Cement Co.....		3.03 1,363.50	
		Dewey Portland Cement Co.....		3.03 1,363.50	
3-8-36	2,250 bbls.-----	Oklahoma Portland Cement Co.....	Clayton.....	3.03 1,363.50	
		Dewey Portland Cement Co.....		2.72 6,120.00	
		Universal Atlas Cement Co.....		2.72 6,120.00	
		Monarch Cement Co.....		2.72 6,120.00	
		Ash Grove Lime & Cement Co.....		2.72 6,120.00	
		Consolidated Cement Co.....		2.72 6,120.00	
		Oklahoma Portland Cement Co.....		2.72 6,120.00	
3-12-36	132 bbls. (in paper)-----	Oklahoma Portland Cement Co.....	Waynoka.....	2.55 336.60	
		Universal Atlas Cement Co.....		2.55 336.60	
		Monarch Cement Co.....		2.55 336.60	
		Lehigh Portland Cement Co.....		2.55 336.60	
		Ash Grove Lime & Cement Co.....		2.55 336.60	
	175 bbls. (in paper)-----		Ash Grove Lime & Cement Co.....	Perry.....	2.42 423.50
			Oklahoma Portland Cement Co.....		2.42 423.50
			Monarch Cement Co.....		2.42 423.50
	3-25-36	150 bbls.-----	Dewey Portland Cement Co.....	Alva.....	2.77 415.50
			Ash Grove Lime & Cement Co.....		2.77 415.50
Universal Atlas Cement Co.....			2.77 415.50		
Oklahoma Portland Cement Co.....			2.77 415.50		
Monarch Cement Co.....			2.77 415.50		
Lehigh Portland Cement Co.....			2.77 415.50		
4-9-36	450 bbls.-----	Ash Grove Lime & Cement Co.....	Boise City.....	3.03 1,363.50	
		Monarch Cement Co.....		3.03 1,363.50	
		Dewey Portland Cement Co.....		3.03 1,363.50	
		Oklahoma Portland Cement Co.....		3.03 1,363.50	
		Consolidated Cement Co.....		3.03 1,363.50	
4-10-36	390 bbls.-----	Dewey Portland Cement Co.....	Cyril.....	2.87 1,119.30	
		Oklahoma Portland Cement Co.....		2.87 1,119.30	
		Monarch Cement Co.....		2.87 1,119.30	
		Ash Grove Lime & Cement Co.....		2.87 1,119.30	
		Consolidated Cement Co.....		2.87 1,119.30	
		Lehigh Portland Cement Co.....		2.87 1,119.30	

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4-18-36	132 bbls	Dewey Portland Cement Co.	Buffalo	2.86	377.52
		Ash Grove Lime & Cement Co.		2.86	377.52
		Oklahoma Portland Cement Co.		2.86	377.52
		Monarch Cement Co.		2.86	377.52
		Universal Atlas Cement Co.		2.86	377.52
4-18-36	900 bbls	Consolidated Cement Co.		2.86	377.52
		Dewey Portland Cement Co.	Stilwell	2.71	2,439.00
		Ash Grove Lime & Cement Co.		2.71	2,439.00
		Oklahoma Portland Cement Co.		2.71	2,439.00
		Monarch Cement Co.		2.71	2,439.00
5-16-36	200 bbls. (in paper)	Universal Atlas Cement Co.		2.71	2,439.00
		Consolidated Cement Co.		2.71	2,439.00
		Oklahoma Portland Cement Co.	Perry	2.42	484.00
		Dewey Portland Cement Co.		2.42	484.00
		Ash Grove Lime & Cement Co.		2.42	484.00
6-20-36	750 bbls	Universal Atlas Cement Co.		2.42	484.00
		Monarch Cement Co.		2.42	484.00
		Ash Grove Lime & Cement Co.	Boise City	3.03	2,272.50
		Monarch Cement Co.		3.03	2,272.50
		Dewey Portland Cement Co.		3.03	2,272.50
7-1-36	132 bbls	Oklahoma Portland Cement Co.		3.03	2,272.50
		Universal Atlas Cement Co.		3.03	2,272.50
		Ash Grove Lime & Cement Co.	Buffalo	2.86	377.52
		Oklahoma Portland Cement Co.		2.86	377.52
		Ash Grove Lime & Cement Co.	Apache	2.82	987.00
7-8-36	350 bbls	Monarch Cement Co.		2.82	987.00
		Oklahoma Portland Cement Co.		2.82	987.00
		Dewey Portland Cement Co.		2.82	987.00
		Universal Atlas Cement Co.		2.82	987.00
		Lehigh Portland Cement Co.		2.82	987.00
8-22-36	900 bbls	Consolidated Cement Co.		2.82	987.00
		Oklahoma Portland Cement Co.	Stilwell	2.71	2,439.00
		Lehigh Portland Cement Co.		2.71	2,439.00
		Ash Grove Lime & Cement Co.		2.71	2,439.00
		Universal Atlas Cement Co.		2.71	2,439.00
		Consolidated Cement Co.		2.71	2,439.00
		Dewey Portland Cement Co.		2.71	2,439.00
		Monarch Cement Co.		2.71	2,439.00
		Lone Star Cement Co.		2.71	2,439.00

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NOTE.—All cement in cloth except as otherwise specified.

*Methods for Making System Effective*

PAR. 7. In pursuance and in support of their combination averred in paragraphs 4 and 5 hereof, respondents have used many and various means and have followed many practices including the following:

(a) Respondents have prepared and distributed among producers, and from time to time amended, information as to all-rail rates of freight on cement. The said information, except interim amendments, is furnished in the form of rate books, one for each State throughout the country. Each State book shows the carload rate on cement from every basing point, whether within or outside the State, which governs or which under any reasonably possible change of base price or freight rate might govern any territory within the State, to all cities, towns, and other points of reasonably possible destination within the State. This is done under the pretext of furnishing producers with information needed by them to the end that they may know what rate of freight applies to any given transaction. This, however, is not the true motive; the said freight rate information is furnished to the end that, irrespective of actual existing freight rates, all producing respondents shall reach precisely identical results in calculating that factor of the said formula which is measured by the rate of freight from the governing basing point to destination as described in paragraph 5 (c) hereof. The purpose is not accurate rate information but precisely uniform freight rate applications by all producers. Such purpose appears from these facts:

1. If a modification of a rate is made effective at any time for cement, it is the understanding among respondents that none of them shall use the new rate for quoting delivered prices until it shall have been promulgated officially by respondents' freight rate information service. The freight rate books furnished by the Institute to producers rather than any revised official freight rate of the railroad is the freight rate effective for quotation purposes until all interested respondent producers have been officially notified of such change of rates. Thus, for the purpose of arriving at producing respondents' delivered prices the making of rates by the carriers and the supervision thereof by the Interstate Commerce Commission are nullities until the Institute shall have notified all interested producers. (Before such notification, however, the rates as modified from time to time are in force for purposes of computing the freight paid by producing respondents to the railroads as actual carriage charges.)

2. These freight rate schedules are a matter of great complexity and intricacy. Since thousands of rates are given in each rate book, some errors arise. Producers frequently prepare and maintain their own

freight rate data; yet, if any producer deems any rate given by the Institute to be erroneous, or even if the same be in truth erroneous, it is the understanding of respondents that each will use, in computing delivered price quotations, the rate given in the Institute's rate book rather than the true railroad or Interstate Commerce Commission rate. The Institute's freight rate books are instruments for the maintenance of uniform delivered prices and not primarily of complete and accurate information. In cases where freight rates are reduced and in cases where the Institute's figures are erroneously too high, the better informed and more diligent producing respondents are restrained from making reduced delivered prices, as the result of respondents' understanding that for price quotation purposes the Institute's freight rate schedules, right or wrong, are to be used. This understanding constitutes a safeguard against pleas, whether genuine or spurious, on the part of any producers making any quotation below those submitted by their competitors, that they acted in harmony with formula rather than as intentional price cutters.

(b) Customers have frequently demanded the privilege of buying at the point of production and delivering to destination by truck. This has long been regarded by respondents as a menace to said pricing system because it constituted an element of uncertainty tending to create price competition and to weaken the combination described in paragraphs 4 and 5 hereof. At one time said pricing system broke down, largely as a result of such use of trucks. The respondents, accordingly, have resorted to various means to prevent the use by customers of trucks for delivery. Among these means, has been a concerted effort in certain parts of the country to charge customers requiring delivery to trucks 15 cents per barrel more than producing respondents charge to customers who obtain delivery by rail. At other times, respondents have attempted, with varying success, cooperatively to forbid entirely the loading of cement on trucks furnished by customers. The result of these concerted efforts, so far as successful, has been to eliminate an important source of competition in delivered prices and to prevent savings in cost to consumers buying direct and to those who buy from middlemen.

(c) Among the possible means whereby the said pricing system may be impaired or broken is the diversion of shipments of cement in transit from the anticipated destination to a destination where the price is higher. This amounts to a concession in delivered price in favor of the transferee. Respondents have taken cooperative measures by the use of provisions in their contract forms in order to eliminate such diversions in transit. This tends toward the maintenance of concerted delivered prices.

(d) Under recent acts of Congress appropriating for emergency and other expenditures, the Federal Government has expended large sums of money for cement in the West and in certain parts of the South, where it is entitled to reduced railroad freight rates under land-grant acts of Congress. These rates have never been published for general distribution. In many instances, they are not precisely known to commercial shippers including marketers of cement and are often highly difficult of determination and frequently in dispute. Respondents have thwarted the efforts of Government officials to secure f. o. b. mill prices on cement, both before and during the period of national emergency. If the United States had been able to obtain f. o. b. mill prices for cement, it would have been practicable for it to have elected to purchase from such mill as would have afforded it the maximum benefit of land-grant rates. In lieu of quoting upon proposals of the Federal Government upon an f. o. b. mill basis as called for by government officials, respondents have insisted upon maintaining their said pricing system and to that end have employed in each case a "control clause" by the use of which only delivered prices are quoted to the Federal Government. The control clause is used by all producing respondents bidding on any given job in land-grant territories. Under this control clause, the respondents arbitrarily select the route and approximate the land-grant concession to which the United States is entitled. This results in depriving the United States not only of the full benefit of the land grant rates reserved by acts of Congress but also of the benefit of price competition in its purchases of cement.

(e) Before and during the period that the code of fair competition for the cement industry approved November 27, 1933, pursuant to the National Industrial Recovery Act, was in effect, respondents attempted to obtain approval of a code provision which would require a division of customers into two classes, those to whom cement producers might sell direct and those to whom cement producers would be prohibited from selling direct. These efforts were unsuccessful. Nonetheless, respondents arbitrarily and cooperatively made such classification and division of customers.

(f) Respondents have entered into an understanding whereby they have combined to limit their sales to middlemen to those who fall within respondents' agreed and arbitrary definition of a "cement dealer." Moreover, respondents agree that sales shall be confined to those who fall within such definition of cement dealer with the exception of certain specific classes of customers, arbitrarily selected, who, though not recognized cement dealers, may, nevertheless, purchase cement.

(g) Terms of sale and discounts are uniform and the result of mutual understanding and concert of action among respondents.

(h) A relatively small volume of cement is imported into the United States chiefly from Belgium and Denmark. After paying the tariff charges, it may still be sold in certain seaboard centers at prices lower than the delivered prices at such centers derived under said pricing system. This price competition from foreign sources tends to cause producing respondents, selling at said centers, to make competitive prices and thus to depart from and break down said pricing system. In order to prevent such a break-down, producing respondents who have customers at such centers (1) have threatened to boycott and have boycotted dealer-customers who trade in imported cement; (2) have in some cases resorted to espionage upon dealers; (3) have made concerted and uniform deviations from the prices which would prevail at such centers under said pricing system; and (4) have taken other steps to minimize or prevent genuine price competition in cement resulting from such importation.

(i) Among the functions of respondent Institute, is that of interpreting the policies of cement companies and of formulating official policies for the industry both through its principal office and its officers and trustees and through its regional offices, freight bureaus and committees. These policies as formulated by the Institute promote the combination in paragraphs 4 and 5 hereof described. Where individual action by producing respondents might result in breaking down the said pricing system and result in price competition, it is a frequent practice on the part of members to refer questions of policy to the Institute or to a divisional office of the Institute. Meetings of the Institute and of sectional or local groups of producers are also means for promoting the said described system of pricing.

(j) By united action, respondents have sought to camouflage their combination and to allay public suspicion and criticism so that they may more effectively carry on said combination, by causing public advertisements to be prepared, published, and circulated, in which advertisements respondents falsely represented that the basing point method of pricing cement was practiced in order to discourage monopolistic practices and preserve free competition. Such representations were privately characterized by a prominent producer and trustee of respondent Institute as "sheer bunk and hypocrisy" in a letter written by him during May 1934, to his associated leaders in the Institute. Said producer and trustee also stated in said letter that "the truth is of course—and there can be no serious, respectable discussion of our case unless this is acknowledged—that ours is an industry above all

others that cannot stand free competition, that must systematically restrain competition or be ruined."

The foregoing means and practices set forth in subparagraphs (a) to (j), inclusive, are not exclusively alleged. There are numerous other unlawful means and practices which have been employed under the combination averred in paragraphs 4 and 5.

### *Effects of the Combination*

PAR. 8. The effect of the adoption, continuance, and maintenance of the said pricing system, to the extent that it has been and is followed, has been and is completely to destroy competition in price. Thereunder each producing respondent quotes and charges a delivered price to any given customer wherever said customer may be located, identical with that quoted and charged to that customer by every other producer adhering to the system. This is done by each with the knowledge and the mutual understanding that all other producers following the system will quote and charge delivered prices identical with his own and with one another. Among other effects of the said pricing system, to the extent that the same is used, are the following:

(a) Each producing respondent whose mill is located at a basing point receives its highest net price or true price, when it sells to customers located within the area governed by the basing point where such producer is located. Each producing respondent whose mill is not located at a basing point receives its highest net price or true price from customers located at its own place of production; from customers so located it receives, in addition to the base price at the governing basing point, the rate of all-rail freight from such basing point to customers' location and is obliged to pay no cost of transportation except possibly from one part of the city to another. Both of these classes of producers refrain from so reducing their delivered prices, in the territory where they receive their highest net price, as to obtain or hold their most profitable business. Each reciprocally refrains from price competition and offers no such price concessions as might make it impracticable for more distant producers to obtain the business, because of the greater freight costs which would necessarily be incurred in delivering from their mills. Thus, each respondent producer may sell in the vicinity of mills of other producers without encountering any delivered price competition from the latter producers. In many instances respondent producers thus noncompetitively transport their said products beyond the successive localities or other producers' mills into far distant points of consumption.

(b) In order thus to eliminate price competition, producing respondents' base prices are placed high enough to permit them often



to defray much higher amounts of actual freight than the amount of freight from the governing basing point to destination, which latter they include in the formula price under the said pricing system. This would not occur under conditions of true price competition.

(c) The costs of producing cement vary somewhat due to natural conditions and differences in efficiency. By said pricing system variations in such cost are nullified as an influence and check upon prices. The incentive for any producing respondent to offer lower prices in order to obtain a greater volume of business is largely removed as shown by the fact that under said pricing system each producing respondent shares the territory wherein he obtains his highest net price with far distant producers. Under the said pricing system, delivered prices are charged by respondent producers with little regard to the varying local conditions of supply and demand. Said prices are made through a concert of action, which is formulated and expressed in terms of the said pricing system and applied throughout most, if not all, of the country. Thus respondents maintain, against thousands of private and public consumers in many parts of the United States, an artificial price level little related to and not governed by truly competitive conditions. The result is higher base prices and higher delivered prices to the consuming public.

(d) Even in times of greatly depressed demand, respondents' combination has tended to eliminate the strong trend toward lower prices which normally operates at such times. The maintenance of higher prices delays the return to the market of prospective buyers, who, on account of reduced purchasing power or fear, can, or believe that they can, buy only at lower prices, and thereby delays recovery. Rather than make reductions in price normal to a time of depression respondents have elected to continue the said pricing system and to refrain from making truly competitive prices, even for the respective territories in which, as described in subparagraph (a) of this paragraph 8, they obtain their highest net price, and even though they were then operating far below the respective capacities of their mills. Thus, in definite measure, respondents by their combination in paragraphs 4 and 5 hereof described, have neutralized the natural economic forces which operate to restore prosperity and have so acted in combination as to constitute an influence prolonging the depression.

(e) Under conditions of true price competition, consumers located at points of production normally tend to buy from a local mill. If its prices advance unduly, the competition of the nearest competitor-producer, having similar costs of production and distribution, at once becomes active and restores a more reasonable price. But under respondents' said pricing system the advantages which would nor-

mally accrue to buyers located near cement mills are destroyed. The buying public pays the same prices precisely as though there were no natural advantages in producing and delivering cement. Each producer charges the same delivered price as every other. The buyer located at the point of production, if he buys from the local producer, pays such producer a greater net price than any buyer located elsewhere. Under the system, no other producer will offer a lower price. Buyers can perhaps purchase from a greater number of producers than would normally quote or sell under true price competition but the conditions under which they buy are monopolistic, not competitive.

(f) Under the said pricing system, producing respondents who follow the same and who are well located with regard to raw materials, means of transportation and proximity to large consuming centers and who are well financed and ably conducted, do not avail themselves of their competitive advantages by offering competitive prices. They do not cause these advantages to be reflected in their price level. The system precludes such producers from seeking volume of business through price reduction as the result of low costs. It, therefore, eliminates part of the natural incentive toward efficiency and economy. The result is a loss to the buying public.

(g) Under the formula, stated in paragraph 5 (c) hereof, the freight rate from the governing basing point, comprising the second factor in the delivered prices, is the all-rail freight rate, and that is true irrespective of whether customers could save money by buying f. o. b. producing point and using their own or hired trucks or barges for delivery purposes. The buying public pays the same delivered prices precisely for cement at respective destinations as though there were no destinations which might be served from any mill by delivery through means cheaper than all-rail transportation. The wrong committed against the consuming public is aggravated by the fact that producers are free under the system themselves to make actual delivery, wholly or in part, by highway or waterway at their option, thus monopolizing the benefits of these cheaper means of delivery intended to inure to the public from governmental expenditures for highways and waterways; and in fact they frequently do avail themselves of these cheaper means of delivery. If, however, genuine competitive conditions prevailed, circumstances would in many instances force competing producers to pass on to consumers the benefits of cheaper means of delivery. Thus the system results in greater costs to the public.

(h) Respondents have made concerted efforts to avoid competition between producers and wholesale dealers in cement in bidding upon

cement for Federal Government jobs. They have brought it about that certain agencies have been constrained to curtail the practice of buying direct from producers and have resorted to more costly purchases in quantity from dealers.

(i) State and Federal Governments and municipal and quasimunicipal corporations have been unable to obtain competitive price quotations and prices. They have been obliged, as the result of respondents' said pricing system, to raise larger sums by taxation, for such public works requiring cement as have been undertaken, than would otherwise be necessary; and the public have been deprived of all benefits which would accrue from competition in price in the cement industry. State and Federal laws requiring competitive bids before the award of public purchases have been thus evaded and rendered nugatory by respondents' uniform delivered price system. The State of South Dakota, finding it impossible to obtain competitive cement bids, deemed it necessary to erect a state cement mill and now operates the same. Thus an important effect of said pricing system upon public-buying agencies, and through them upon the public, has been substantially to increase the cost of public works, to increase taxation, and to deplete individual incomes and thus the system has tended to lessen purchasing power and impede prosperity.

(j) Respondents through their said combination have appropriated to themselves a disproportionate share of the huge funds appropriated by Congress in aid of reemployment and the restoration of prosperity, in that their concert of action has maintained higher prices for cement than would otherwise have prevailed. Most departments and agencies of the United States expending moneys for public works have found it necessary to pay the identical delivered prices uniformly charged by cement producers. One Federal agency, the Tennessee Valley Authority, was however given a reduced price by respondents when it became known that it had under consideration the Federal acquisition of a cement mill. One result of respondents' combination has been to lessen the public benefit from the emergency acts of Congress.

The foregoing subparagraphs (a) to (j) inclusive, are not alleged exclusively or as the only unlawful effects of respondents' combination alleged in paragraphs 4 and 5. There are other effects thereof.

#### *The Public Interest*

PAR. 9. The combination of respondents as herein above averred has hindered, lessened, restricted, and restrained the trade of members thereof and still hinders, lessens, restricts, and restrains the same. The

direct and immediate result of the said combination has been and is restraint upon interstate commerce with respect to cement manufactured by any of the producing respondents to be transported beyond the State in which the cement was made. Such confederated action exercises a power which individual action could not exercise or possess, and the necessary tendency and the direct and substantial effect of the combination are injury to the public.

The effect of respondents' combination upon the public interest has been and now is:

1. To bring about the disappearance of prices arrived at through the play of competitive forces; and the adoption by concert of organized producers of prices calculated to preserve the more poorly located, equipped, and conducted units at the expense of the buying public.

2. To lessen the demand for cement and the volume of public and private construction in which cement is used.

3. Correspondingly to lessen the opportunities for employment, both in the cement industry and in the construction industry.

4. To raise the cost of public roads and projects and private structures in which cement is used and thereby either to make them less available to the public or to raise the taxes and rents by which the public pays for them.

5. To encourage the development of excess capacity by the inducements of high prices and of fictitious freight charges obtainable by mills not located at basing points.

PAR. 10. The Federal Trade Commission further alleges that the public interest directly involved herein and set out more particularly in the preceding paragraphs is a part of the larger public interest, within the meaning of the Federal Trade Commission Act, in maintaining the natural regulatory forces of free competition in industry generally. The economic tendency of the respondents' combination upon the public interest, as thus broadly stated, is to lend encouragement to similar impairment of competition in other industries, the effect of which upon the buying power of consumers, the employment of labor, the opportunities for independence in business, the necessity that the Government undertake by regulation to protect the public interest, and the fluctuations of national prosperity, must increase in severity as the extent of competition is reduced. The leaving to private industry of monopolistic special privileges and franchises is at the expense of the purchasing power of the masses of the country, and results inevitably in reducing the opportunity freely to enter industry and commerce.

*Violation of the Federal Trade Commission Act*

PAR. 11. The acts and practices in this count set forth are all to the prejudice of the public; they have a substantial and dangerous tendency to hinder, lessen, restrict, and restrain, and actually have unduly, directly, and substantially, hindered, frustrated, lessened, restricted, and restrained, competition in interstate commerce in cement; they have increased the price of cement to the buying public. The said acts and practices constitute unfair methods of competition within the intent and meaning of the aforesaid Federal Trade Commission Act.

*COUNT II*

## THE CHARGE UNDER THE CLAYTON ACT

PARAGRAPHS 1 TO 5, INCLUSIVE. As paragraphs 1 to 5, inclusive, of count II of this complaint the Commission hereby incorporates paragraphs 1 to 5, inclusive of count I to precisely the same extent as if each and all of them were set forth in full and repeated verbatim in this count.

*The Practice of Discrimination Generally Considered*

PAR. 6. Delivered prices made under the formula set forth in paragraph 5 (b) hereof are not the actual prices received by producing respondents. This is for the reason that such delivered prices include not only the price of the cement but the price of its transportation. In order to derive the true price received, the price actually paid to the carrier for transportation of the cement to the buyer must be deducted from the delivered price. Sales by producing respondents not located at basing points, and also sales by producing respondents located at basing points to customers outside the territory governed by the basing point where the seller is located, are made at almost as many true prices as there are customers' locations. The respective producing respondents thus discriminate in price in substantial amounts among their customers. These discriminations are made with the purpose to prevent, lessen, and destroy competition in price in commerce on the part of each producing respondent, which grants the discrimination, with all other such producing respondents. It is only through the said described discrimination that respondents are thus enabled to eliminate price competition.

*Examples of Discrimination*

PAR. 7. (a) For the purpose of illustrating the discrimination practiced by producing respondents, there are submitted as part of this paragraph 7 tabulations showing base prices and freight rates which, if concurrently in existence, would cause the basing points mentioned therein to be the governing basing points for specific destinations. For present purposes, the said basing point prices and the said freight rates are hypothetical but they are not wholly so, for they constitute the respective base prices and rates of all-rail transportation which were simultaneously in effect at a former period. These tabulations are not included herein as allegations of current discrimination in prices made under said pricing system to customers located at destinations named. They are alleged as typical of the discriminations in price now existing under the said pricing system throughout the United States.

(b) Referring to the "delivered prices" included in the tabulations, it is usual in the trade to add ten cents each for the cloth bags, when delivery is so made, and this sum is refunded to the buyer if the bags are returned in good condition; and also to add sums which will later be deducted as discounts if the buyer qualifies to receive them. Since these sums are generally included in the prices quoted only to be deducted subsequently, they are omitted from the tabulated figures.

(c) For the purpose of the illustrations below set forth, these assumptions are made: (1) that the said pricing system is in full effect; (2) that each producer actually ships all-rail rather than to avail itself of less costly truck or water means of delivery; and (3) that the producer at the respective points of production designated in the tabulation, has customers located at the points named in each respective illustration.

(d) The final item entitled in each case "divergence from maximum price" shows the measure of the discrimination.

(e) The illustrations above described are submitted in tabular form in lieu of extended textual averment and are hereby made a part of this complaint, to wit:

Quotations by—	For delivery at—							
	Albion, Ind.	Brookville, Ind.	Cannelton, Ind.	Greencastle, Ind.	Shoals, Ind.	Boonville, Ind.	Noblesville, Ind.	Franklin, Ind.
<i>Universal-Atlas Cement Co.</i>								
Basing point.....	Buffington, Ind.	Ironton, Ohio	Birmingham, Ala.	Limesdale, Ind.	Mitchell, Ind.	Birmingham, Ala.	Limesdale, Ind.	Limesdale, Ind.
Base price (per bbl.).....	\$1. 40	\$1. 30	\$1. 00	\$1. 40	\$1. 50	\$1. 00	\$1. 40	\$1. 40
Freight from basing point (per bbl.).....	. 40	. 48	. 74	. 25	. 29	. 70	. 32	. 32
Delivered price (less deductions noted in par. 7b).....	1. 80	1. 78	1. 74	1. 65	1. 79	1. 70	1. 72	1. 72
Less actual freight to destination.....	. 40	. 51	. 59	. 46	. 55	. 57	. 44	. 48
Actual price.....	1. 40	1. 27	1. 15	1. 19	1. 24	1. 13	1. 28	1. 24
Divergence from maximum price.....	. 00	. 13	. 25	. 21	. 16	. 27	. 12	. 16
<i>Alpha Portland Cement Co.</i>								
Delivered price (less deductions noted in par. 7b).....	1. 80	1. 78	-----	-----	1. 79	-----	1. 72	1. 72
Less actual freight to destination.....	. 49	. 48	-----	-----	. 48	-----	. 49	. 51
Actual price.....	1. 31	1. 30	-----	-----	1. 31	-----	1. 23	1. 21
Divergence from maximum price.....	. 19	. 00	-----	-----	. 09	-----	. 27	. 29
<i>Lehigh Portland Cement Co.</i>								
Delivered price (less deductions noted in par. 7b).....	1. 80	1. 78	1. 74	1. 65	1. 79	1. 70	1. 72	1. 72
Less actual freight to destination.....	. 49	. 42	. 36	. 34	. 29	. 34	. 40	. 34
Actual price.....	1. 31	1. 86	1. 38	1. 31	1. 50	1. 36	1. 32	1. 38
Divergence from maximum price.....	. 19	. 14	. 12	. 19	. 00	. 14	. 18	. 12
<i>Lone Star Cement Co.</i>								
Delivered price (less deductions noted in par. 7b).....	1. 80	1. 78	1. 74	1. 65	1. 79	1. 70	1. 72	1. 72
Less actual freight to destination.....	. 46	. 42	. 46	. 25	. 40	. 44	. 32	. 32

Quotations by—	For delivery at—							
	Albion, Ind.	Brookville, Ind.	Cannelton, Ind.	Greencastle, Ind.	Shoals, Ind.	Boonville, Ind.	Noblesville, Ind.	Franklin, Ind.
<i>Lone Star Cement Co.—Continued</i>								
Basing point-----	Buffington, Ind.	Ironton, Ohio	Birmingham, Ala.	Limedale, Ind.	Mitchell, Ind.	Birmingham, Ala.	Limedale, Ind.	Limedale, Ind.
Actual price-----	\$1.34	\$1.36	\$1.28	\$1.40	\$1.39	\$1.26	\$1.40	\$1.40
Divergence from maximum price-----	.06	.04	.12	.00	.01	.14	.00	.00
<i>Louisville Cement Co.</i>								
Delivered price (less deductions noted in par. 7b)-----	1.80	1.78	1.74	1.65	1.79	1.70	1.72	1.72
Less actual freight to destination-----	.51	.42	.40	.42	.36	.42	.42	.34
Actual price-----	1.29	1.36	1.34	1.23	1.43	1.28	1.30	1.38
Divergence from maximum price-----	.53	.46	.48	.59	.39	.54	.52	.44
<i>Wabash Portland Cement Co.</i>								
Delivered price (less deductions noted in par. 7b)-----	1.80	1.78	1.74	1.65	1.79	1.70	1.72	1.72
Less actual freight to destination-----	.30	.38	.57	.44	.51	.57	.40	.42
Actual price-----	1.50	1.40	1.17	1.21	1.28	1.13	1.32	1.30
Divergence from maximum price-----	.32	.34	.57	.53	.46	.61	.42	.44
<i>Marquette Cement Mfg. Co.</i>								
Delivered price (less deductions noted in par. 7b)-----	1.80	1.78	1.74	1.65	1.79	1.70	1.72	1.72
Less actual freight to destination-----	.49	.57	.55	.49	.61	.49	.49	.51
Actual price-----	1.31	1.21	1.19	1.16	1.18	1.21	1.23	1.21
Divergence from maximum price-----	.19	.29	.57	.34	.58	.55	.27	.29



	Clear Lake Iowa	Indianola, Iowa	Dallas Center, Iowa	Luther, Iowa	Perry, Iowa	Ridgeway, Iowa	Donnellson, Iowa	Monmouth, Iowa
<i>Universal-Atlas Cement Co.</i>								
Basing point.....	Mason City, Iowa	Mason City, Iowa	Mason City, Iowa	Mason City, Iowa	Mason City, Iowa	Mason City, Iowa	Prospect Hill, Alpha, Mo.	Mason City, Iowa, Buffington, Ind.
Base price (per. bbl.).....		\$1. 30	\$1. 30	\$1. 30	\$1. 30	\$1. 30	\$1. 30	\$1. 30
Freight from basing pt. (per bbl.).....		. 46					. 51	. 51
Delivered price (less deductions noted in par. 7b).....		1. 76					1. 81	1. 81
Less actual freight to destination.....		. 61					. 53	. 51
Actual price.....		1. 15					1. 28	1. 30
Divergence from maximum price.....		. 15					. 02	. 00
<i>Penn-Dixie Cement Co., Hawkeye Portland Cement Co.</i>								
Delivered price (less deductions noted in par. 7b).....	1. 57	1. 78	1. 74	1. 74	1. 74	1. 70	1. 81	1. 81
Less actual freight to destination.....	. 44	. 36	. 32	. 32	. 32	. 53	. 46	. 51
Actual price.....	1. 13	1. 42	1. 42	1. 42	1. 42	1. 17	1. 35	1. 30
Divergence from maximum price.....	. 61	. 32	. 32	. 32	. 32	. 57	. 39	. 44
<i>Dewey Portland Cement Co.</i>								
Delivered price (less deductions noted in par. 7b).....	\$1. 57	1. 78	1. 74	1. 74	1. 74	1. 70	1. 81	1. 81
Less actual freight to destination.....	. 51	. 53	. 51	. 51	. 51	. 51	. 44	. 34
Actual price.....	1. 06	1. 25	1. 23	1. 23	1. 23	1. 19	1. 37	1. 47
Divergence from maximum price.....	. 68	. 49	. 51	. 51	. 51	. 55	. 37	. 27

Quotations by—	For delivery at—							
	Clear Lake, Iowa	Indianola, Iowa	Dallas Center, Iowa	Luther, Iowa	Perry, Iowa	Ridgeway, Iowa	Donnellson, Iowa	Monmouth Iowa
<i>Lone Star Portland Cement Co.</i>								
Basing point.....	Mason City, Iowa	Mason City, Iowa	Mason City, Iowa	Mason City, Iowa	Mason City, Iowa	Mason City, Iowa	Prospect Hill, Alpha, Mo.	Mason City, Iowa, Buffington, Ind.
Delivered price (less deductions noted in par. 7b).....	\$1. 57	\$1. 78	\$1. 74	\$1. 74	\$1. 74	\$1. 70	\$1. 81	\$1. 81
Less actual freight to destination.....		. 55	. 55	. 55	. 55	. 70	. 53	. 61
Actual price.....		1. 23	1. 19	1. 19	1. 19	1. 00	1. 28	1. 20
Divergence from maximum price.....		. 22	. 26	. 24	. 26	. 45	. 17	. 25
<i>Lehigh Portland Cement Co.</i>								
Delivered price (less the deductions noted in par. 7b)....	1. 57	1. 78	1. 74	1. 74	1. 74	1. 70	1. 81	1. 81
Less actual freight to destination.....	. 27	. 48	. 44	. 44	. 44	. 40	. 53	. 51
Actual price.....	1. 30	1. 30	1. 30	1. 30	1. 30	1. 30	1. 28	1. 30
Divergence from maximum price.....	. 00	. 00	. 00	. 00	. 00	. 00	. 02	. 00
<i>Northwestern States Portland Cement Co.</i>								
Delivered price (less deductions noted in par. 7b).....	1. 57	1. 78	1. 74	1. 74	1. 74	1. 70	1. 81	1. 81
Less actual freight to destination.....	. 27	. 46	. 40	. 40	. 38	. 40	. 53	. 51
Actual price.....	1. 30	1. 32	1. 34	1. 34	1. 36	1. 30	1. 28	1. 30
Divergence from maximum price.....	. 00	. 38	. 36	. 36	. 34	. 00	. 02	. 00
<i>Marquette Cement Mfg. Co.</i>								
Delivered price (less deductions noted in par. 7b).....	1. 57	1. 78	1. 74	1. 74	1. 74	1. 70	1. 81	1. 81
Less actual freight to destination.....	. 42	. 61	. 59	. 59	. 59	. 55	. 51	. 44

Actual price.....	1.15	1.17	1.15	1.15	1.15	1.15	1.30	1.37
Divergence from maximum price.....	.25	.23	.25	.25	.25	.25	.10	.03
<i>Ash Grove Portland Cement Co.</i>								
Delivered price (less deductions noted in par. 7b).....		1.78	1.74	1.74	1.74		1.81	1.81
Less actual freight to destination.....		.53	.48	.48	.46		.59	.61
Actual price.....		1.25	1.26	1.26	1.28		1.22	1.20
Divergence from maximum price.....		.66	.65	.65	.63		.69	.71

<sup>1</sup> In the case of producers having more than 1 mill from which shipment might be made, it is assumed that shipment would be made from mill which would net producer the highest price.

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*Effect of the Discrimination*

PAR. 8. The discrimination in price set forth in paragraphs 6 and 7 of this Count II is the result of respondents' combination and conspiracy alleged in paragraphs 4 and 5 hereof. The effect of said discriminations in price is to injure, destroy, and prevent competition in price on the part of each producing respondent with all others who likewise grant discriminations under respondents' said pricing system. Insofar as said system is followed, every producer knows what every other producer following the system will quote and charge as his delivered price to any given destination and that all delivered prices will be identical. Each said producer knows that, in reciprocity for its omission to offer competitive prices to prospective customers located in the consuming areas adjacent to its mill (where it has a natural advantage and receives its highest actual price), each respective producer will receive the same immunity from price competition when it sells in the consuming areas adjacent to other mills. A difference in delivered price of only 1 cent a barrel will deflect the business away from one manufacturer to another. Thus each reciprocally waives the advantages and neutralizes the disadvantages which it has in certain consuming areas as aforesaid in order that there may not anywhere be genuine competition in price between producers which, except for such reciprocal waiver and neutralization, would be in normal and active competition in price.

*Violation of Clayton Act as Amended*

PAR. 9. The acts of discrimination in interstate commerce performed in the actual course of such commerce in this Count set forth may have the effect substantially to lessen, and they actually do substantially lessen, competition in cement of like grade and quality; and constitute unlawful discrimination in price within the intent and meaning of section 2 of the aforesaid Clayton Act as amended by the aforesaid Robinson-Patman Act.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and 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 (Clayton Act), as amended by act approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission on July 2, 1937, issued and subsequently served its complaint in this proceeding upon the respondents named

in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act and with discriminations in price in the sale of Portland cement in violation of the provisions of subsection (a) of section 2 of the said Clayton Act as amended.

After the issuance of the said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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, this proceeding regularly came on for final hearing before the Commission on the complaint, the answers thereto, testimony and other evidence, report of the trial examiner and the exceptions thereto, briefs in support of and in opposition to the complaint, and oral arguments by opposing counsel, including a general appeal by counsel for respondents from every adverse ruling of the trial examiner without further specification except as to exhibits offered by respondents but not received in evidence; 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. (a) Respondent, ~~The Cement Institute~~ (hereinafter frequently referred to as "Institute"), is a voluntary unincorporated trade association. It was organized in August 1929 for the promotion of the mutual interests of its members and has functioned through its officers, trustees, committees, divisions, bureaus, and other agents. At the time of the issuance of the complaint in this proceeding, practically all domestic producers of portland cement, including all but one of the corporate respondents herein, were members of the Institute. At various times the Institute has had general offices at 11 East Forty-fourth Street, New York, N. Y., and at 111 West Washington Street, Chicago, Ill., and divisional offices in those and other cities.

(b) Respondent, Smith W. Storey (the individual referred to in the complaint as S. W. Storey), was at the time of the issuance of the complaint in this proceeding president of the Institute.

(c) Respondent, George H. Reiter (the individual referred to in the complaint as G. H. Reiter), was manager of the Chicago Division of the Institute from February 1930 to December 1930 and from August 1, 1933, to June 1935. On the latter date he became general man-

ager of the Institute, in December 1935 he was also made its secretary, and continued in both positions until April 1937.

(d) The other officers of the Institute at the time of the issuance of the complaint in this proceeding were Frank G. McKelvey, vice president; Blaine S. Smith, vice president; and Charles F. Conn, treasurer; and the trustees of the Institute at that time were Harold M. Scott, John J. Porter, Harry F. Jennings, A. J. Rooney, B. H. Rader, M. C. Monday, C. B. Condon, Chester A. Brooke, William R. Blair, Charles Boettcher, Ernest E. Duque, Edwin P. Lucas, Charles L. Hogan, John B. John; Frank G. McKelvey, V. N. Roadstrum, Blaine S. Smith, Smith W. Storey, and Joseph S. Young.

(e) Respondent, Aetna Portland Cement Co. (hereinafter frequently referred to as "Aetna"), is a corporation, organized and existing under the laws of the State of Maine, with its principal place of business in Bay City, Mich. It is a producer of cement and has its manufacturing plant at Bay City, Mich. It has another plant at Fenton, Mich., which has not been operated for some time. It became a member of the Institute in June 1933.

(f) Respondent, Alpha Portland Cement Co. (hereinafter frequently referred to as "Alpha"), is a corporation, organized and existing under the laws of the State of New Jersey, with its principal place of business in Easton, Pa. It is a producer of cement and has two manufacturing plants at Martin's Creek, Pa.; and one plant each at Jamesville, N. Y.; Cementon (Catskill), N. Y.; Manheim, W. Va.; La Salle, Ill.; Ironton, Ohio; St. Louis, Mo.; Birmingham, Ala.; and Bellevue, Mich. The last-named plant has not been operated for some time. It was one of the original members of the Institute and continued as a member until May 1931, when it resigned, and thereafter rejoined the Institute in June 1933. (The articles of association of the Institute require the payment of dues for a period of 12 months following notice of resignation.)

(g) Respondent, Arkansas Portland Cement Co. (hereinafter frequently referred to as "Arkansas"), is a corporation, organized and existing under the laws of the State of Arkansas, with its principal place of business in Denver, Colo. It is a producer of cement and has its manufacturing plant at Okay Junction, Ark. It joined the Institute in March 1930, resigned in May 1931, rejoined in June 1933, resigned in February 1936, and rejoined in February 1937.

(h) Respondent, Ash Grove Lime & Portland Cement Co. (hereinafter frequently referred to as "Ash Grove"), is a corporation, organized and existing under the laws of the State of Maine, with its principal place of business in Kansas City, Mo. It is a producer of

cement and has its manufacturing plant at Chanute, Kans. It joined the Institute in January 1930, resigned in February 1931, and re-joined in June 1933. It has a subsidiary, Ash Grove Lime & Portland Cement Co. of Nebraska, with its manufacturing plant at Louisville, Nebr.

(i) Respondent, Beaver Portland Cement Co. (hereinafter frequently referred to as "Beaver"), is a corporation, organized and existing under the laws of the State of Oregon, with its principal place of business in Portland, Oreg. It is a producer of cement and has its manufacturing plant at Gold Hill, Oreg. It became a member of the Institute in June 1933.

(j) Respondent, The Bessemer Limestone & Cement Co. (hereinafter frequently referred to as "Bessemer"), is a corporation, organized and existing under the laws of the State of Ohio, with its principal place of business in Youngstown, Ohio. It is a producer of cement and since July 1, 1935, has operated one manufacturing plant at Bessemer (shipping point Walford), Pa. It joined the Institute in July 1935.

(k) Respondent, Calaveras Cement Co. (hereinafter frequently referred to as "Calaveras"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in San Francisco, Calif. It is a producer of cement and operates a manufacturing plant at Kentucky House, Calif. It became a member of the Institute in September 1933.

(l) Respondent, California Portland Cement Co. (hereinafter frequently referred to as "California"), is a corporation, organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, Calif. It is a producer of cement and has its manufacturing plant at Colton, Calif. It became a member of the Institute in June 1933.

(m) Respondent, Castalia Portland Cement Co. (hereinafter frequently referred to as "Castalia"), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Pittsburgh, Pa. After closing its manufacturing plant at Castalia, Ohio, in 1932 it purchased its supplies of cement from Medusa Portland Cement Co. until early in 1938, and that company made shipments of cement pursuant to orders received from Castalia. Respondent is at present in bankruptcy and its affairs are in the hands of a trustee. It became a member of the Institute in March 1930.

(n) Respondent, Colorado Portland Cement Co. (hereinafter frequently referred to as "Colorado"), is a corporation, organized and

existing under the laws of the State of Colorado, with its principal place of business in Denver, Colo. It is owned by the Ideal Cement Co. and markets cement produced by mills of the latter company located at Portland and Boettcher, Colo. It became a member of the Institute in June 1933, resigned in February 1936, and withdrew its resignation in February 1937.

(o) Respondent, Consolidated Cement Corporation (hereinafter frequently referred to as "Consolidated"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Ill. It is a producer of cement and has manufacturing plants located at Fredonia, Kans., and Cement City, Mich. Its plant at Mildred, Kans., has been dismantled. It became a member of the Institute in January 1930, resigned in December 1930, and rejoined in June 1933.

(p) Respondent, Coplay Cement Manufacturing Co. (hereinafter frequently referred to as "Coplay"), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Coplay, Pa. It is a producer of cement and its manufacturing plant consists of two units: one at Coplay, Pa., and the other at Saylor, Pa. It became a member of the Institute in June 1933.

(q) Respondent, Cumberland Portland Cement Co., (hereinafter frequently referred to as "Cumberland"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business at Cowan, Tenn. It is a producer of cement and its manufacturing plant is located at Cowan. It became a member of the Institute in December 1929.

(r) Respondent, Dewey Portland Cement Co. (hereinafter frequently referred to as "Dewey"), is a corporation, organized and existing under the laws of the State of West Virginia, with its principal place of business in Kansas City, Mo. It is a producer of cement and its manufacturing plants are located at Dewey, Okla. and Linwood (near Davenport), Iowa. It became a member of the Institute in January 1930, resigned in December 1930, and rejoined in June 1933.

(s) Respondent, Diamond Portland Cement Co. (hereinafter frequently referred to as "Diamond"), is a corporation, organized and existing under the laws of the State of Ohio, with its principal place of business in Middlebranch, Ohio. It is a producer of cement and its manufacturing plant is located at Middlebranch, Ohio. It became a member of the Institute in February 1930, resigned at the end of that year, and rejoined in June 1933.

(t) Respondent, Edison Cement Corporation (hereinafter frequently referred to as "Edison"), is a corporation, organized and ex-



isting under the laws of the State of New Jersey, with its principal place of business in West Orange, N. J. It is a producer of cement and its manufacturing plant is located at New Village, N. J. It became a member of the Institute in June 1933. Its predecessor corporation, the Edison Portland Cement Co., was a member of the Institute from August 1929 until its assets were taken over by Edison in 1931.

(u) Respondent, The Federal Portland Cement Co., Inc. (hereinafter frequently referred to as "Federal"), is a corporation, organized and existing under the laws of the State of New York, with its principal place of business in Buffalo, N. Y. It is a producer of cement and its manufacturing plant is located at Buffalo, N. Y. Prior to about the middle of 1933 the output of Federal was sold for it by the Bessemer Cement Corporation, but since that time Federal has marketed its own output. It became a member of the Institute in January 1934.

(v) Respondent, Florida Portland Cement Co. (hereinafter frequently referred to as "Florida"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Ill. It is a producer of cement and its manufacturing plant is located at Tampa, Fla. It became a member of the Institute in December 1929, resigned in December 1930, and rejoined in June 1933.

(w) Respondent, Georgia Cement & Products Co. (hereinafter frequently referred to as "Georgia"), is a corporation, organized and existing under the laws of the State of Georgia, with its principal place of business in Atlanta, Ga. It is a producer of cement and its manufacturing plant is located at Portland, Ga. It became a member of the Institute in December 1929.

(x) Respondent, Giant Portland Cement Co. (hereinafter frequently referred to as "Giant"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Philadelphia, Pa. It is a producer of cement and has two manufacturing plants: one located at Egypt, Pa., and the other at Lesley, Pa. It became a member of the Institute in August 1929.

(y) Respondent, The Glens Falls Portland Cement Co. (hereinafter frequently referred to as "Glens Falls"), is a corporation, organized and existing under the laws of the State of New York, with its principal place of business in Glens Falls, N. Y. It is a producer of cement and its manufacturing plant is located at Glens Falls, N. Y. It became a member of the Institute in August 1929.

(z) Respondent, Great Lakes Portland Cement Corporation (hereinafter frequently referred to as "Great Lakes"), is a corporation

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organized and existing under the laws of the State of Indiana, with its principal place of business at Buffalo, N. Y. It is a producer of cement, and the entire output of its manufacturing plant in Buffalo, N. Y., and its clinker grinding plant at Cleveland, Ohio, is marketed by respondent Lehigh Portland Cement Company, which company owns a controlling interest in Great Lakes. It became a member of the Institute in June 1933.

(2a) Respondent, Green Bag Cement Co. of Pennsylvania (hereinafter frequently referred to as "Green Bag of Pennsylvania"), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Pittsburgh, Pa. It is engaged in marketing the cement produced by its parent corporation, Pittsburgh Coke & Iron Company, in a manufacturing plant located at Neville Island, near Pittsburgh, Pa. It became a member of the Institute in July 1933.

(2b) Respondent, Green Bag Cement Co. of West Virginia (hereinafter frequently referred to as "Green Bag of West Virginia"), is a corporation, organized and existing under the laws of the State of West Virginia, with its principal place of business in Kenova, W. Va. It is a producer of cement and its manufacturing plant is located in Kenova, W. Va. It became a member of the Institute in June 1933.

(2c) Respondent, Hawkeye Portland Cement Co. (hereinafter frequently referred to as "Hawkeye"), is a corporation, organized and existing under the laws of the State of West Virginia, with its principal place of business in Des Moines, Iowa. It is a producer of cement and its manufacturing plant is located at Des Moines, Iowa. It became a member of the Institute in January 1930, resigned in February 1931, and rejoined in June 1933.

(2d) Respondent, Hercules Cement Corporation (hereinafter frequently referred to as "Hercules"), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Philadelphia, Pa. It is a producer of cement and its manufacturing plant is located at Stockertown, Pa. It became a member of the Institute in August 1929, subsequently resigned, and rejoined in June 1933.

(2e) Respondent, Hermitage Portland Cement Co. (hereinafter frequently referred to as "Hermitage"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal office in Nashville, Tenn. It is a producer of cement and its manufacturing plant is located at Nashville, Tenn. It became a member of the Institute in December 1929.

(2f) Respondent, Huron Portland Cement Co. (hereinafter frequently referred to as "Huron"), is a corporation, organized and existing under the laws of the State of Michigan, with its principal place of business in Detroit, Mich. It is a producer of cement and its principal plant is located at Alpena, Mich., from which plant auxiliary plants at Muskegon, Saginaw, and Detroit, Mich.; Duluth, Minn.; Milwaukee and Green Bay, Wis.; Toledo and Cleveland, Ohio; and Buffalo and Oswego, N. Y., are supplied. It also markets the cement manufactured by the Michigan Alkali Co. at Wyandotte, Mich. It became a member of the Institute in June 1933.

(2g) Respondent, Idaho Portland Cement Co. (hereinafter frequently referred to as "Idaho"), is a corporation, organized and existing under the laws of the State of Idaho, with its principal place of business in Inkom, Idaho. It is a producer of cement and its manufacturing plant is located at Inkom, Idaho. It became a member of the Institute in January 1934.

(2h) Respondent, Lone Star Cement Corporation (hereinafter frequently referred to as "Lone Star"), is a corporation, organized and existing under the laws of the State of Maine, with its principal place of business in New York, N. Y. It is the respondent named in the complaint as International Cement Corporation, its name having been changed to Lone Star Cement Corporation in 1936 when its subsidiary companies in the United States were merged into a single corporation. It is a producer of cement and has 10 domestic manufacturing plants which are located as follows: Hudson, N. Y.; Nazareth, Pa.; Norfolk, Va.; North Birmingham and Spocari, Ala.; New Orleans, La.; Manchester (near Houston), and Harrys (near Dallas), Tex.; Limesdale, Ind.; and Bonner Springs, Kans. Lone Star Cement Co. of New York, Inc., Lone Star Cement Co. of Pennsylvania, Lone Star Cement Co. of Virginia, Lone Star Cement Co. of Alabama, and Lone Star Cement Co. of Louisiana became members of the Institute in December 1929, and Lone Star Cement Co. of Indiana and Lone Star Cement Co. of Kansas became members of the Institute in January 1930. The parent corporation, International Cement Corporation, resigned these memberships in the Institute in October 1930, and in June 1933 all of the Lone Star companies above named rejoined the Institute and the Lone Star Co. of Texas also joined.

(2i) Respondent, Keystone Portland Cement Co. (hereinafter frequently referred to as "Keystone"), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Philadelphia, Pa. It is a producer of cement and its manufacturing plant is located at Bath, Pa. It became a member of the Institute in June 1933.

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(2j) Respondent, Kosmos Portland Cement Co. (hereinafter frequently referred to as "Kosmos"), is a corporation, organized and existing under the laws of the State of Kentucky, with its principal place of business in Kosmosdale, Ky. It is a producer of cement and its manufacturing plant is located at Kosmosdale, Ky. It became a member of the Institute in June 1933.

(2k) Respondent, Lawrence Portland Cement Co. (hereinafter frequently referred to as "Lawrence"), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Northampton, Pa. It is a producer of cement and its manufacturing plants are located at Siegfried, Pa., and Thomaston, Maine. It became a member of the Institute in June 1933.

(2l) Respondent, Lehigh Portland Cement Co. (hereinafter frequently referred to as "Lehigh"), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Allentown, Pa. It is a producer of cement and its active manufacturing plants are located at Sandt's Eddy, Ormrod, New Castle, and Fogelsville, Pa.; Buffalo, N. Y.; Union Bridge, Md.; Mitchell, Ind.; Oglesby, Ill.; Fordwick, Va.; Boyles (near Birmingham), Ala.; Mason City, Iowa; Iola, Kans., and Metaline Falls, Wash. It became a member of the Institute in August 1929, resigned in March 1931, and rejoined in June 1933.

(2m) Respondent, Marquette Cement Manufacturing Co. (hereinafter frequently referred to as "Marquette"), is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business in Chicago, Ill. It is a producer of cement and its manufacturing plants are located at Oglesby (frequently referred to as La Salle), Ill., and Cape Girardeau, Mo. It became a member of the Institute in June 1933.

(2n) Respondent, Medusa Portland Cement Co. (hereinafter frequently referred to as "Medusa"), is a corporation, organized and existing under the laws of the State of Ohio, with its principal place of business in Cleveland, Ohio. It is a producer of cement and its manufacturing plants are located at York and Wampum, Pa.; Bay Bridge and Silica, Ohio; and Dixon, Ill. Through a wholly owned subsidiary, the Manitowoc Portland Cement Co., it operates another manufacturing plant at Manitowoc, Wis. It has auxiliary plants at Milwaukee, Wis.; Chicago, Ill.; and Holland, Mich. Its plant at Newaygo, Mich., has not been operated since 1931. It became a member of the Institute in August 1929.

(2o) Respondent, Missouri Portland Cement Co. (hereinafter frequently referred to as "Missouri"), is a corporation, organized and

existing under the laws of the State of Missouri, with its principal place of business in St. Louis, Mo. It is a producer of cement and its manufacturing plants are located at Prospect Hill and Sugar Creek, Mo. It became a member of the Institute in January 1930.

(2p) Respondent, The Monarch Cement Co. (hereinafter frequently referred to as "Monarch"), is a corporation, organized and existing under the laws of the State of Kansas, with its principal place of business in Humboldt, Kans. It is a producer of cement and its manufacturing plant is located at Humboldt, Kans. It became a member of the Institute in January 1930, resigned in February 1931, and rejoined in June 1933.

(2q) Respondent, Monolith Portland Cement Co. (hereinafter frequently referred to as "Monolith Portland"), is a corporation, organized and existing under the laws of the State of Nevada, with its principal place of business in Los Angeles, Calif. It is a producer of cement and its manufacturing plant is located at Monolith, Calif. It became a member of the Institute in June 1933.

(2r) Respondent, Monolith Portland Midwest Co. (hereinafter frequently referred to as "Monolith Midwest"), is a corporation organized and existing under the laws of the State of Nevada, with its principal place of business in Los Angeles, Calif. It is a producer of cement and its manufacturing plant is located at Laramie, Wyo. It became a member of the Institute in June 1933.

(2s) Respondent, National Cement Co. (hereinafter frequently referred to as "National"), is a corporation, organized and existing under the laws of the State of Alabama, with its principal place of business in Birmingham, Ala. It is a producer of cement and its manufacturing plant is located at Ragland, Ala. It became a member of the Institute in December 1929.

(2t) Respondent, Nazareth Cement Co. (hereinafter frequently referred to as "Nazareth"), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Nazareth, Pa. It is a producer of cement and its manufacturing plant is located at Nazareth, Pa. It became a member of the Institute in August 1929.

(2u) Respondent, Nebraska Cement Co. (hereinafter frequently referred to as "Nebraska"), is a corporation, organized and existing under the laws of the State of Delaware. It was incorporated in December 1936 and succeeded to the business of a Nebraska corporation of the same name. Like its predecessor, the present company is controlled by the Ideal Cement Co. and, likewise, it operates a cement manufacturing plant at Superior, Nebr., owned by the Ideal Cement Co. Nebraska Cement Co. (the Nebraska corporation), became

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a member of the Institute in May 1930, resigned in September 1930, and rejoined in June 1933. The Nebraska Cement Co. (the Delaware corporation), succeeded to the Institute membership of its predecessor company.

(2v) Respondent, North American Cement Corporation (hereinafter frequently referred to as "North American"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Albany, N. Y. It is a producer of cement and its manufacturing plants are located at Howe's Cave and Catskill, N. Y., and Security, Md. It became a member of the Institute in June 1933.

(2w) Respondent, Northwestern Portland Cement Co. (hereinafter frequently referred to as "Northwestern Portland"), is a corporation, organized and existing under the laws of the State of Washington, with its principal place of business in Seattle, Wash. It is a producer of cement and its manufacturing plant is located at Grotto, Wash. It became a member of the Institute in July 1933.

(2x) Respondent, Northwestern States Portland Cement Co. (hereinafter frequently referred to as "Northwestern States"), is a corporation, organized and existing under the laws of the State of Iowa, with its principal place of business in Mason City, Iowa. It is a producer of cement and its manufacturing plants are located at Mason City and Gilmore City, Iowa. It has continued the membership in the Institute of its predecessor corporation of the same name, which became a member in January 1930.

(2y) Respondent, Oklahoma Portland Cement Co. (hereinafter frequently referred to as "Oklahoma"), is a corporation, organized and existing under the laws of the State of Oklahoma, with its principal place of business in Denver, Colo. It markets the cement produced by Ideal Cement Company at two manufacturing plants at Ada, Okla. It became a member of the Institute in January 1930, resigned in February 1931, and rejoined in June 1933.

(2z) Respondent, Oregon Portland Cement Co. (hereinafter frequently referred to as "Oregon"), is a corporation, organized and existing under the laws of the State of Nevada, with its principal place of business in Portland, Oreg. It is a producer of cement and its manufacturing plants are located at Lime and Oswego, Oreg. It became a member of the Institute in June 1933.

(3a) Respondent, Pacific Portland Cement Co. (hereinafter frequently referred to as "Pacific"), is a corporation, organized and existing under the laws of the State of California, with its principal place of business in San Francisco, Calif. It is a producer of cement and its manufacturing plant is located at Redwood Harbor, Calif.

Its plant at San Juan Bautista, Calif., has not been operated for a number of years. It became a member of the Institute in June 1933.

(3b) Respondent, Peerless Cement Corporation (hereinafter frequently referred to as "Peerless"), is a corporation, organized and existing under the laws of the State of Michigan, with its principal place of business in Detroit, Mich. It succeeded in January 1936 to the business of another corporation of the same name which went into receivership and was dissolved. It is a producer of cement and its manufacturing plants are located at Detroit and Port Huron, Mich. It became a member of the Institute in January 1936 and its predecessor company had previously been a member of the Institute.

(3c) Respondent, Pennsylvania-Dixie Cement Corporation (hereinafter frequently referred to as "Penn-Dixie"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in New York, N. Y. It is a producer of cement and its manufacturing plants are located at Kingsport and Richard City, Tenn.; Clinchfield, Ga.; Nazareth, Penn Allen, and Bath, Pa.; Portland Point, N. Y.; and West Des Moines, Iowa. It became a member of the Institute in August 1929.

(3d) Respondent, Petoskey Portland Cement Co. (hereinafter frequently referred to as "Petoskey"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Petoskey, Mich. It is a producer of cement and its manufacturing plant is located at Petoskey, Mich. It became a member of the Institute in January 1930.

(3e) Respondent, Pittsburgh Plate Glass Co. (hereinafter frequently referred to as "Pittsburgh Plate Glass"), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business at Pittsburgh, Pa. It is a producer of cement and its manufacturing plant is located at Fultonham, Ohio. It became a member of the Institute in June 1933.

(3f) Respondent, Portland Cement Co. of Utah (hereinafter frequently referred to as "Portland of Utah"), is a corporation, organized and existing under the laws of the State of Wyoming, with its principal place of business in Salt Lake City, Utah. It is a producer of cement and its manufacturing plant is located in Salt Lake City, Utah. It became a member of the Institute in December 1936.

(3g) Respondent, Riverside Cement Co. (hereinafter frequently referred to as "Riverside"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Los Angeles, Calif. It is a producer of cement and its manufacturing plants are located at Crestmore and Oro Grande, Calif.

The latter plant has not been operated since 1928. It became a member of the Institute in June 1933.

(3*h*) Respondent, Santa Cruz Portland Cement Co. (hereinafter frequently referred to as "Santa Cruz"), is a corporation, organized and existing under the laws of the State of California, with its principal place of business in San Francisco, Calif. It is a producer of cement and its manufacturing plant is located at Davenport, Calif. It has auxiliary plants at Alameda, Stockton, and Long Beach, Calif., and Portland, Oreg. It became a member of the Institute in June 1933.

(3*i*) Respondent, Signal Mountain Portland Cement Co. (hereinafter frequently referred to as "Signal Mountain"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Ill. It is a producer of cement and its manufacturing plant is located at Chattanooga, Tenn. It became a member of the Institute in December 1929, resigned in December 1930, and rejoined in June 1933.

(3*j*) Respondent, Southern States Portland Cement Co. (hereinafter frequently referred to as "Southern States"), is a corporation, organized and existing under the laws of the State of Georgia, with its principal place of business in Rockmart, Ga. It is a producer of cement and its manufacturing plant is located at Rockmart, Ga. It became a member of the Institute in December 1929.

(3*k*) Respondent, Southwestern Portland Cement Co. (hereinafter frequently referred to as "Southwestern"), is a corporation, organized and existing under the laws of the State of West Virginia, with its principal place of business in El Paso, Tex. It is a producer of cement and its manufacturing plants are located at El Paso, Tex.; Victorville, Calif.; and Osborn, Ohio. It became a member of the Institute in January 1930, but paid dues only for its Osborn, Ohio, plant until June 1933, when it began payment of dues for all of its plants.

(3*l*) Respondent, Spokane Portland Cement Co. (hereinafter frequently referred to as "Spokane"), is a corporation, organized and existing under the laws of the State of Washington, with its principal place of business in Spokane, Wash. It is a producer of cement and its manufacturing plant is located at Irvin, Wash. This business was originally organized in 1910 as the International Portland Cement Co., Ltd., which, on or about May 2, 1932, by amendment to its articles of incorporation, changed its name to the Spokane Portland Cement Co. With the consent of this company, a new corporation of the identical name was organized about February 5, 1937, and about February 13, 1937, the original Spokane Portland Cement Co., by amendment to its articles of incorporation, changed its name to International Portland Cement Co., Ltd. About May 5, 1937, the present Spokane



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Portland Cement Co. acquired the property and business of the International Portland Cement Co., Ltd., and thereafter the latter company was dissolved. The present Spokane Portland Cement Co. retained and employed the same management and personnel previously employed by its predecessor corporation. The original Spokane Portland Cement Co. became a member of the Institute in June 1933 and paid dues up to the end of 1936. The present Spokane Portland Cement Co. paid dues to the Institute assessed against the original company for January 1937; thereafter paid dues assessed against the International Portland Cement Co., Ltd., for the months of February, March, and April, 1937; thereafter, without formal application for membership, continued to pay dues through September 1937; and on or about March 1, 1938, formally resigned from the Institute.

(3m) Respondent, Standard Portland Cement Co. (hereinafter frequently referred to as "Standard"), is a corporation, organized and existing under the laws of the State of Ohio, with its principal place of business at Painesville, Ohio. It is a producer of cement and its manufacturing plant is located at Painesville, Ohio. It became a member of the Institute in June 1933.

(3n) Respondent, Superior Cement Corporation (hereinafter frequently referred to as "Superior"), is a corporation, organized and existing under the laws of the State of Ohio, with its principal place of business in Portsmouth, Ohio. It is a producer of cement and its manufacturing plant is located at Superior, Ohio. It was formerly known as the Wellston Iron Furnace Co., but by change of corporate name became the Superior Cement Corporation. It became a member of the Institute in January 1930.

(3o) Respondent, Superior Portland Cement, Inc. (hereinafter frequently referred to as "Superior Portland"), is a corporation, organized and existing under the laws of the State of Washington, with its principal place of business in Seattle, Wash. It is a producer of cement and its manufacturing plant is located at Concrete, Wash. Since 1931 it also has leased and operated the Seattle plant of the Pacific Coast Cement Co. It became a member of the Institute in June 1933.

(3p) Respondent, Three Forks Portland Cement Co. (hereinafter frequently referred to as "Three Forks"), is a corporation, organized and existing under the laws of the State of Montana, with its principal place of business in Denver, Colo. It markets the cement produced by a manufacturing plant located at Trident, Mont., which plant is owned and operated by the Ideal Cement Co. It became a member of the Institute in June 1933.

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(3q) Respondent, Trinity Portland Cement Co. (hereinafter frequently referred to as "Trinity"), is a corporation, organized and existing under the laws of the State of West Virginia, with its principal place of business in Chicago, Ill. It is a producer of cement and its manufacturing plants are located at Dallas, Fort Worth, and Houston, Tex. It became a member of the Institute in June 1933.

(3r) Respondent, Union Portland Cement Co. (hereinafter frequently referred to as "Union"), is a corporation, organized and existing under the laws of the State of Utah, with its principal office in Denver, Colo. It markets the cement produced by a manufacturing plant located at Devils Slide, Utah, which plant is owned and operated by the Ideal Cement Co. It became a member of the Institute in June 1933.

(3s) Respondent, Universal Atlas Cement Co. (hereinafter frequently referred to as "Universal"), is a corporation, organized and existing under the laws of the State of Indiana, with its principal place of business in Chicago, Ill. It is a wholly owned subsidiary of the United States Steel Corporation and is a producer of cement, having manufacturing plants located at Buffington, Ind.; Universal and Northampton, Pa.; Duluth, Minn.; Leeds, Ala.; Hannibal, Mo.; Independence, Kans.; Waco, Tex.; and Hudson, N. Y. It was originally known as Universal Portland Cement Co., having changed to its present name about January 1930, shortly after it acquired the assets of the Atlas Portland Cement Co., which included all of the above-mentioned manufacturing plants except those at Buffington, Ind.; Universal, Pa.; and Duluth, Minn. It became a member of the Institute in June 1933.

(3t) Respondent, Valley Forge Cement Co. (hereinafter frequently referred to as "Valley Forge"), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Catasauqua, Pa. It is a producer of cement and its manufacturing plant is located in West Conshohocken, Pa. The entire output of this plant is marketed by the Allentown Portland Cement Co. for the account of the Valley Forge Cement Co., and all the officers and directors of Valley Forge Cement Co. are officers and directors of the Allentown Portland Cement Co. Under date of February 23, 1937, the Institute advised its members that it then represented all members of the cement industry in the United States, with certain exceptions which did not include Valley Forge Cement Co., and in a list of members compiled shortly thereafter Valley Forge is listed, followed parenthetically by Allentown. Through its sales agent, Allentown Portland Cement Co., which became a member of

the Institute in August 1929, Valley Forge was a party to the activities of the Institute.

(3u) Respondent, Volunteer Portland Cement Co. (hereinafter frequently referred to as "Vounteer"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Knoxville, Tenn. It is a producer of cement and its manufacturing plant is located at Caswell (near Knoxville), Tenn. It became a member of the Institute in December 1929, resigned in December 1930, and rejoined in June 1933.

(3v) Respondent, Vulcanite Portland Cement Co. (hereinafter frequently referred to as "Vulcanite"), is a corporation, organized and existing under the laws of the State of New Jersey, with its principal place of business in Philadelphia, Pa. Its manufacturing plant at Vulcanite, N. J., has not been operated since 1933. Subsequent to the closing of its plant, Vulcanite has marketed cement manufactured for it by respondent Hercules. It became a member of the Institute in August 1929, resigned in December 1930, and rejoined in June 1933.

(3w) Respondent, Wabash Portland Cement Co. (hereinafter frequently referred to as "Wabash"), is a corporation, organized and existing under the laws of the State of Indiana, with its principal place of business in Detroit, Mich. It is a producer of cement and its plants are located at Stroh, Ind., and Osborn, Ohio. It became a member of the Institute in January 1930, resigned in November 1930, and rejoined in June 1933.

(3x) Respondent, West Penn Cement Co. (hereinafter frequently referred to as "West Penn"), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Butler, Pa. It is a producer of cement and its manufacturing plant is located at West Winfield, Pa. It became a member of the Institute in August 1929.

(3y) Respondent, The Whitehall Cement Manufacturing Co. (hereinafter frequently referred to as "Whitehall"), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Philadelphia, Pa. It is a producer of cement and its manufacturing plant is located at Northampton, Pa. It became a member of the Institute in June 1933.

(3z) Respondent, Wolverine Portland Cement Co. (hereinafter frequently referred to as "Wolverine"), is a corporation, organized and existing under the laws of the State of Michigan, with its principal place of business in Coldwater, Mich. It is a producer of cement and its manufacturing plants are located at Quincy and Coldwater, Mich. It became a member of the Institute in June 1933.

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(4a) Respondent, Yosemite Portland Cement Corporation (hereinafter frequently referred to as "Yosemite"), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Merced, Calif. It is a producer of cement, and its manufacturing plant is located at Merced, Calif. It became a member of the Institute in June 1933.

PAR. 2. The corporate respondents named in paragraph 1, except as otherwise specifically set forth therein, are engaged in the production, sale, and distribution of portland cement, and in the course thereof each competes with others of said respondents to the extent that competition has not been restrained, lessened, or destroyed as hereinafter set forth. Pursuant to sales made in the course and conduct of its said business, or sales made for it, each such corporate respondent regularly transports cement, or causes it to be transported, from the State in which such cement is produced to purchasers thereof at locations outside the State in which such cement is produced; except that Northwestern Portland makes no sales or shipments outside the State of Washington; Superior Portland, with few exceptions, makes sales and shipments outside the State of Washington only to Alaska, and Florida makes few, if any, sales and shipments outside the State of Florida except to destinations outside the continental United States. In general, said corporate respondents have maintained, and now maintain, a constant course of trade and commerce in cement among and between the several States of the United States. The respondents named in sections (a) to (d), inclusive, of paragraph 1 are not individually engaged in the production, sale, or distribution of cement, but have participated in, aided, assisted, and cooperated with the other respondents in planning, doing, and performing the acts and practices hereinafter set forth.

PAR. 3. (a) Portland cement, technical definitions of which appear in the record, is made of finely ground limestone, shale, or slag, and other materials which are heated or "burned" until fused into "clinker," which is then ground into the fine powder usually referred to merely as "cement." The first mill for the commercial manufacture of cement in this country was established in Pennsylvania some 70 years ago. Prior to that time the cement used in this country was imported from abroad. The raw materials and fuel necessary for the production of cement are available in many parts of the United States and its manufacture has gradually spread until there are now cement-producing plants in many States, including Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota,

Missouri, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. There are approximately 80 manufacturers of cement in the United States and the total number of mills operated by them is about 150. Cement is a heavy and bulky commodity and the cost of transporting it from point of manufacture to point of use generally constitutes a substantial part of the delivered cost. Freight charges of 30 cents to 60 cents per barrel for delivery are quite usual, charges approximating \$1 per barrel are not uncommon, and in extreme instances the delivery charges sometimes reach amounts such as \$1.33, \$1.52, and \$1.71 per barrel (Com. Exs. 2711-188; 2722-18; and 2671-27). The high transportation cost constitutes one of the factors which have contributed to the extension of the manufacture of cement throughout the United States.

(b) Cement is used in street and highway construction, in water power, irrigation, and flood-control works, in most heavy construction work, in general building, in various public projects, in the production of blocks, pipes, and other products, and in many other ways. In some of these uses cement constitutes a very substantial part of the total cost of all materials used in the project. The aggregate consumption of cement is large, and the total quantity used and the value thereof make it a commodity of material importance in the national economy. Shipments from domestic cement plants during each of the 10 years from 1928 to 1937, inclusive, expressed in terms of barrels to the nearest million were:

Year:	Barrels
1928 -----	176,000,000
1929 -----	170,000,000
1930 -----	159,000,000
1931 -----	127,000,000
1932 -----	81,000,000
1933 -----	64,000,000
1934 -----	75,000,000
1935 -----	75,000,000
1936 -----	113,000,000
1937 -----	114,000,000

(Resp. Exs. 3772-3781.)

(c) Manufacturers customarily market cement by sales to dealers for resale, to processors who sell ready-mixed cement, to manufacturers of cement products such as blocks and pipes, to contractors who use it in construction, to railroads and other large commercial users, and to governmental agencies. In periods of normal business, sales to dealers constitute the most important channel of distribution in terms

of volume, but in the years 1930 to 1937 public construction, undertaken in part at least as a relief measure to alleviate the effects of the economic depression, was on so large a scale as to make governmental purchases an unusually important outlet for cement during those years.

(d) The quantity unit in the cement industry is a barrel of 376 pounds net weight. Cement is usually packaged in paper or cloth bags containing 94 pounds each, and when thus packaged four bags constitute a barrel of cement, the gross weight of which is 380 pounds.

PAR. 4. (a) Five of the some 80 companies producing cement—Alpha, Lehigh, Lone Star, Penn-Dixie, and Universal—operate 49 out of the approximate total of 150 manufacturing plants. The productive capacity of these 5 respondents exceeds one-third of the total capacity of the industry, and their manufacturing plants are so located as to enable one or more of these respondents effectively to reach all parts of the United States except the West coast in the sale of cement. These respondents and 5 others control more than one-half of the productive capacity of the industry. These 10 and 16 other respondents account for approximately three-fourths of the total capacity of the industry.

(b) There are substantial interrelationships among a number of the corporate respondents. The Cowham Engineering Co. holds stock in, manages, and directs the properties and sales of Florida, Trinity, Signal Mountain, and Consolidated. Great Lakes is controlled by Lehigh and its output marketed by that company. The president of Hermitage is also president of Cumberland. Monolith Portland owns a controlling interest in Monolith Midwest. The president of Medusa was for many years an officer of Petoskey. He resigned as president of Petoskey in 1937 but has continued since that time as a director of that company. All the officers and directors of Valley Forge are officers and directors of the Allentown Portland Cement Co. Bessemer Securities Co. controls Federal and has stock holdings in Bessemer and Peerless. After closing its manufacturing plant in 1932, Castalia secured its supplies of cement from Medusa. Superior Portland leases and operates the Seattle plant of the Pacific Coast Cement Co. After closing its manufacturing plant in 1933, Vulcanite secured its supplies of cement from Hercules. Oklahoma, Three Forks, Union, Nebraska, Colorado, and Arkansas are controlled by the Boettcher interests through the Ideal Cement Co.

(c) The concentration of a large proportion of the industry in the control of relatively few individuals, directly and through the existing relationships among numerous companies, has aided in creating and maintaining unity of purpose among respondents. These fac-

tors also afford a basis for leadership in the industry, as well as the economic power to enforce that leadership. At the time this proceeding was commenced, practically all producers of cement were members of the Institute and the industry thus had an effective vehicle for the formulation, expression, and execution of collective plans and purposes.

PAR. 5. There have been numerous trade organizations and associations in the cement industry over a long period of years. The Association of American Portland Cement Manufacturers was organized in 1902 and grew in size and strength until its membership included substantially all domestic cement manufacturers. In 1916 its name was changed to Portland Cement Association, and it has continued under that name to the present time. Between 1907 and 1911 several members of the Association of American Portland Cement Manufacturers were also members of the Association of Licensed Cement Manufacturers. The Cement Manufacturers Protective Association was organized in 1916 and remained active until shortly before the decision of the Supreme Court in 1924 in the suit brought by the United States against that association and its members (268 U. S. 588). In 1929 The Cement Institute was organized and has continued to the present time. During a period of about 18 months beginning in November 1933, when partial self-government for the cement industry was authorized under the terms of the National Industrial Recovery Act, the Institute was the repository of the authority delegated and through its control of the Code Authority controlled the administration of the Code for the Cement Industry, subject to such limitations as were imposed by the National Recovery Administration. At various times during the life of the organizations named above there were also in existence in the industry other groups or associations of cement producers of a more strictly local or regional nature, such as the Kansas City Cement Bureau. Some of the respondents in this proceeding have been members of and participated in the activities of one or more of each of the groups named above in addition to their activities in the Institute.

PAR. 6. (a) The records of cooperative activity among cement producers which are available in this proceeding, beginning with the Association of American Portland Cement Manufacturers in 1902 and continuing to the present time, show that the cement industry has evidenced a strong aversion to free competition and that its members have, by understandings and agreements, developed and maintained substantial uniformity of action among themselves with respect to practically every marketing procedure which involves price

or other competition. A remarkable continuity of action is also demonstrated. Some of the current practices of the industry, designated by respondents as "customs of the trade," originated in agreements entered into as long as 20 to 30 years ago and have persisted, with the support of collective action, in substantially their original form. Other practices having similar origin have been modified or extended by collective action, as circumstances required, into their current form. Some of the respondents have been parties to substantially all of these activities; other respondents have participated in a lesser degree, or fully or partially for shorter periods of time; other respondents have been mere followers, adopting and supporting the practices of their more active associates; and a few respondents have from time to time, for various reasons, participated only reluctantly in some of the practices, and have occasionally opposed for a time particular instances of group action.

(b) These long-pursued restraints of competition have contributed to, if not created, the belief now generally held by respondents that free and open competition is impracticable for the cement industry and have fostered among the respondents a philosophy of seeking not to excel others in quality or price or in affording terms of sale that would be more attractive to purchasers. Instances where expression has been given to this desire not to excel but merely to maintain equality—to keep step—follow. On May 17, 1934, John Treanor, then president of Riverside and a trustee of the Institute, in writing to a fellow trustee, stated in part:

The truth is of course—and there can be no serious, respectable discussion of our case unless this is acknowledged—that ours is an industry above all others that cannot stand free competition, that must systematically restrain competition or be ruined. \* \* \* (Com. Ex. 7-B).

In a letter of March 5, 1934, to the editor of the Wall Street Journal, Mr. Treanor stated:

Now it is to the credit of the men responsible for the capital invested in the cement business that, in the face of this peculiar menace, they have been as successful as they have been in avoiding the extreme evils of such a system; that, foreseeing the dismal end-product of unrestrained competition, they have, by forbearance and skill, consciously obtained equilibrium at something above the level of ruin, even sometimes within the zone of profit (Com. Ex. 553-3E).

In response to a question as to whether he thought it futile for competitors to try to increase their percentage of the total business available to the whole group, Benjamin F. Affleck, formerly president of Universal, testified in part:



I don't think my opinion as to whether it was futile or not is important. It just is futile. \* \* \* So I should qualify that by saying it wasn't entirely futile. They could get by with a certain increase in percentage for a certain time but they soon ran out (T. 34933).

He also testified:

Q. You don't mean to say, though, that you have no purposes of your own to serve in the making of identical delivered prices on the basing point system?

A. Oh, no, I wouldn't deny that at all. On the contrary, I would say that I was committing suicide if I didn't do that, \* \* \* (T. 34947).

In testifying before the Interstate Commerce Committee of the Senate in 1936 concerning a bid to the Government on a large quantity of cement which was identical to a tenth of a cent with the bids of his competitors, the same witness said in part:

And, as I stated before, this would have been a very attractive order for any one of the four bidders, but we did not care to break the market, and probably the others did not. We have to live with this market a long time, and jobs such as this Beverly job will not be with us year after year. (Com. Ex. 2878-I).

and also:

The CHAIRMAN. On this extremely large order of 365,000 barrels, the largest order that any of these people probably had for many years, how did they know but that you were going to make a lower price?

Mr. AFFLECK. They did not know, but they thought we would have sense enough not to break down the market (Com. Ex. 2878-J).

George H. Reiter, testifying as sales manager of Universal, was asked whether or not he ever bid under the destination price of a competitor calculated upon mill base plus applicable freight rate, and replied:

Well, to the best of my knowledge, no (T. 4039).

F. M. Coogan, president of Alpha, testified:

Q. You say you quote delivered prices because it enables you to meet competition. Aren't you interested in beating competition, or just meeting it?

A. I am interested in meeting the lowest price which I find in any given market.

Q. You are not interested in beating the lowest price that any competitor offers?

A. No, sir; I am not (T. 24340).

A pamphlet, issued by Lone Star entitled "Trade Ethics and Marketing Policies," in explaining cement prices, stated in part:

In the second instance, as we cannot get more than our competitor's price, we quote a price which *we expect will be identical* with that asked by the competitor whose lower freight rate gives his product the advantage at that point. \* \* \* It is equally simple to anticipate the competitor's price at any definite point, just as it is for any competitor to anticipate ours. This usually results in

identical quotations being submitted by several manufacturers at a given time and place (Com. Ex. 1112, pp. 23, 25).

H. C. Koch, vice president of Lone Star, admitted that he testified as a witness in a suit against his company under the Texas antitrust laws:

Q. What is your definition of competition on a price basis?

A. I always construed the word "competition" as matching prices, or in placing yourself in a position to solicit an order on a standardized product on an equality with the other man (T. 33161).

In a letter dated August 20, 1935, Blaine S. Smith, president of Penn-Dixie, in discussing the uniformity of prices for cement, stated in part:

It is quite true that any deviation from the uniform price structure works in cumulative fashion and cannot be limited to a few isolated cases without doing serious harm (Com. Ex. 971-21A).

L. J. Capen, vice president of Dewey, testified in part:

Q. In other words, you want your delivered prices to be the same as those of your competitors?

A. We want to meet competition.

Q. And you mean, by meeting competition, having the prices at given destinations the same as your competitors?

A. Yes, sir (T. 12678).

L. T. Sunderland, president of Ash Grove, testified in part:

Q. Does it mean that you endeavor to make your delivered prices the same as your competitors?

A. We endeavor to meet.

Q. And by meeting them you mean making them the same?

A. Well, we wouldn't want to discredit our product or be charged with being a chiseler by quoting a lower price (T. 13694).

Under date of December 30, 1935, in replying to a protest by the Department of Highways of the State of Nevada against identical bids, Santa Cruz stated in part:

The prices which we quoted are our regular established prices under the classification of State Highway Departments. It is expected that prices would be uniform, otherwise the company quoting the lowest price would receive all the business and the other companies would be left without any (Com. Ex. 1212-B).

In writing to the Louisville Cement Co. under date of July 5, 1919, protesting price irregularities by that company, Kosmos stated in part:

You also recognize an obligation of what I might call sportsmanship to compete with the companies on their own level (Com. Ex. 3211-A).

(c) Within the period since the organization of the Institute there have been, of course, instances where cement manufacturers have made

concessions in price or terms of sale; from time to time numerous concessions have been made in particular areas; and in the depth of the economic depression in the early 1930's concessions were widespread. These concessions, however, are exceptions to the general practice and policy, which is and has been to maintain continued and regular uniformity in prices and terms and conditions of sale by all manufacturers offering cement at any given location. In conformity with the philosophy of "competition" indicated in this paragraph, cement is customarily sold by respondents upon the basis of service; entertainment to the buyer, and personal relationships, without substantial competition in quality, price, or terms and conditions of sale. Respondent, George H. Reiter, testifying before the Interstate Commerce Committee of the Senate in 1936, said:

The CHAIRMAN. One of your advertisements states [reading]:

Under the old system there were only as many competitive points as there were mills. Now, every village, town, and city is a point of competition.

No village, town, or city has competition in price or quality at the present time, has it?

Mr. REITER. Of course, what that advertisement is trying to do is to defend the destination price.

The CHAIRMAN. Yes; but, as a matter of fact, no town or city has competition as to prices or as to quality of cement, has it?

Mr. REITER. Generally, that is true (Com. Ex. 2878-T).

PAR. 7. (a) Substantially all sales of cement by the corporate respondents are made on the basis of a delivered price; that is, at a price determined by the location at which actual delivery of the cement is made to the purchaser. In determining the delivered price which will be charged for cement at any given location, respondents use a multiple basing-point system. The formula used to make this system operative is that the delivered price at any location shall be the lowest combination of base price plus all-rail freight. Thus, if mill A has a base price of \$1.50 per barrel, its delivered price at each location where it sells cement will be \$1.50 per barrel plus the all-rail freight from its mill to the point of delivery, except that when a sale is made for delivery at a location at which the combination of the base price plus all-rail freight from another mill is a lower figure, mill A uses this lower combination so that its delivered price at such location will be the same as the delivered price of the other mill. At all locations where the base price of mill A plus freight is the lowest combination, mill A recovers \$1.50 net at the mill, and at locations where the combination of base price plus freight of another mill is lower, mill A shrinks its mill net sufficiently to equal that price. Under these conditions it is obvious that the highest mill net which can be recovered by mill A is \$1.50 per barrel, and on sales where it has been necessary

to shrink its mill net in order to match the delivered price of another mill, its net recovery at the mill is less than \$1.50.

(b) Approximately half of the mills operated by the corporate respondents have base prices and are known as base mills. The other mills which have no base prices are known as nonbase mills. The number and identity of base and nonbase mills change from time to time. A base mill may, for reasons its management considers sufficient, become a nonbase mill, and, similarly, a nonbase mill may become a base mill.

(c) Having no base price, a nonbase mill quotes and sells cement at delivered prices determined by the lowest combination of base price plus freight from base mills. The mill net of a nonbase mill is therefore highest in its home location and is less at all other locations by the amount of the freight from its mill to the point of delivery to the purchaser.

(d) In addition to basing points at mill locations, there are a limited number of basing points used for pricing purposes at locations where no cement is produced. There are also basing points common to a number of different mills; that is, several mills may be located in an area from which the freight rates to other locations are the same regardless of where within the given area a mill is located.

(e) Respondents have maintained certain arbitrary variations with respect to basing points. A base may be a dual one; that is, have two prices in effect simultaneously, each applicable in different territory. For example, the Ironton base price south of the Virginia-North Carolina line was higher than its base price north of that line. The application of a base price may also be limited to certain territory and the territory thus excluded be controlled by other bases. The limitation of the Wyandotte base to Michigan territory is an example of this type. In the case of certain adjoining bases a consistent price relationship may be maintained between such bases over periods of years. For example, the Alsen (Hudson Valley) base was for years maintained at 10 cents above the Lehigh Valley base.

(f) Various respondents have described their multiple basing-point system in differing language but without difference in substance. Illustrative of these descriptions, Walter S. Wing, vice president and general manager of Penn-Dixie, testified.

Q. Will you explain, Mr. Wing, what it is that determines which base price shall be applicable at a given destination?

A. The one that makes, with the freight rate, the lowest destination cost (T. 8136).

A. T. Wood, general manager of Green Bag of West Virginia, testified:

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Q. In other words, your method of making up delivered prices is to take the base point that you find prevailing and add the freight in the freight rate book?

A. Meeting prices; right (T. 29887).

F. M. Coogan, president of Alpha, testified:

Q. Mr. Coogan, today how do you determine the delivered prices which you quote?

A. We determine our delivered prices by the use of certain mill base prices plus the freight rates to the particular destination using the lowest combination of mill base and freight rates which we arrive at, at that particular destination.

Q. Does your particular company use basing points in calculating your delivered prices, if so, will you tell us to what extent?

A. We do. We use basing points. We use them almost entirely, in fact, almost entirely. There are some few exceptions where you might have, as has been the case, in the past years, where, in order to meet foreign competition there have been, what I call, "arbitrary prices" in certain sections. You will find that once in a while, in order to meet a local competition, or local competitive situation, there are some prices which are not based on some of the mill basis plus freight rates, but, generally speaking, all of our destination prices today are made up on the bases of mill basis plus freight rates to destination (T. 23050).

Charles L. Hogan, president of Lone Star, in testifying before the Interstate Commerce Committee of the Senate in 1936, said:

The CHAIRMAN. All the members of the Cement Institute use the basing-point system, do they?

Mr. HOGAN. Yes.

The CHAIRMAN. They all use the basing-point system?

Mr. HOGAN. So far as I know. You do not mean that they all have basing prices? They do not have.

The CHAIRMAN. How is that?

Mr. HOGAN. They do not all have basing prices (Com. Ex. 2878-M).

Respondent George H. Reiter testified:

A. The Government destination cost would be the lowest sum of any price base plus the applicable lowest rate available to the Government, whether land grant, special or commercial.

Q. And I wanted to extend that into the commercial purchases, and have you state to what extent the same principles applied there.

A. Ordinarily the destination price — let me say the commercial destination price — is the lowest sum of any base price plus the applicable commercial freight rate (T. 3749).

(g) The following is a hypothetical illustration of the system of pricing described: Assume that the base price of mill A, located at town A, is \$1.50 per barrel; that the base price of mill C, located at town G, is the same; that mill B, located at town D, is a nonbase mill; and that the all-rail freight rates are as indicated. Then the delivered prices of cement in the several towns and the mill nets of the several mills would be as shown below:

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	Town A	Town B	Town C	Town D	Town E	Town F	Town G
Freight from mill A-----	0	\$0. 10	\$0. 20	\$0. 30	\$0. 40	\$0. 50	\$0. 60
Freight from mill B-----	\$0. 30	. 20	. 10	0	. 10	. 20	. 30
Freight from mill C-----	. 60	. 50	. 40	. 30	. 20	. 10	0
Delivered price of mill A-----	1. 50	1. 60	1. 70	1. 80	1. 70	1. 60	1. 50
Delivered price of mill B-----	1. 50	1. 60	1. 70	1. 80	1. 70	1. 60	1. 50
Delivered price of mill C-----	1. 50	1. 60	1. 70	1. 80	1. 70	1. 60	1. 50
Mill net of mill A-----	1. 50	1. 50	1. 50	1. 50	1. 30	1. 10	. 90
Mill net of mill B-----	1. 20	1. 40	1. 60	1. 80	1. 60	1. 40	1. 20
Mill net of mill C-----	. 90	1. 10	1. 30	1. 50	1. 50	1. 50	1. 50

(h) Excluding errors made in the application of this pricing formula, it is plain that it will inevitably result in identical delivered prices for cement at any given location by all sellers using it. It is equally plain that this formula, once put into operation, is self-perpetuating in the sense that renewed understandings or agreements are not needed to maintain identical delivered prices over an indefinite period of time. This formula was not evolved and put into operation at one stroke. It came into existence and its territorial application was extended from time to time as a result of understandings and agreements among cement manufacturers. Prior to the organization of the Association of American Portland Cement Manufacturers in 1902, cement was sold f. o. b. mill. In testifying before the Interstate Commerce Committee of the Senate in 1936, B. F. Affleck, president of Universal, said:

In 1901 the Atlas Portland Cement Co., which had built and was operating one of the first plants built in the Lehigh Valley, began to build a large plant at Hannibal, Mo., on the Mississippi River, 100 miles north of St. Louis. The purpose was to better serve the Western territory and to make more profit.

The company then announced it would name all prices delivered instead of f. o. b. mill, and for a time these prices were based on Lehigh Valley base plus freight, the difference between freight from Lehigh Valley and from Hannibal going to increase profits of the Hannibal plant, the customers paying no more than before but getting better service (Com. Ex. 2878-K).

F. M. Coogan, president of Alpha, testified that after 1902 his company, which had formerly sold cement f. o. b. mill, began selling on a delivered-price basis but for a few years continued making a limited number of sales f. o. b. mill. At about this period the domestic cement manufacturing industry was spreading rapidly from its birthplace in the Lehigh Valley. The increasing number of mills at new locations frequently resulted in purchasers buying f. o. b. mill from the nearest mill rather than from a more distant mill. The existence of delivered-price selling and f. o. b. mill selling side by side had an unsettling effect upon prices.

(i) Some of the background of the concert of action among cement manufacturers with respect to prices during this period of time, and out of which the multiple basing-point delivered-price system evolved, is indicated in the following extracts from the minutes of various meetings of the Association of American Portland Cement Manufacturers. Numbers of the respondents in this proceeding were members of that association, and representatives of some of them were present at each of the meetings from the minutes of which extracts are quoted. At a meeting of the association in December 1904, it was announced that the membership of the association then represented approximately 90 percent of the productive capacity in the United States. The minutes of this meeting show the following statement by one of the members:

The main grievance which the Association has here today is the grievance for a uniform price for cement. I feel that I can safely state that two-thirds of those present today are ready to adopt any proceedings that will advance and keep the price of cement where it should be, and if there is any member here who has the ability to present to the Executive Committee something that will accomplish this, I assure them that the Executive Committee will do all in their power to put it in force. Now it is in your hands—not in the hands of the Executive Committee—and I agree with you, and will sustain in any motion that will advance the price of Portland cement for the year (Com. Ex. 3235-U).

At this meeting a representative of Nazareth stated:

Now, if we are going to accomplish anything in the matter of prices, I believe the right place to do it is here. If we are men enough to get together, and if we can trust each other here in this room, we can have our Executive Committee appoint a few among themselves to get together and feel the market, and say what the market price should be; what they estimate the price should be, and then send out circulars to the different members of this Association on that line (Com. Ex. 3235-V).

A representative of Coplay then said:

While we are on this subject today we ought to do something practical; according to our By-Laws, we are here for mutual benefit and not for mutual admiration, and I think we can pass a resolution that will be a basis to steady the market for next year. I do not think it is fair that dealers and consumers are enabled to speculate with our goods. It is not fair to our stockholders to have this condition of things. If there is any speculating to be done with our goods, our stockholders should have this privilege—not dealers. I am sure that if we pass a resolution here, fixing the price say to April first deliveries, then increase price for deliveries after that time, and agree right here to do this, that we can carry this through. This is the time and place that this should be done. (Com. Ex. 3235-V).

After discussion, the following resolution was adopted:

Resolved, That the members of this Association in answering inquiries for prices, confine deliveries up to April 1st, 1905, and quote a higher price for de-

liveries after that date, and that it is the sense of this meeting that the price should not be less than \$1.00 per barrel at the mill for the Lehigh District (Com. Ex. 3235-W).

At an association meeting in Philadelphia in April 1905, a representative of Lehigh made the statement:

You take the Western situation; the remark was made last evening that, likely, Western prices would reach the Lehigh Valley level, and I think that probably that will be the case east of the Mississippi. Our Michigan friends are interested in that proposition, because the West cannot produce sufficient cement for the business that will come up this year in the West. That will tend to bring on shipments from the Lehigh Valley, and will bring the prices out in the Middle West (east of the Mississippi) up to the Lehigh Valley level. I think it would be very interesting to hear from some of our Michigan members. In view of the fact that none of us have a very large stock of cement on hand, it does seem to me that we have good reason to congratulate ourselves on the satisfactory condition of the cement business today (Com. Ex. 3235-X).

This was followed by a statement by a member from Michigan, who concluded:

We are trying to follow our Eastern friends in the Lehigh Valley, and we will be very well satisfied if they keep up their "nerve" (Com. Ex. 3235-Y).

Another member from Michigan stated:

We have lately issued a schedule of prices on a basis of 85 cents in the Lehigh Valley, adding freight, and this price we can get without any trouble. This is all very encouraging (Com. Ex. 3235-Y).

At the same meeting one of the members, Mr. Miller, said in part:

It strikes me that you should appoint a special committee to take charge of the matter of prices and business methods and to report at the next meeting of the Association. Let the committee take the Lehigh Valley for the ground to work upon; no doubt they represent the largest amount of cement manufactured. It seems to me that it would be well if you would appoint a committee, with the majority coming from the Lehigh Valley, to take this matter in hand, formulate some plan, and get together and have a report for the next meeting at Atlantic City, establishing a uniform method (Com. Ex. 3235-Z1).

Thereafter, the proposal for the appointment of such a committee was carried by unanimous vote and Mr. Miller was named as chairman thereof. It appears from the minutes of a meeting of the association in September 1905 that:

The president: Mr. Miller made his report to the Atlantic City meeting, which report was adopted at that meeting. That report is now here, together with a list of the members who have signed the same, together with those who have refused to sign. Forty-six members have signed the report, and three, the Atlas, Pacific and Standard Portland Cement Companies, have refused, the latter two being California companies and the other an Eastern company (Com. Ex. 3235-Z3).



The record does not contain the terms of the agreement signed as indicated in the above quotation. The minutes of a meeting in September 1906 show a report was made by Mr. Miller, as chairman of the committee on trade conditions, which stated in part:

Having passed through both the demoralizing and unbusinesslike methods of one year ago, and now experiencing and enjoying the very opposite, viz, a very healthy condition of our trade, there should be no question which method should govern the management of our business in the future. It may be well, however, at this time to caution the members of our Association not to permit the present favorable conditions to lead them into a false position by adopting more stringent and uncalled-for methods, or unreasonably high prices, and thereby create the false impression that a Trust has secured control of our common industry (Com. Ex. 3235-Z11).

The minutes of a meeting of the association in September 1908 show a letter to the president of the association from Mr. Miller, chairman of the committee on trade conditions, expressing regret that he was unable to be present and stating in part:

I think it fair to assume that the consensus of opinion of the Association is that the lack of unity and cooperation on the part of all the manufacturers in their respective territories is the only lucid explanation of the unwarranted and unfortunate condition which our business has drifted into (Com. Ex. 3235-Z35).

He then proceeded to make a number of recommendations, including the following:

All prices quoted for Portland Cement shall be the prices for delivery at the point required by the purchaser (Com. Ex. 3235-Z36).

(j) In 1900 two employees of the Atlas Portland Cement Co., Messrs. Hurry and Seaman, secured a patent on a method of burning powdered coal in rotary cement kilns. In 1903 the Atlas Portland Cement Co. brought suit for infringement of this patent and final argument was had in July 1906. Before a decision was handed down, a settlement was effected and in November 1906 a new corporation known as the North American Portland Cement Co. was created, the capital stock of which was owned by Atlas Portland Cement Co., Lehigh, Alpha, American Cement Co., Vulcanite, and Lawrence. The new company was granted an exclusive license, with power to sublicense the use of the Hurry and Seaman patent. In December 1907 the Association of Licensed Cement Manufacturers was formed and, pursuant to the terms of an agreement, various companies were licensed under the patent. A supplemental license agreement was entered into on January 13, 1909, to which Atlas Portland Cement Co., Lehigh, Alpha, American Cement Co., Vulcanite, Lawrence, Pennsylvania Cement Co., Penn-Allen Portland Cement Co., Nazareth, Catskill Cement Co., Bath Portland Cement Co., Glens Falls,

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Phoenix Cement Co., Edison, Whitehall, and Northampton Portland Cement companies were parties. The agreement provided that other Portland cement companies which might thereafter be licensed under the patents might also become parties to it. By this agreement the licensees were made subject to compliance with numerous conditions, including:

All prices quoted for Portland cement covered by the (\* \* \*) License Agreement of which this schedule is part made by any of the parties to said License Agreement shall be prices for delivery at the point required by the purchaser. \* \* \* (Com. Ex. 3196-2R).

and, further:

Until the Licensor shall give notice of establishment of delivery points and sections and minimum prices therein, prices in Territory A shall be as follows:

All prices given below are the minimum prices to consumers and subject to the discounts permitted to dealers and distributors by Paragraph (2) of this Schedule and no other discount.

All prices shall be quoted and made delivered.

Delivered prices for wood and cotton shall be the same and for paper 25 cents less, computing the freight at a weight of 400 lbs. for all packages.

Prices in Territory A shall be not less than \$1.20 in wood and cotton and 95 cents in paper plus the Northampton all-rail rate with the following exceptions: \* \* \* (Com. Ex. 3196-2Y).

After a decision in 1910 adverse to the validity of the Hurry and Seaman patents, the licensing agreement was canceled on January 1, 1911.

(k) The extension of the price system under discussion to the Michigan area is indicated in the minutes of a meeting of the Association of American Portland Cement Manufacturers in June 1910 at which representatives of a number of the respondents herein were present. A member representing Wabash stated:

The situation in Michigan is very satisfactory and growing more so. There was a chaotic state there early in the year. There was no unity of action at all among the mills until they formed a little association which comprises all the Michigan mills and one or two across the border. This has resulted in a free interchange of views and an understanding to the effect that the Lehigh prices should govern the prices out here. This understanding has been observed. The price today, based upon the Lehigh price of 80 cents, makes Detroit a price of \$1.25 delivered (Com. Ex. 3235-Z59).

(l) The extension of the basing-point system of pricing into the West, as well as the fact that this extension was not the result of independent action, is shown in a letter of January 25, 1915, from the general sales manager of Colorado to Three Forks, an affiliated company, in which it was stated in part:

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From this date, our prices will be made f. o. b. point of delivery and the price including cost of sacks. The same to be due 30 days from date of invoice, and an allowance of 2¢ per bbl. will be made for cash received within ten days from date of invoice.

## PRICE TO APPLY UNTIL FURTHER NOTICE

Use Irvin, Wash., as your basing point, and figure \$1.50 per bbl., including cost of cloth sacks, f. o. b. that point. Add to this the amount of freight from Irvin to point of destination at rates shown in list sent you by our Chicago friends, which you have no doubt received prior to this date. \* \* \* No deviation or exception to the above price will be considered in any instance, and any salesman, or employee, deviating one iota, will be discharged at once. No excuse will be tolerated, and if we do not have salesmen at this time who can secure the business for us on the basis of prices given them, we will have to get salesmen who can. We will give every salesman, and every employee, every assistance possible and complete information, so that they may be thoroughly posted, and we will see that our prices are as low as our legitimate competitors are naming, but no lower if we know it, and on this basis we expect them to secure for us practically all of the business in our territory.

I will write you under personal cover, an explanation of the above sometime, in detail, so that you may know exactly why we are so positive in our statements, but can assure you, that every one of them are ironclad. In this you may know, I will refer to my recent visit to Chicago (Com. Ex. 3210-A, B, C).

This was followed by letter of January 28, 1915, between the same parties, in which it was stated in part:

I have wired you the basis for quoting all of your territory, which is as follows:

- \$1.50 per bbl. f. o. b. Irvin.
- \$1.30 per bbl. f. o. b. LaSalle.
- \$1.50 per bbl. f. o. b. Mason City.
- \$1.10 per bbl. f. o. b. Iola.
- Whichever figures lowest.

\* \* \* \* \*

You have no doubt received lists of rates from Irvin, and I am preparing rates from all other basing points, which I hope to have entirely completed within the next few days. However, you, no doubt, have the correct rates in your office at this time. We want no business on any other terms, or prices, than the above, but want you and your salesmen to keep us thoroughly posted in every instance where you have any idea of any deviation from the above by our competitors. You need have no fear, whatever, of the Lehigh people taking any business except on this basis, as their Chicago office is now in complete charge of their Spokane factory, and will be responsible for every action of every one of their employes, and you may rest assured, that Mr. Brown, as well as all the others, understands this perfectly. Mr. Gowan gave me his personal guarantee of this, and I in turn gave him my guarantee of our strict adherence to this. Of course, nothing has been said to the International people regarding this, as in the first place, I have had no opportunity, and, in the second place, our Chicago friends seem very certain, that the International people would not quote lower than that basis, as they claimed, that the cost at Irvin is fully if not more than \$1.10.

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What do you think of the advisability of seeing Mr. Berry regarding this matter? Of course, we want to work with them and will do nothing, whatever, against them, but we must realize that the Lehigh plant is our strongest competitor, and we must work in harmony with them and keep absolutely in the clear, keeping our business open and above board in every particular. I have not heard definitely whether Mr. Berry will remain this year with the International Company, but I believe from what information I have, that he will. You remember he stated to me, as no doubt he stated to you, that he would not go lower than any basis upon which he knew the Lehigh plant to be selling, which I hope is true. While on this subject I want to call your attention to the fact of not letting any one know, that any understanding, whatsoever, has been agreed upon, and especially never mention this to any of your customers, but simply say to them, that we have reasons to believe, that no lower prices will be named than those we are quoting, because we know the basis to be practically cost of manufacture, at basing points, and no exceedingly large profit can be made by the plants operating at those basing points. Please caution your salesmen particularly in this regard (Com. Ex. 3209-A, B).

The mill at Irvin, Wash., referred to in the correspondence quoted was not the property of either Lehigh or Colorado; it belonged to International Portland Cement Co., Limited, the corporate predecessor of Spokane.

(m) The record does not definitely show the date and manner of the extension of the multiple basing-point delivered-price system to California, but it was in existence there at the time the War Industries Board fixed maximum prices for cement during the first World War. The central California mills used the Davenport mill of Santa Cruz as a basing point until about the middle of 1929, when all mills in that area became basing points. In southern California the basing-point system of pricing is modified by an elaborate system of zone prices applicable in certain areas. The system as used in California does not require separate calculations to determine the delivered price in each transaction. The limited number of points at which sales are made makes it possible for each respondent to publish, and each has published, complete price lists showing the delivered prices at substantially all delivery points.

(n) The multiple basing-point delivered-price system was extended to western Washington in 1931. Its introduction there followed a price war which commenced when two new mills began operating in that territory, one in 1928 and the other in 1929, and was approximately coincident with the leasing of one of these new mills by Superior Portland.

(o) When the Institute was organized in August 1929, the statement of purposes contained in the articles of association included these provision:

To adopt and promulgate a Code of Ethics for the government of the members.  
To establish and maintain all such lawful trade customs and usages for the protection of the members as the Institute may deem advisable (Com. Ex. 138-C).

The multiple basing-point delivered-price system was one of the "customs and usages" to be maintained. The Code of Ethics adopted by the Institute, which remained in effect until the beginning of the NRA Code period, included the following:

For manufacturers to divert, or permit purchasers or users of cement to divert, carload shipments of cement, made to one destination, to other destinations in cases where the result of such diversion is to enable purchasers or users of cement to secure cement less than the manufacturer's market price at the point of final delivery, is discriminatory as between purchasers or users, and is therefore an unfair trade practice (Com. Ex. 138-S).

The diversions thus prohibited would not have been inconsistent with f. o. b. mill selling, but would tend to break down a multiple basing-point delivered-price system. This Code of Ethics also provided:

It is further declared, that it is desirable that a standard form of sales contract be drafted and adopted for the use of the Portland Cement industry (Com. Ex. 138-Q).

Pursuant to the last-quoted provision of the Code of Ethics, the Institute on July 14, 1930, submitted a report to its members, stating in part:

It represents a statement of the recommendations of the Institute as to the provisions which should be included in a proper contract for the sale of cement as declared in Article II of the Code of Ethics, quoted above (Com. Ex. 153-M).

Among the recommendations thus made was the following:

**PRICE AND QUANTITY.** A definite agreement to sell and to buy a specific number of barrels of portland cement at a definite price or prices F. O. B. a specific destination or destinations, subject to terms and conditions as outlined.  
\* \* \* (Com. Ex. 153-M).

(p) At the time the National Industrial Recovery Act was approved, the multiple basing-point system of delivered prices was in effect in the cement industry throughout the United States, except in certain limited zones or areas where special prices were in effect. Thus one of the so-called "customs and usages" which the Institute was organized to maintain had been effectively supported and maintained. When the cement industry sought approval of a "Code of Fair Competition under the NRA, the Institute was the vehicle for submitting a proposed code, and in doing so stated in part:

The Institute includes 96 percent in number and 98 percent of the producing capacity of all Portland Cement producers in the United States, and is authorized

to represent the industry under the National Industrial Recovery Act, the policy and purposes of which are set out in Section 1, Title 1, thereof (Com. Ex. 536, p. 1).

One of the provisions of the suggested code as proposed by the Institute read as follows:

Except in cases where the Committee permits otherwise, all cement quotations and sales shall be F. O. B. point of delivery, and all cement shall be sold on such delivered basis; provided, however, that in making quotations and sales to the Federal Government, cement shall be sold F. O. B. plant, in the event land-grant rates may be availed of by the Federal Government in arriving at the delivered cost (Com. Ex. 536, p. 6).

While the proposed code was pending, Charles F. Conn, president of the Institute, on August 31, 1933, wrote to L. T. Sunderland, president of Ash Grove, and Joseph S. Young, president of Lehigh, saying that it was important that preparation should be made in advance to reply to criticisms and objections which might be offered, and continued:

We [Washington contact committee] therefore request that you gentlemen give consideration to the provisions in the Code and in the supplements thereto, relating to price control (including defense of the present level of prices) and the universal practice of quoting delivered prices only, so that you may be prepared to make a brief statement in support of any phase of this subject, if called upon to do so (Com. Ex. 836-2V).

There was objection within the National Recovery Administration to the pricing system in use in the cement industry and the Institute made special efforts to convince the Consumers Advisory Board of NRA that this system was not objectionable. When approved on November 27, 1933, the Code for the Cement Industry did not contain the provision concerning sales f. o. b. point of delivery which had been submitted by the Institute in its proposed code. However, Exhibit C, annexed to the Code as approved, is described as "Form of Future Specific Sales Contract" and reads in part:

If any of the cement shipped hereunder is reconsigned or diverted by Buyer from the place of delivery specified herein or used for any other purpose, Seller may cancel this contract and refuse to ship any more cement and Buyer agrees to pay Seller's market price at the place of final destination for such cement as has been diverted by Buyer from the place of delivery specified herein or has been used by Buyer for any other purpose than the purpose above specified (Com. Ex. 557).

The Code for the Cement Industry as amended and approved on May 11, 1935, contained the following:

To prevent diversions of cement prohibited by this Code and to insure the broadest field of active competition for all cement business offered, cement

shall not be quoted or sold in quantities or for points of delivery which are not definitely specified (Com. Ex. 560, p. 20).

and

All future sales orders and future sales contracts for the sale of products of the Industry shall contain a definite statement of price, quantities, terms of payment, time and place of delivery, and all other terms of sale necessary to form a complete and unambiguous contract (Com. Ex. 560, p. 21).

The multiple basing-point delivered-price system was continued in full operation during the NRA Code period.

(q) For some seven months after the decision in the Schechter case (295 U. S. 495) the Institute, through its trade practice committee, composed of the same individuals who had previously constituted the Code Authority, attempted to administer some of the provisions of the NRA Code for the Cement Industry. The articles of association of the Institute, as amended December 11, 1935, contained in the statement of purposes of the Institute the following:

To adopt and promulgate a Code of Fair Competition for the government of the industry (Com. Ex. 561, p. 5).

The Institute issued a so-called "Compendium of Established Terms and Marketing Methods of the Portland Cement Industry as Approved by the Board of Trustees of the Cement Institute December 9, 1935," which compendium contained the following provision:

All specific sales orders and specific sales contracts for the sale of Industry Products contain definite statements of price, quantities, terms of payment, time and place of delivery, and all other terms of sale necessary to form a complete and unambiguous contract (Com. Ex. 561, p. 14).

and designated the following as an "unfair trade practice":

Diverting or permitting the diversion of shipments of Industry Products, the effect of which will be to enable a purchaser or user to secure Industry Products at variance with Member's published price terms for point of final destination (Com. Ex. 561, p. 16).

A standard form of sales contract recommended in the Compendium contains the following provision:

If any of the cement shipped hereunder is reconsigned or diverted by Buyer from the place of delivery specified herein or used for any other purpose, Seller may cancel this contract and refuse to ship any more cement and Buyer agrees to pay Seller's market price at the place of final destination for such cement as has been diverted by Buyer from the place of delivery specified herein \* \* \* (Com. Ex. 561, p. 21).

and the recommended contract form also states:

All shipments made on this contract will be at the current destination price of Seller on the date of shipment, if this price is below the contract destination price mentioned herein (Com. Ex. 561, p. 21).

(r) The determination of respondents to maintain the multiple basing-point delivered-price system in the sale of cement and the degree of their resistance to selling f. o. b. mill are illustrated by certain occurrences with respect to the NRA Code for the Cement Industry. Ineffectual efforts to secure bids from cement manufacturers on an f. o. b. mill basis were made during the Code period by purchasing agencies of both State and Federal Governments. The failure of these efforts resulted in protests and objections by such agencies. On May 8, 1934, Barton W. Murray, Deputy Administrator of the National Recovery Administration, telegraphed B. H. Rader, chairman of the Code Authority for the Cement Industry:

I HAVE BEEN REQUESTED BY THE PRESIDENT OF THE UNITED STATES TO ENCOURAGE THE MANUFACTURERS OF CEMENT TO SUBMIT FOB MILL PRICES TO PROSPECTIVE PURCHASERS STOP I URGE THAT THIS QUESTION BE PLACED BEFORE THE CODE AUTHORITY FOR YOUR INDUSTRY AND A REPORT OF THEIR ACTION THEREON PARTICULARLY AS IT AFFECTS PURCHASES BY STATE AND FEDERAL AGENCIES BE MADE TO THIS ADMINISTRATION WITHIN THE NEXT TWO WEEKS (Com. Ex. 6-A).

On May 15, 1934, Mr. Rader replied, saying in part:

\* \* \* WE EARNESTLY REQUEST YOUR COOPERATION TO PROCURE FOR A SMALL REPRESENTATION OF OUR INDUSTRY AN AUDIENCE TO PRESENT TO THE PRESIDENT OF THE UNITED STATES THE FACTS AS WE SEE THEM WHICH WE THINK JUSTIFY THE PRESENT METHOD OF SELLING AND QUOTING OUR PRODUCT \* \* \* (Com. Ex. 6-B)

On May 17, 1934, John Treanor, president of Riverside, wrote Mr. Rader regarding this, saying in part:

I have been thinking about your telephone call, from which I get the impression that you sent a pretty unyielding telegram to Murray—as you say at least that you “did not intend to make any concession before the ‘trading’ starts.”

Now I would have conceded the mill price at once on Federal business and I would have indicated a very open-minded attitude toward the larger question; and this to create the impression, deliberately that something besides obstruction and short range trading can be had out of the cement industry. \* \* \*

\* \* \* \* \*  
 The f. o. b. mill price on Federal business is of no real importance, is entirely practical to grant, can and I think will be forced out of us—therefore *good* trading would have been to give it without any trading. Now, when it comes to the larger question of mill price on commercial business, much as I would like to think otherwise, I am convinced that we will have to maintain our basing point position and refuse the President's request. It will not be an easy refusal to defend upon economic grounds. It will be almost impossible to persuade an *unsympathetic* government that we are justified in our refusal. But the least we can do is to prepare the way by an initial showing of open mindedness, which might entitle our later arguments to sympathetic hearing (Com. Ex. 7-A, B).



On May 24, 1934, Mr. Treanor wrote A. E. Morgan, Chairman, Tennessee Valley Authority, in part:

\* \* \* It is certain that the entire cement industry will not voluntarily adopt the f. o. b. mill system, for a very substantial part of it, having made its plant investment with reference to the basing point system, now has a vital interest in keeping that system in force \* \* \* (Com. Ex. 347-C).

On June 4, 1934, Mr. Treanor telegraphed A. E. Morgan, informing him that the industry had requested an audience with the President to "inform him of the confusion which would result from any summary order to change marketing methods long established in the cement industry," and in referring to a suggestion by one of the President's secretaries that the industry have a hearing before Secretary Ickes and Admiral Peoples, said that the industry should not "be required to deal with another committee upon the same subject at the same time" (Com. Ex. 350-C, D). On June 5, 1934, Mr. Rader wrote to C. F. Conn, president of the Institute:

Enclosed is copy of letter from Mr. Murray referring to my letter of May 24th regarding the request from the President to quote f. o. b. mill prices.

Also enclose copy of letter from Mr. M. H. McIntyre to Mr. Murray and copy of Mr. Murray's letter to me.

After the receipt of these letters, Mr. Treanor was in Chicago and I asked him to take the matter up with Dr. Morgan, and I enclose copy of his telegram to Dr. Morgan.

I am now going to wait and see if this telegram produces results before following Mr. McIntyre's letter any further. I feel that we must not be carrying on two hearings on the same subject (Com. Ex. 839-4K).

On June 7, 1934, Dr. Morgan wrote Mr. Treanor, replying to his telegram and saying in part that he had talked with the President on June 5th and "told him that in case the basing point system should be abandoned, I thought it should be only on the development of some other policy which would avoid confusion and which could have general application" (Com. Ex. 350-E). The industry did not comply with the request of the President.

PAR. 8. (a) In order for the pricing formula of lowest combination of base price plus all-rail freight to produce identical prices by all respondents selling or offering to sell at any given delivery point, it is necessary that the freight factor used in the delivered price of each seller be the same. The ascertainment of freight rates involves the use of complicated freight tariffs, knowledge of routing, switching charges, car weights, and other factors. Independent determination of freight rates may readily, and frequently does, result in different individuals reaching varying results.

(b) Members of the industry began many years ago to disseminate freight rate information among themselves in order to avoid quoting

different delivered prices as a result of having used different freight rate factors in determining those prices. The cooperative preparation and publication of special freight rate books for use by cement producers was commenced about 1914 by various regional associations which included in their memberships some of the present respondents. The Cement Manufacturers Protective Association, the Southeastern Portland Cement Association, the Kansas City Cement Bureau, and other organizations furnished freight rate information. That furnished by the Cement Manufacturers Protective Association until about 1922 was in much the same form as the rate information subsequently supplied by the Institute. When the Protective Association discontinued supplying freight rate information during the pendency of the suit brought against that association by the United States, many cement manufacturers thereafter obtained a similar service from the Nazareth Traffic Bureau. For a few years immediately preceding the organization of the Institute a number of respondents cooperatively compiled common freight rate factors, and others secured such rate factors from the National Traffic Bureau. On November 6, 1929, the traffic manager of the Cowham Engineering Company addressed a letter to the manager of one of the respondent companies under its direction and control explaining the reason for subscribing to the rate service furnished by the National Freight Rate Bureau, and stated in part:

As to the cost, we considered that it was quite reasonable for the reason that if we did not take the service we would have to compile our own rate books, involving additional clerical help and the cost of printing the rate books and supplements. This service cannot be compared with the old plan that was used in furnishing our company with rate books when the general revision of cement rates took effect on April 14, 1928. Due to the fact that it would have been impossible for each company to have compiled all rate books needed between the time that the tariffs were published by the railroad and the effective date, we entered into an arrangement with the other cement companies which provided that each company would compile one or more rate books and bill each company only for the cost of printing, it being thought that the cost of compiling or clerical help furnished by one company would practically offset this cost for all companies. This arrangement was only temporary and is to remain in effect only until such time as the National Freight Rate Bureau can finish compiling all rate books needed in the South (Com. Ex. 988-A).

(c) The Institute has maintained and operated two freight rate bureaus: one in Bethlehem, Pa., managed by the individual who previously operated the Nazareth Traffic Bureau; and one in Chicago, Ill. The Institute has published rate books for substantially every State east of the Rocky Mountains. These rate books show the railroad freight rates on cement from each of a number of points to all destina-

tions in a given State or States. The manner in which this work of the Institute was initiated and superseded previous rate services is indicated in a letter of April 17, 1930, from the traffic manager of Lone Star to various offices of that company, as follows:

The Cement Institute will establish rate bureaus which should function in the near future. It is contemplated that the bureau established at Bethlehem will handle Trunk Line, New England and Southeastern territory. The bureau at Chicago will handle C. F. A. territory, and the bureau at Kansas City Western Trunk Line territory. The bureau at Bethlehem will start immediately to re-issue Trunk Line, which will include Virginia and West Virginia and the New England books. The plan for the Southeast is that those books will be reissued by those that formerly handled those books; this territory will be taken over by the bureau at Bethlehem soon after they are reissued.

Detail instructions will be issued by Mr. Gubernator, Chairman of the Traffic Committee of the bureau, and roughly speaking, will call for a reissue of the Alabama book by the Lehigh at Birmingham; Florida by the Consolidated at Chicago; Georgia by the Alpha at Birmingham; Mississippi by the Lone Star at Birmingham; South Carolina by the National at Birmingham; North Carolina by the Lehigh, Allentown. Tennessee by the Penn-Dixie at Chattanooga. The Kentucky book will be worked out by the Alpha at Chicago in connection with the bureau at that point (Com. Ex. 2460).

(d) The rate books published by the Institute were intended, as were those previously secured from other sources, to provide common freight rate factors for pricing purposes, avoid differences in delivered price quotations resulting from errors in rate calculations or failure to keep abreast of rate changes, and thus enable the corporate respondents to quote identical delivered prices for cement at all destinations; and they were in fact used for that purpose. Illustrative of this are the following extracts from exhibits and testimony. On February 25, 1916, C. N. Apgar, traffic manager of Alpha, wrote the Security Cement & Lime Co. of Hagerstown, Md., as follows:

Replying to your favor of February 24th, would advise that it is the general understanding that the cement companies will use the books published by us. This is the book which we are using and which we will continue to use.

For your information, I might state that the Lehigh Company and ourselves watch the changes and exchange correction notices (Com. Ex. 3199).

In a letter of July 1, 1918, B. L. Swett, the eastern sales manager of Lehigh, wrote the Cement Manufacturers Protective Association:

Have you an extra West Virginia price book? If so, I will greatly appreciate if you can let me have it (Com. Ex. 3200).

The association official replied to Mr. Swett:

Responding to your letter of July 1st, File 65414-C, we are sending you under separate cover a copy of West Virginia Rate Book, which I take it is what you want.

## Findings

37 F. T. C.

In your letter you request a price book, which is no doubt a typographical error, inasmuch as you are aware of the fact that this Association does not issue any books in any way connected with price matters (Com. Ex. 3200).

In a letter dated September 3, 1931, Charles L. Hogan, then vice president of Lone Star, advised a divisional manager of that company who had suggested discontinuing the Institute rate service, in part:

From this you will learn that we in this office feel that the freight service is well worth the money that the Institute charges, in that it has a distinct advantage over any individual company record, because it seminate freight rate information to practically all of the companies in a given territory, and thereby serves to prevent variations in quotations by the various companies, which might be due entirely to incorrect freight information (Com. Ex. 2461).

In explaining the recommendation he had made, the divisional manager stated in a letter dated September 10, 1931, that:

Our recommendation was based solely in an effort to economize, feeling that we were sufficiently up to date with our freight rate information; that we should be able with our present organization, to carry on this work in a reasonably satisfactory way, thus saving the company the cost of this service, which we estimated at \$595.00. However, since receiving your letter and Mr. Hogan's letter of the 3rd we have reached the decision that this service is worth all that it costs (Com. Ex. 2402).

On October 4, 1934, J. F. Neylan, then assistant general sales manager of Lone Star, in writing to the Dallas office of that company, stated in part:

You have no doubt received copy of a letter from G. H. Reiter, Manager Chicago Division of The Cement Institute, which was addressed to Members in District #9. This letter has to do with an assessment to cover the compiling and distribution of freight rates on cement from all points of origin to Texas destinations.

We know you appreciate the advisability of having freight rates compiled at one central point and issued to all members operating in any given district in order that everyone may be operating on the same rate. This is being followed in practically every other section of the country and we are of the opinion it should be continued in Texas (Com. Ex. 2417).

Under date of November 7, 1936, the manager of the Institute Rate Bureau in Bethlehem, Pa., wrote to Volunteer explaining the omission from Institute rate books of information on switching charges, stating in part:

As you probably understand, rate books show lowest rate available to any given destination, and are not intended for shipping purposes. And, under these circumstances, we do not carry destinations which are located within switching districts of stations to which rates are published or, as in the instant case, where it is possible to accomplish delivery at the Knoxville rates (Com. Ex. 1002-B; Resp. Ex. 2243-A).

In addition to the office use of the Institute freight rate books, they were frequently furnished by respondents to their salesmen for use in calculating and quoting prices. For example, the sales manager of Edison testified:

Q. Of what value are any of these freight rate services to you?

A. Well, they are only valuable in so far as they are—the books are convenient. The rates are shown in a form that we use them in our business, and they are convenient.

Q. And convenient for what, Mr. Sweeney?

A. For the salesmen who carry them for their particular territories—they can carry them a whole lot more conveniently than they could a long list of freight rates which we might prepare and furnish to them.

Q. You use them mostly for quotation purposes?

A. That is all (T. 35807).

The sales manager of Copley testified:

Q. Where your salesmen do carry them, do they use them to calculate the delivered price at the different destinations?

A. Presumably they do, but it is understood that all quotations are to be confirmed at the office.

Q. You supply them with the freight rate books so that they may use them for that purpose?

A. Yes, sir (T. 6777).

In writing one of its district sales managers on November 11, 1936, criticizing the use, in computing a price, of a rate which did not appear in the Institute rate book, an official of Lone Star stated in part:

So far as our company is concerned, we have always worked on the policy that the freight rates shown in the rate books are the only rates we will use in the computation of prices. If we have knowledge of any rates that are different from those in the rate books, then we have an obligation to inform the Rate Bureau of the new rate before such a rate is used in computing a price (Com. Ex. 287-B).

(e) The freight rate books first issued by the Institute included conversion tables for use in translating rates quoted by the railroads in terms of cents per hundred pounds into rates in terms of cents per barrel of cement of 380 pounds gross weight, the barrel being the unit used in the quotation and sale of cement. These tables provided for eliminating fractions of a cent in the rate per barrel, presumably to avoid fractions in price quotations, by stating the converted rate in cents per barrel to the nearest cent. In calculating freight charges, railroads apply the rate per hundred pounds to the total weight of a shipment and if the resulting figure ends with a fraction of a cent, they eliminate that fraction. In all instances, therefore, where the conversion of a rate per hundred pounds into a rate per barrel resulted in eliminating a fraction of a cent in the latter rate, a calcula-

tion of the cost of a shipment according to the Institute formula would give a result different from a calculation made according to the method followed by the railroads and on which payment of freight charges must be made. By action of the Institute in May 1937, the conversion tables were omitted from the rate books issued by its bureau in Bethlehem, and they had been previously dropped from the rate books issued by its bureau in Chicago. The same method of conversion into rates per barrel has, however, been continued. The rate books lack information that a genuine rate service would be expected to supply: they give no information which would assist in routing shipments; they give no information concerning minimum car weights; and they give no information respecting switching charges.

(f) When the Institute rate service was organized, there was discussion as to whether rates would be shown in the rate books from basing points only or from all points where cement is produced. A member of a committee of traffic managers, in writing to the chairman on August 6, 1930, stated the problem thus:

Confining the rate books to certain points of origin, would eliminate a lot of extra information that is of no value, while the master rate sheets, showing the rates from all points of origin, would supplement that information so that each subscriber would have all the rates. The method appears to be more economical and more efficient, however, it does not answer the question as to why you show rates from certain points of origin, and not others. This subject has been discussed a number of times, and one of the reasons for showing all the rates in the rate books is to avoid any appearance of preference (Com. Ex. 1139-4H).

The rate books were revised in 1933 to show rates from more producing mills, but rates from all producing points have not been included. These rate books, however, have included rates from points such as ports where no shipments of domestic cement originate, but which have been used as basing points for pricing purposes.

(g) The Institute rate books have regularly been used for pricing purposes, either directly or indirectly, by most of the corporate respondents located in territory covered by the rate books, and this has been done even though a price quotation made on the basis of a converted rate may include an artificial freight rate factor. The following extracts from testimony are illustrative of this. A representative of Federal testified:

Q. And hasn't it been your experience that the price at those various destination points in your sales territory always correspond with the freight rate in the freight rate book, including the correction sheet information plus the controlling base?

A. Yes, generally speaking, I think you are absolutely right there. It is a pattern that we follow on basing prices, we use our freight rate, we add our package plus that constant figure that we have predetermined (T. 30825).

In his testimony, the traffic manager of Volunteer said:

Q. But with the exception of arbitraries, have you ever found a price at a destination point which was not built up on a base plus the Institute freight rate book?

A. No, I don't think that I have.

Q. In your 10 years' experience?

A. I do not think so (T. 31934).

All-rail freight rates have regularly been used in calculating delivered prices, even though shipment was made by water transportation or by motor truck at rates different from the all-rail rate on which the price was calculated. The use of Institute freight rate books was not limited to members of the Institute; nonmembers were permitted to, and some did, purchase rate books from the Institute.

(h) Respondents extended their cooperative rate dissemination activity to land-grant rates for the same purpose as existed with respect to commercial rates discussed above. Land-grant rates are special rates received by the Government from certain railroads. In order to secure the benefit of such rates on a shipment over these railroads, the shipment must be one of Government property on a Government bill of lading. Since such rates are not available under any circumstances to any of the corporate respondents, their cooperative activity with respect thereto emphasizes their true interest in common freight factors—the use thereof as a means of attaining and maintaining identical delivered prices.

(i) Government purchasing officers frequently requested cement bids both f. o. b. mill and at specified delivered points. Respondents ordinarily determined the delivered price to be bid according to the formula of lowest combination of base price plus freight, which produced identical delivered prices. By deducting from the destination price determined in this manner the actual freight from his own mill to the delivery point, each bidder arrived at a so-called f. o. b. mill price which was in fact a derived price. The derived f. o. b. mill prices thus calculated might vary greatly among bidders on a given bid, but resulted in identical cost to the Government at the point of delivery. This method worked satisfactorily to respondents in territory where land-grant rates were not available to the Government, but did not operate very satisfactorily in the case of bids in territory where land-grant rates were available to the Government because the application of land-grant rates to an f. o. b. mill price determined in the manner stated ordinarily destroyed the uniformity of destination costs. Sporadic efforts to correct this difficulty were made by respondents in land-grant territory by using land-grant rates in determining delivered prices and derived f. o. b. mill prices. This would have solved respond-

ents' difficulties if they could have accurately ascertained the applicable land-grant rates. Such rates, however, are a matter between the Government and the railroad concerned. There is no official publication of such rates and it is generally impossible to determine in advance what the rate will be. In practice, the land-grant rate actually paid is determined by the Government upon the facts of the particular shipment, and this figure is controlling unless the railroad successfully contests it before the United States Court of Claims. Respondents, however, did what they could to ascertain the land-grant rates applicable in specific instances, sometimes securing information from the railroads, sometimes from previous lettings, and sometimes from competitors. During this time there was substantial interchange of land-grant rate information among respondents interested in particular bids, and from time to time groups of respondents concerned in the same bid had understandings and agreements as to the rates to be used or the price to be bid.

(j) The land-grant rate problem was not, however, of great importance to respondents until, under the stimulus of the expansion of public works in the early 30's, governmental purchases of cement assumed important proportions. A rapid expansion of such purchases was coincident with the existence of the National Recovery Administration, and it was while operating under their NRA Code that respondents first found a satisfactory answer to the land-grant rate problem. At first the Code Authority for the Cement Industry was satisfied to continue the previous practice. On December 23, 1933, it issued an interpretation to the effect.

\* \* \* that United States Government may be quoted with the use of land grant rates, in exact accordance with the prevailing practice prior to the adoption of this Code (Com. Ex. 716-A).

Under the Code, respondents filed their destination prices with the Code Authority and these were systematically disseminated among respondents by the Code Authority, although the Code did not specifically provide for such dissemination. The result was to facilitate greatly the efforts of respondents to make identical bids to the Government. Purchasing officers of governmental agencies developed a policy of deducting commercial freight from destination prices bid by respondents and then awarding the contract upon the basis of the lowest delivered cost, using land-grant rates. This practice resulted in creating differences in otherwise identical bids.

(k) Respondents, however, found a means of defeating the deduction by the Government of commercial freight in land-grant territory. A clause for insertion in bids to the Government, which became known as the "control clause," was developed and filed with the



Code Authority. This clause went through several changes in form and finally, as most frequently used by respondents, assumed the following form:

"The U. S. Government shall determine its cost f. o. b. cars-----for invoicing purposes on shipments moving on U. S. Government bills of lading to the above named destination only, by subtracting from the above mentioned destination cost to the U. S. Government the land grant rate as determined by the U. S. Government as being applicable from-----to said destination, the actual commercial freight rate or special U. S. Government rate applicable from-----to destination named, whichever rate is the lowest (Com. Ex. 558-C).

The chairman of the Code Authority in a letter dated April 11, 1935, explained the effect of this clause in part as follows:

Under the open price provisions of our Code interested competitors have knowledge of such Government Destination costs filed with us and may meet them if they care to do so, thus making it possible for all interested Members of this Industry to bid on a parity. A control clause usually in the form of that quoted in our General Letter of October 5, 1934, requires the Government to deduct the actual land grant rate from the Government Destination Cost bid and thus in effect continues the parity as between derived prices f. o. b. mill (Com. Ex. 27-K).

In the same communication he also referred to the general letter issued by the Code Authority on November 19, 1934, which expressed the opinion that a member of the industry would be in violation of the Code if he allowed the Government to deduct commercial freight to determine the price f. o. b. mill for cement to be shipped on Federal bills of lading. The Code Authority promoted and furthered the use of the control clause in bids made to the Government by members of the industry, and its use did in fact become widespread. The decision in the Schechter case did not end the use of the control clause in Government bids.

(2) Before respondents developed the method stated above for handling Government bids involving land-grant rates, each proposal upon which bids were requested was generally handled separately and involved cooperation among the respondents concerned which in some instances amounted to agreements upon bids to be made. The exchange of telegrams and letters set out below illustrates how a group of bidders were able to file identical sealed bids. On March 17, 1934, the vice president of Pacific telegraphed the chairman of the Code Authority:

REFERRING PHONE MESSAGE DATE WITH YOU AND YOUR ASSISTANT PERTAINING APPLICATION LAND GRANT RATES STOP SOUTHERN CALIFORNIA MILLS INSISTED ON MAKING PRICES WHERE LAND GRANT RATES INVOLVED STOP BASIS TO USE WAS LIST PRICE AT DESTINATION LESS COMMERCIAL FREIGHT RATE STOP ON LARGE OR-

DER AT NOGALES OPENED EARLY PART OF FEBRUARY CEMENT MANUFACTURERS BID ON THIS FORMULA AND DEVELOPED THAT THROUGH APPLICATION OF LAND GRANT RATES IT MADE CALAVERAS MILL APPROXIMATELY TWO CENTS BARREL LOW AND THEY SECURED BUSINESS STOP IT WAS THEN DECIDED THE ONLY WAY TO QUOTE GOVERNMENT PROJECTS WHERE LAND GRANT OR OTHER SPECIAL RATES WERE USED WHICH WERE LOWER THAN PUBLISHED RATES AS CONTAINED IN RAILROAD COMPANY TARIFFS THE FOLLOWING FORMULA SHOULD BE USED STOP TAKES DESTINATION PRICE DEDUCT FROM ALL INTERESTED MILLS THEIR COMMERCIAL FREIGHT RATE THEN ADD FOR COMPARATIVE PURPOSES THEIR LAND GRANT OR SPECIAL RATE APPLICABLE WHICH WILL GIVE COST TO GOVERNMENT AT DESTINATION FROM VARIOUS MILLS AND THE HIGHEST RATED MILL IF THEY WERE INTERESTED WOULD HAVE TO DEDUCT FROM THEIR MILL PRICE THE DIFFERENCE TO EQUALIZE WITH THE LOWEST RATED MILL AND THIS HAS WORKED OUT IN SATISFACTORY MANNER TO INTERESTED PARTIES FOR THE REASON THAT THE PRICES SO ARRIVED AT AT THE VARIOUS MILLS PLUS RATE GOVERNMENT WOULD PAY WOULD MAKE SAME TOTAL PRICE AT DESTINATION STOP THE GOVERNMENT IS CALLING FOR BIDS AT BONNEVILLE OREGON OPENING MARCH TWENTY THIRD AND THIS FORMULA WAS SUGGESTED TO OREGON MILLS AT CONFERENCE AT SAN FRANCISCO FRIDAY BUT THEY CLAIM IN THEIR OPINION PROPER METHOD TO USE WOULD BE DESTINATION PRICE LESS THE COMMERCIAL OR LAND GRANT RATE AS THE CASE MIGHT BE WITH FREIGHTS EQUALIZED WITH THE LOWEST RATED MILL STOP WILL YOU PLEASE WIRE US FIRST THING MONDAY MORNING SO THAT WE CAN NOTIFY INTERESTED PARTIES HOW WE ALL SHALL FIGURE BONNEVILLE BID BASED BACK TO A MILL PRICE WHICH IN ALL CASES IN OUR OPINION THE MILL PRICE MUST BE THE DIFFERENCE TO EQUALIZE WITH THE LOWEST RATED MILL STOP ALSO APPRECIATE IF ASCERTAIN AND WIRE WHAT MILL PRICE CALAVERAS AND MONOLITH ARE GOING TO USE STOP \* \* \* (Com. Ex. 159-1, 2).

Respondents Beaver and Oregon on the same date also wired the then chairman of the Code Authority concerning the bids on cement for the Bonneville Dam and stated in part:

\* \* \* AN IMMEDIATE RULING BY THE CODE AUTHORITY TO ALL CALIFORNIA OREGON AND WASHINGTON MILLS WHICH WILL PROVIDE A METHOD OF BIDDING EQUITABLE TO ALL WILL BE GREATLY APPRECIATED OTHERWISE WE FEAR MANY VIOLATIONS OF THE CODE WILL BE APPARENT WHEN BIDS ARE OPENED ON THE TWENTY THIRD STOP \* \* \* (Com. Ex. 159-3, 4).

The chairman of the Code Authority wired respondent Beaver on March 22nd:

RETEL AS BONNEVILLE LETTING IS TWENTY THIRD AND PRICES MUST BE ON FILE IN OFFICE OF CODE AUTHORITY FIVE DAYS PRIOR TO USE NO PRICES TERMS AND CONDITIONS FILED TODAY CAN APPLY AND ONLY PRICE ON FILE NOW IS TWO FIFTY SIX GROSS BULK FOB BONNEVILLE STOP \* \* \* (Com. Ex. 159-18).

Oregon, Beaver, Pacific, Santa Cruz, Monolith, and Henry Cowell Lime & Cement Co. bid \$2.56 f. o. b. Bonneville, or derived mill prices equivalent to \$2.56 f. o. b. Bonneville. Calaveras bid \$2.5307296 f. o. b. Bonneville and was low (Com. Ex. 159-40). Thereupon, respondent Santa Cruz filed protest with the Code Authority which concluded:

\* \* \* INASMUCH AS EACH BIDDER WAS REQUIRED TO MAKE AFFIDAVIT THAT ITS BID WAS IN ACCORDANCE WITH TERMS OF THE CODE FOR THE CEMENT INDUSTRY SHOULD NOT CALAVERAS BID BE DISREGARDED? (Com. Ex. 159-25.)

The Code Authority on April 13, 1934, protested to the National Recovery Administration, which, in turn, advised the Secretary of War in part:

You are informed that the Administrator for Industrial Recovery has found that the bid of the Calaveras Cement Company did not comply with the Code. Inasmuch as nearly all the other bids have been found to be in violation of the Code, it is recommended that all bids be rejected (Com. Ex. 159-56).

This recommendation was followed and the bids were rejected. The final result was that on another letting all bids were identical and the contract was awarded by lot.

(m) The filing of "destination cost" prices on Government business under the NRA Code and the dissemination of these prices among respondents bypassed the difficulties of reaching identical delivered prices where land-grant rates were involved. After the Code period, however, the problem was once more with respondents. As a solution, the Institute undertook to collect and disseminate land-grant rates and thus provide common freight factors on Government business, as was done through the rate books for commercial business. The Institute began collecting from its members such information as they had concerning land-grant rates and assigned the responsibility for furnishing such information for specified territories to particular respondents. Under date of December 12, 1935, The Cement Institute circularized its members, stating in part:

At its meeting on December 9 the Board of Trustees instructed the General Manager to collaborate with the Freight Rate Bureau at Chicago in compiling and publishing for the convenience of the Members information regarding current Land Grant Rates on cement from the several points of origin to various destinations.

It is the intention of the Institute to publish a schedule of current Land Grant Rates just as it has long been the practice to compile and publish the actual commercial rates. Where it is impossible to secure the exact Land Grant Rates, the best available information, together with the source thereof, will be published.

We are, therefore, addressing each member and requesting you to send us all the information which you have concerning current Land Grant Rates applicable

from your mills and also such information as you have concerning Land Grant Rates applicable from other mills. In compiling this data it is necessary that we designate the source of the information regarding such Land Grant Rates. Will you, therefore, indicate in each case the source of your information regarding the respective Land Grant Rates? (Com. Ex. 841-A.)

(n) There being no official publication of land-grant rates, the Institute publication of such rates included figures arrived at by various means: some were secured from railroads; some were determined as a result of previous transactions; some were derived by calculation; some were derived by mileage prorates; and some were obtained by other means. When the amount of a given rate as furnished to the Institute by different sources varied, the lowest of such rates was reported by the Institute. The explanation of the land-grant rate schedules issued by the Institute states in part:

The term *the lowest land grant rates* indicates that in many instances the current applicable land grant rate between two given points was reported variously by different sources, and that the figure included herein was the lowest land grant rate reported to the Institute on the date of issuing this schedule.

In no case does the figure represent a computation by The Cement Institute, which merely serves as the medium for exchanging information. Furthermore, there is no assurance that the stated land grant rate will be the exact one which will be computed and used by the U. S. Government in any particular case (Com. Ex. 841-J).

Under date of January 2, 1936, the Institute in a circular letter to its members gave a more detailed statement with respect to the collection and dissemination of land-grant rates. It stated in part:

Briefly stated, our purpose in this regard is identical with the purpose which we have pursued for many years through our Traffic Bureaus in compiling and distributing information to the members regarding commercial freight rates. In other words, it is recognized that the cost of transportation is a necessary element for each manufacturer to consider when he quotes a price or files a bid on any other basis than f. o. b. mill. The compilation of freight rates provides a convenient instrument for the cement manufacturer in determining a delivery price, whenever he chooses to quote such a price.

\* \* \* \* \*

During the NRA code period when all cement manufacturers were required to file their prices and terms of sale, the methods which the different companies followed in bidding on Government business was a matter of public record. It became evident that many of the companies labored under difficulties, since it seemed that they were unwilling to deviate from their long established practice of quoting destination prices and yet bids of this nature would not assure to the Government the benefit of land grant rates.

In the Code days, companies which did not desire to quote f. o. b. mill prices to the Government filed their bids with certain control clauses, and as these conditions were made public other companies either adopted them or made certain changes. The result was that it became a widely prevalent practice, in the case of bids to the United States Government, for cement companies to quote what was called a "Government Destination Cost."

In bidding a Government Destination Cost it was the practice of the individual company to quote a figure which was based upon the mill net return (that the company was satisfied with in the particular case) to which was added the land grant or special rate to the destination. In the absence of exact information regarding the applicable land grant rate the company added its best approximation of that rate. The result was the so-called "Government Destination Cost," which was filed as a bid on the condition that the Government could determine the bidder's mill price (for purposes of invoicing) by subtracting the actual land grant rate or some other specified amount.

The so-called open price plan is no longer operative in the cement industry, so that it will no longer be possible for the Cement Institute to handle the filing of prices or of the Government Destination Costs. Nevertheless, the problems which arose under the open price plan continue to exist.

\* \* \* \* \*

\* \* \* Therefore, it is frankly admitted that, except in rare instances where the Government will make such computations and publish them in advance, it is not possible for anyone to have accurate information regarding the land grant rate applicable at a particular time between two particular points.

Nevertheless, the method of computing such land grant rates is so well known that the discrepancy between the figure arrived at by the Government and the figure arrived at by the railroads or others is negligible. For all practical purposes it is possible to secure estimated land grant rates which are practically identical with the actual ones. For this reason a careful computation of land grant rates amounts to factual data rather than to fanciful or arbitrary figures.

It is further recognized that it is a considerable burden for any individual company to secure information regarding all applicable land grant rates. It is obvious that cooperation of all the companies through the Institute will lessen this burden on each and should make it possible to secure the factual data more promptly and make it available for the assistance of each company (Com. Ex. 95-A, B, C).

A little more than a year after the date of the above communication, the general manager of the Institute notified members that "effective immediately The Cement Institute will discontinue the distribution of information on land-grant rates \* \* \*" (Resp. Ex. 169).

(o) The publication by certain respondents on the Pacific Coast of price lists showing commercial delivered prices at most destinations, and the exchange of such lists among themselves, did not aid such respondents in maintaining identical prices on sales to the Government where land-grant rates were involved. For a time there was some informal interchange of land-grant rates among certain of these respondents. This was followed in 1936 by the organization of the Pacific Coast Cement Institute, composed of members of the Institute and originally intended to become a division of the Institute. The relationship between the Pacific Coast Institute and the Institute was close, and for a considerable time after its organization the president of the former was a trustee of the latter. One of the principal activities of the Pacific Coast Cement Institute was the collection and dis-

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semination of land-grant rate information. In practice, the member respondents requested information on such rates from the secretary of the Pacific Coast Cement Institute as needed, and in replying to such inquiries the secretary sent copies of his letter to others so situated as to be in a position to bid on the particular project. Typical of the letters of notification sent by the secretary is the following:

The Southern Pacific Company general offices at San Francisco advise, under their file No. 2-S-12050-6702, that the following are the current commercial and approximate land-grant rates (in cents per 100 lbs.) on cement, minimum carload weight 60,000 pounds to *Elko, Nevada*.

*To Elko, Nev.*

From—	Commercial rate	Land grant rate
Davenport, Calif.....	30½	29.756
Redwood City, Calif.....	30½	None
Cowell, Calif.....	30½	None
Stockton, Calif.....	30½	None
Kentucky House, Calif.....	30½	None
Merced, Calif.....	30½	None
Devils Slide, Utah.....	30½	None
Monolith, Calif.....	47	43.268
Victorville, Calif.....	61	52.310
Colton, Calif.....	56	47.310
Crestmore, Calif.....	56	47.858
Los Angeles, Calif.....	56	48.532
Long Beach, Calif.....	59½	50.814
Salt Lake City, Utah.....	30½	None

(Com. Ex. 564-Q.)

PAR. 9. (a) Respondents' pricing formula, when supplemented by common freight factors, inevitably produces identical prices at any given delivery point by all sellers who use it. Identical prices are important to respondents because, under the conditions which have existed, a difference in price as small as one cent per barrel may divert business from one seller to another. In testifying, numerous officials of respondent companies have stated that ordinarily the commercial prices of all sellers of cement at any given delivery point are the same. An examination and comparison of the invoices in the record covering actual sales of cement made in April 1938 in some 250 widely scattered communities show an extremely high degree of uniformity in the delivered prices of cement at each delivery point by all respondents who made sales there. In particular locations at particular periods of time there have been arbitrary prices, including zone and area prices, and there have been instances where departures from the pricing formula have caused price differences, but in general it is true that the commercial delivered prices of all respondents making sales of cement at any given location have been identical.

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(b) The perfection of respondents' pricing formula in producing identical delivered prices is best illustrated, however, by sealed bids made to public agencies. Instances of bids by various respondents to public agencies, some of which involved the use of commercial rates and some the use of land-grant rates, follow. An abstract of the bids on 8,000 barrels of cement for the Navy Department at Brooklyn, N. Y., opened May 29, 1936, shows the following:

Name of bidder	Price per bbl.	Name of bidder	Price per bbl.
Allentown Portland Cement Co.....	\$2. 43	Lone Star of New York.....	\$2. 43
Alpha.....	2. 43	National.....	2. 43
Coplay.....	2. 43	Nazareth.....	2. 43
Edison.....	2. 43	North American.....	2. 43
Giant.....	2. 43	Penn-Dixie.....	2. 43
Hercules.....	2. 43	Standard Lime & Stone Co.....	2. 43
Keystone.....	2. 43	Universal.....	2. 43
Lawrence.....	2. 43	Vulcanite.....	2. 43
Lehigh.....	2. 43	Whitehall.....	2. 43

(Com. Ex. 387-E, F.)

An abstract of the bids on 1,200 barrels of cement to the United States Engineer Office at Vicksburg, Miss., opened August 30, 1937, shows the following:

Name of bidder	Destination cost to Government, f. o. b. Monroe, La., on Government bills of lading	Amount f. o. b. local switch, Missouri Pacific R.R., Monroe, La.	Name of bidder	Destination cost to Government, f. o. b. Monroe, La., on Government bills of lading	Amount f. o. b. local switch, Missouri Pacific R.R., Monroe, La.
Penn-Dixie.....	\$2, 772	\$3, 060	Lone Star.....	\$2, 772	\$3, 060
Arkansas.....	2, 772	3, 060	Monarch.....	2, 772	3, 060
Universal.....	2, 772	3, 060	National.....	2, 772	3, 060
Cumberland.....	2, 772	3, 060	Consolidated.....	2, 772	No bid
Trinity.....	2, 772	3, 060	Volunteer.....	2, 772	3, 060
Signal Mountain.....	2, 772	3, 060	Georgia.....	2, 772	3, 060
Alpha.....	2, 772	3, 060	Hermitage.....	2, 772	3, 060
Lehigh.....	2, 772	3, 060			

All bids subject to 10 cents per barrel discount for payment in 15 days (Com. Ex. 180-A).

An abstract of bids on 600,000 barrels of cement in bulk and 10,000 barrels sacked in paper to the War Department for the Fort Peck, Mont., dam, opened July 25, 1935, shows the following prices per barrel:

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Name of bidder	Bulk per bbl.	Paper per bbl.	Name of bidder	Bulk per bbl.	Paper per bbl.
Universal.....	\$2. 5054	\$2. 7145	Three Forks.....	\$2. 5054	\$2. 7145
Huron.....	2. 5054	2. 7145			

All bids subject to 10c per barrel discount (Com. Ex. 168-A).

A list of the bids for 500 barrels of cement for the United States Industrial Reformatory at Chillicothe, Ohio, opened June 12, 1936, shows the following:

Name of bidder	Price per bbl.	Name of bidder	Price per bbl.
Alpha.....	\$2. 02	West Penn.....	\$2. 02
Green Bag (West Virginia).....	2. 02	Bessemer.....	2. 02
Southwestern.....	2. 02	Lehigh.....	2. 02
Standard.....	2. 02	Superior.....	2. 02
Universal.....	2. 02	Louisville Cement Co.....	2. 02
Medusa.....	2. 02	Diamond.....	2. 02
Pittsburgh Plate Glass.....	2. 02	Wabash.....	2. 02

All bids were subject to 10 cents per barrel discount for payment in 15 days (Com. Ex. 373-A).

An abstract of the bids for 1,000 barrels of cement for the United States Penitentiary at Leavenworth, Kans., opened September 3, 1935, shows the following:

Name of bidder	Price per bbl.	Name of bidder	Price per bbl.
Universal.....	\$2. 163424	Lehigh.....	\$2. 163424
Ash Grove.....	2. 163424	Monarch.....	2. 163424
Missouri.....	2. 163424	Consolidated.....	2. 17528
Lone Star.....	2. 163424	Dewey.....	2. 163424

All bids subject to a 10 cents per barrel discount for payment in 15 days (Com. Ex. 370).

An abstract of the bids to Tennessee Valley Authority on 200,000 to 800,000 barrels of cement, or partial quantity, at Coal Creek, Tenn.; 100,000 to 700,000 barrels, or partial quantity, at Wheeler Dam; 100,000 to 700,000 barrels, or partial quantity, to the Wheeler Dam Authority; and 100,000 to 700,000 barrels, or partial quantity, at Sheffield, Ala., opened October 15, 1934, shows the following:



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Name of bidder	Coal Creek	Wheeler contractor	Wheeler authority	Sheffield, Ala.
Alpha.....		\$1. 8798	\$1. 8398	\$1. 7008
Universal.....		1. 8798	1. 8398	1. 7008
Marquette.....		1. 8798	1. 8398	1. 7008
Lehigh.....		1. 8798	1. 8398	1. 7008
Hermitage.....	\$1. 7384	1. 8798	1. 8398	1. 7008
Cumberland.....	1. 7384	1. 8798	1. 8398	1. 7008
Signal Mountain.....	1. 7384	1. 8798	1. 8398	1. 7008
Lone Star (Alabama).....		1. 8798	1. 8398	1. 7008
National.....		1. 8798	1. 8398	1. 7008
Georgia.....		1. 8798	1. 8398	1. 7008
Penn-Dixie.....	1. 7384	1. 8798	1. 8398	1. 7008
Volunteer.....	1. 7384			

All bids were subject to a 10 cents per barrel discount for payment in 15 days. Some bidders limited their offers to partial quantities (Com. Ex. 401).

An abstract of the bids for 6,000 barrels of cement to the United States Engineer Office at Tucumcari, N. Mex., opened April 23, 1936, shows the following:

Name of bidder	Price per bbl.	Name of bidder	Price per bbl.
Monarch.....	\$3. 286854	Consolidated.....	\$3. 286854
Ash Grove.....	3. 286854	Trinity.....	3. 286854
Lehigh.....	3. 286854	Lone Star.....	3. 286854
Southwestern.....	3. 286854	Universal.....	3. 286854
Oklahoma.....	3. 286854	Colorado.....	3. 286854
U. S. Portland Cement Co.	3. 286854		

All bids subject to 10 cents per barrel discount for payment in 15 days (Com. Ex. 175-A).

(c) The operation of the pricing formula in bids submitted to State agencies is indicated in the following description of a few such bids:

On January 18, 1935, the Louisiana Highway Commission received bids from Trinity, Marquette, Monarch, Universal, Penn-Dixie, Lehigh, Alpha, Arkansas, and Lone Star for 238,000 barrels of cement delivered at 70 different destinations. Although differing as between destinations, all of the bids at each destination were identical, except that Monarch was higher than the other bidders at three destinations (Com. Ex. 2454-A, B).

On March 30, 1937, the Illinois Highway Commission received bids for 125,000 barrels of cement delivered at 102 different destinations. Alpha, Lehigh, Marquette, Universal, Lone Star, and Medusa bid at all destinations; Missouri bid at 71 destinations, Dewey at 56, and Ash Grove at 35. Although differing between destinations, all of the bids received at each of 98 destinations were identical; Dewey was higher than the others at 1 destination, and Lone Star was higher at 2 and lower at 1 destination than the others (Com. Ex. 1879).

In February 1937 the North Carolina Division of Purchase and Contract received bids for 500,000 barrels of cement. Excluding a few destinations at which

only one bid was received, the record shows bids at 144 destinations. Cumberland and National bid at 115 destinations; Southern States, Superior, and Hermitage at 113; Penn-Dixie at 112; Lehigh at 111; Signal Mountain at 110; North American at 97; Medusa and Universal at 94; Lone Star and Volunteer at 92; Alpha at 83; and Standard Lime & Stone at 81. Although differing between destinations, all the bids received for each destination were identical, except that Lone Star was higher than other bidders at 2 destinations, Cumberland was higher than others at 1 destination, Superior was higher at 1, and Volunteer was higher at 1 destination (Com. Ex. 12-A, B).

(d) Sometimes a respondent, who for some reason did not desire to sell at a particular location but did at others, or wished to retain his name on the list of bidders, bid a price higher than the basing-point pattern provided. When a respondent, by reason of miscalculation or mistake, made a bid lower than the basing-point pattern provided, he would sometimes correct or withdraw, or seek to correct or withdraw, such bid.

(e) Except to the extent that the dissemination of delivered prices during the NRA Code period and some seven months thereafter necessarily carried with it an exchange of base prices, and except for limited direct exchanges among certain respondents which the record does not show to have been made under the auspices of the Institute, there has been no systematic exchange among the corporate respondents of basing-point prices or changes in such prices. No such exchange is needed in the successful operation of the multiple basing-point delivered-price system. When a corporate respondent makes a change in its base price, written delivered-price quotations reflecting this change are usually sent to all customers. Through common customers and through salesmen in the field, information concerning this change reaches the other respondents selling cement in that area almost immediately. Examination of a reasonable number of the new price quotations reveals the pattern followed and thus discloses the base price change made. Notices of price increases are usually sent to customers five days in advance of the effective date thereof; and in the case of a decrease, customers are usually given the benefit of the decrease on shipments made during the five days preceding the decrease.

PAR. 10. (a) In the operation of the pricing system hereinbefore described, national in its scope, it is to be expected that there will be some producers who prefer more independence of action than the system permits, who wish to exploit natural advantages, or who cannot resist the temptation to break away from the system in seeking particularly attractive business. This has occurred, and the departures have probably been more frequent among price followers. Successful maintenance of the system requires, therefore, that the price leaders, usually the larger chain mills, possess the power to force recalci-

trants to adhere to the system and that this power be exercised when necessary. The multiple basing-point delivered-price system has inherent within itself means for enforcing its observance. One producer can, by putting a base price into effect at the mill of another producer, absolutely fix the maximum mill net of that producer, usually without affecting the mill net on more than a portion of his own business. If a large producer with mills at many points places a base price upon the mill of another producer, the effect upon his own mill net may be insignificant. The loss to the producer whose mill has been subjected to an involuntary or punitive base is much greater than the loss to the producer who imposes the base, because the net return on all of the former's business is affected. In practice, punitive bases have frequently been lower than the base price of the seller imposing them. An involuntary base tends to localize the price cut made and place the maximum effect thereof upon the producer whose departures from the pricing formula have invited the imposition of a punitive base. Some of the leaders of the cement industry have not hesitated to use this instrument to force adherence to the pricing system used in the cement industry. The following circumstances illustrate the operation of this policy.

(b) In 1927, about a year after the South Dakota State Cement Mill began operating at Rapid City, Lehigh applied an involuntary base to it which resulted in lowering the mill net of the new plant by approximately 60 cents per barrel. A representative of Lehigh testified that before the imposition of this involuntary base the State plant had made many prices lower than its openly published prices. In January 1930, at a time when prices were increased at surrounding basing points, the base price at Rapid City was left unchanged. Correspondence between representatives of Monolith Midwest indicates that the reason the base price at Rapid City was left unchanged was that the State mill had not fully conformed to its competitors' views of what constituted proper practices in the sale of cement. A letter between these representatives dated January 22, 1930, states in part:

Yesterday morning Mr. Morse of the Colorado Portland Cement Co. phoned and said that Mason City base was up 25¢, that he had heard of no changes. Immediately on receipt of this information I telephoned to Mr. Hartley and he told me that he had quotations out raising his mill base 25¢ at points where it applied in Wyoming, Nebraska, North and South Dakota, but that he was having difficulty in the eastern part of his territory and he did not know whether or not he would stand by these quotations. It all depended on whether or not the other manufacturers were going to follow. I assured him that we would follow in Wyoming but that we could not speak for the rest of the industry, although I would take the matter up with the Colorado Portland Cement Co.

This I did and Mr. Morse assured me that he would raise his prices in Wyoming 25¢, wherever the Rapid City base governed.

I telephoned this information to Mr. Hartley and he said that he would let his quotations stand but he wanted the Colorado Portland Cement Co., to commit themselves to him and asked me to have Mr. Warner telephone him. This I did and late in the afternoon Mr. Morse called me and said that he had been talking to Chicago and had learned from them (I suppose he meant Universal) that Rapid City had quotations out on the new figure but that they accepted business at the old price for shipment during April. Morse said that in view of this he was reluctant to change his quotations until he was sure that Rapid City would stay in line. This morning Mr. Warner telephoned me and said that he was leaving tonight for Chicago to attend a meeting and endeavor to straighten up the situation (Com. Ex. 1202-G).

A second letter between the same parties dated January 30, 1930, states in part:

This morning Mr. Warner, of Colorado Portland Cement Co., advised me by phone that the gas belt mills had increased their base 20¢ per barrel. This means a general increase in prices in practically all of our shipping territory. The basing point will move from Iola to Kansas City. As yet there has been no changes reported from either Sugar Creek or Bonner Springs so we are basing our new prices on \$1.55 Kansas City.

Warner had just returned from Chicago and he says that the powers in the East are inclined to let the Rapid City base stay where it is; in other words, they will not increase price where Rapid City controls until they have some definite assurance from Rapid City that they will abide by it. Warner says that they put out quotations on a base of \$1.65, their mill, and then were willing to accept business for delivery during April. As long as this condition is in effect, it means there will be no change in prices at any Wyoming points controlled by Rapid City. Warner further said that the industry as a whole hesitates to take this matter up with the South Dakota officials because their experience in the past has been that the Governor of South Dakota broadcasts anything that is told to the officials of the cement plant and makes the statement that the cement trusts are trying to control their mill (Com. Ex. 1202-K).

(c) On December 5, 1927, Lone Star imposed an involuntary base at a nonbase mill at Spocari, Ala. In furnishing information to John M. Clark and Arthur R. Burns, two economists, employed by the Institute, Lone Star explained this action by saying:

Spocari producer was found to be passing to buyers, secret rebates (representing freight advantage) deducted from open quotation calculated on N. Birmingham base (Com. Ex. 975-5U).

The following year Lone Star acquired this mill upon which it had imposed an involuntary base.

(d) The tabular statement in paragraph 3 setting forth total sales of cement by years shows the heavy toll the advancing depression began to take in the cement industry in 1930 in the form of reduced sales. This decline in sales volume led some of the respondents to

seek attractive orders through departures from the multiple basing-point delivered-price formula in the form of nonidentical lower prices in particular transactions. As these departures became more frequent, numerous involuntary punitive bases were imposed upon price-cutters. Lehigh placed an involuntary base upon the Painesville, Ohio, mill of Standard. A representative of Lehigh, in explanation of this, testified that Standard's prices appeared to vary from day to day and job to job. Alpha placed involuntary bases upon the Osborn, Ohio, mill of Southwestern and the Fultonham, Ohio, mill of Pittsburgh Plate Glass. A representative of Alpha, in testifying concerning this, indicated that the action was the result of spotty competition. Lehigh placed involuntary bases upon the Louisville, Nebr., mill of Ash Grove and the Kosmosdale, Ky., mill of Kosmos. Involuntary bases were also established at the Ada, Okla., mill of Oklahoma; the Dewey, Okla., mill of Dewey; the Superior, Nebr., mill of Nebraska; the Cape Girardeau, Mo., mill of Marquette; and at other points.

(e) The unsettled price conditions during this period and the imposition of numerous involuntary bases created considerable resentment on the part of some respondents against what was felt to be the arbitrary action of the larger units in the industry, and both conditions contributed to the withdrawal of many members from the Institute and the Portland Cement Association. There was much activity among respondents in seeking to work out the situation, restore price stability, and secure the removal of the involuntary bases. Illustrative of these activities are the following extracts from correspondence among various respondents. On April 23, 1931, W. H. L. McCourtie, president of Trinity, wrote Joseph S. Young, chairman of the committee on public relations of the Portland Cement Association and president of Lehigh. After setting forth how thoroughly Trinity had cooperated with the association since 1916, Mr. McCourtie stated:

\* \* \* In view of the fact, however, that conditions indicate—at least as I see them from this distance—that a dissolution or a disintegration of the Association is now imminent, I can see no very good reason for its acquiring or our giving any information which is intended to be used for the benefit of the industry as a whole.

If one of the larger units in the industry—such as the one with which you are identified—can justify the broadcasting of quotations three or four hundred miles further from its mill than it ever heretofore has made either quotations or shipments, and to which territory it does not expect to make any shipments—the quotations being made simply for the purpose of compelling another manufacturer, legitimately and properly serving that territory, to sell his product at a much lower price than he otherwise would—then I can see no very good reason for maintaining an Association, nor to further attempt any active cooperation with such units.

Frankly, I cannot make myself enjoy the idea of any other company giving away my money, not only without saying "by your leave," but without a commercial grievance of any kind against us that would in any sense justify such action (Com. Ex. 1195-A, B).

On April 18, 1931, L. T. Sunderland, president of Ash Grove, wrote to Charles Boettcher, who controlled the respondents composing the "Ideal" group, referring to "this cement market debacle" and stating in part:

My present conviction is that the five or six interests which apparently observed the published market at the recent Oklahoma bidding, should get together as soon as possible and organize, for mutual protection and to map out a constructive program. Until at least a few of us can present a solid front and have something constructive to offer, I feel any individual efforts to try to placate our belligerent Eastern friends would be futile at this time and might longer delay market recovery.

On account of commitments I cannot readily change, I shall be away the greater part of next week; but if it is agreeable to you and your mind reacts favorably to the above suggestion I shall be very glad to try and arrange such a conference at Kansas City at the earliest date after my return as may best suit your convenience (Com. Ex. 2245).

On May 28, 1931, Charles Boettcher wrote Frank Powell, president of Southwestern, in part:

I wish you would give me some idea as to what success you people had at the New York Meeting, and whether anything will be done in the near future. As you know, we have this \$1.00 base at Ada and also at the Nebraska plant and I am extremely anxious to have this taken off if it can be done, so if you people have a meeting in the near future, I would like to attend it, or help all I can. Of course, I don't want to go to New York, but if the meeting is in Chicago or this side of Chicago, I will be glad to attend, if you want me to (Com. Ex. 2248).

On June 5, 1931, Charles Boettcher wrote to B. H. Rader, vice president of Lehigh, stating:

As I wired you May 29, I went to Kansas City last Monday and returned here Wednesday. We had a pleasant meeting in Kansas City; there were only a few present and everything went off very nicely, but, at the same time, I can't see that we accomplished much. No doubt, you heard all about it from Mr. Norcross, as he represented the committee of twelve appointed to see the various people. We have agreed to join the Association; under certain conditions which could easily be complied with.

When I saw you in Chicago, you said you would do what you could to take off the base at our Ada plant. I am very anxious, Mr. Rader, to have that done and I believe, with your help, it could be done. Will you not kindly advise what you can do for me and when I may look for a change in conditions, that is, when we will have the privilege of putting our own base on our mill. This is not asking a great deal, as your putting a base on our mill does not help you at all and it injures us very much. Will you not please see what you can do for us, and I certainly will be glad to return the compliment (Com. Ex. 2249).

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On August 13, 1931, L. T. Sunderland, president of Ash Grove, wrote Charles Boettcher, president of the Ideal Cement Co.:

After leaving you today I tried to reach Hiram by phone but was unsuccessful, and therefore sent him a personal note, copy herewith, so he could shape his plans accordingly.

I think it leaves the matter in excellent shape since it will allow Hiram time to develop the phases of the situation which he was delegated to try and get straightened out as far as our districts are concerned. In the meantime none of us will be paying additional dues which, we all agree with you, none of us should pay unless, and until, the principle is recognized that each company has the exclusive right to determine its own maximum selling (base) price at its own mill (Com. Ex. 2257).

A copy of the note referred to in the above letter, addressed to Hiram Norcross, reads in part:

After you left I had an opportunity to further discuss the situation with Mr. Boettcher, who authorized me to say his companies would join with others represented today in making application to join the P. C. A., effective January 1, 1932, without attaching to the application any conditions, but with the understanding nevertheless (among ourselves only) that if matters mentioned are not in the way of being straightened out before the annual meeting in November (when the amendments are to be submitted), the applications may be withdrawn (Com. Ex. 2258).

(f) An examination of the details of the imposition of an involuntary base is further illustrative of the practice. Marquette, with a mill at La Salle, Ill., and a nonbase mill at Cape Girardeau, Mo., where it had the benefit of water transportation, frequently departed from formula pricing, and particularly in sales for delivery at locations where it would derive a high mill net. The president of the Cowham Engineering Company, manager of several respondents, wrote the president of one of these on May 6, 1929, stating in part:

A 60¢ Cape Girardeau base, I understand, was very narrowly averted last week. This has been brought about by Marquette and I am not at all sure it will not be the base price there before the Summer is over \* \* \* (Com. Ex. 2379-B).

In bids to the Indiana Highway Commission on November 19, 1929, there were 15 bidders, all of whom except Marquette bid according to the multiple basing-point delivered-price formula. Marquette bid according to the formula at 58 destinations, but bid below formula prices at 32 destinations and was low bidder by a few cents at each of these. It was partially out of line on other bids, and on November 26, 1930, Alpha put an involuntary base of \$1.35 net on Marquette's Cape Girardeau mill, a reduction of 10¢ per barrel, and on December 1st reduced this involuntary base by 10¢ per barrel, making a total reduction of 20¢ per barrel. Alpha explained this action by stating

that Marquette had made "Special prices to paving contractors later met by Missouri Portland" (Com. Ex. 975-4L). The economic situation was worsening as the depression advanced and departures from formula prices were becoming more frequent. On March 13, 1931, the vice president and manager of the Davenport mill of Dewey wrote F. E. Tyler, president of that concern, in part:

Illinois is taking bids again on March 26, and I am wondering what will happen. If somebody could get Marquette in line to bid with the rest there would be a chance to the awards being made. As long as Marquette continues to cut and take all the business, I doubt if the State will make awards, \* \* \* (Com. Ex. 2178).

By the latter part of May 1931 the Cape Girardeau involuntary base price had been reduced to \$1 per barrel net. On August 13, 1931, the president of Dewey wrote the manager of the Davenport mill of that company in part:

This will acknowledge your letter of August 12th advising the Marquette Company are making deals of 10¢ off to practically all lineyard lumber companies.

The above practice has of course been chronic with them during a long period of time \* \* \* (Com. Ex. 2185).

When price stability was being approached in some other areas in 1932 on the basis of advanced prices, Lone Star on June 3, 1932, reduced the involuntary base at Cape Girardeau to 75 cents per barrel net. The minutes of a meeting of the board of directors of the Portland Cement Association for July 12, 1932, show the following:

Joseph S. Young reported that he had, with Mr. Rader, interviewed T. G. Dickenson of the Marquette Cement Manufacturing Company, who agreed to take membership in the Association effective July 1.

President Mehren reported that he had been in communication by telephone with F. E. Tyler of the Dewey Portland Cement Company, H. L. Block of the Missouri Portland Cement Company, and C. B. Condon of the Hawkeye Portland Cement Company, who had agreed, provided the Marquette Manufacturing Company resumed membership, to do the same thing.

F. L. Stone reported that the Universal Atlas Company would withdraw for the time being its letter of May 13 regarding the payment of dues on the production of their Buffington, Indiana, Hannibal, Missouri, and Independence, Kansas, plants.

J. B. John advised that the Medusa Portland Cement Company would withdraw its resignation in view of the action outlined above (Com. Ex. 3005-E).

On July 16, 1932, the manager of the association telegraphed Missouri:

Wecker of Marquette just telephoned that he was mailing membership application effective July one (Com. Ex. 3003).

On the same date Marquette increased the base price at its Cape Girardeau mill by 40 cents, making it \$1.15 per barrel net, and this



advance was accepted within a few days by other companies operating in that area. In December 1932 Marquette made two advances of 10 cents per barrel each, thus increasing its Cape Girardeau base to \$1.35 net, and these advances were accepted by other companies. Various price advances were being made at other bases from time to time, and in June 1933 Marquette advanced its Cape Girardeau base to \$1.60 per barrel net. The general advances at various bases resulted in eliminating a number of the involuntary bases which had been imposed. In March 1935 the Cape Girardeau base was advanced to \$1.70 per barrel net, in February 1936 to \$1.75 per barrel net, and in March 1937 Marquette increased the Cape Girardeau base, to use the language in which the advance was described by Universal, "from \$1.75 to \$1.90 or some other figures sufficiently high to make this base price inactive in figuring delivered prices as against other base prices now in effect" (Com. Ex. 3340). Thus, Marquette's Cape Girardeau mill returned to its former status as a nonbase mill.

(g) The opposition to the use of punitive bases which developed among some of the respondents as a result of the numerous instances in which such bases were imposed in 1930, 1931, and 1932 found expression in the tentative draft of a code to be proposed to NRA, as recommended to the trustees of the Institute by the Institute membership in Districts 5, 7, and 8, an area in which many punitive bases had been imposed. The provision suggested was:

Fair competition requires fair standards in the attitude of each member of an industry toward his competitor, to the end that competition may be honest, open, and fair. The following practices are not in accord with this standard and will not be used:

\* \* \* \* \*

5. For a manufacturer to establish a maximum (base) price at the mill of a competitor constitutes an act of unfair competition (Com. Ex. 828-7F, 7G).

The Code as proposed to the National Recovery Administration by the Institute did not, however, contain any suggested prohibition against involuntary or punitive bases.

(h) The necessity for retaining the compelling force, both actual and potential, of punitive bases in restoring and maintaining uniform prices determined according to the multiple basing-point delivered price formula was evidently recognized and accepted, for when the Institute in December 1935 adopted the "Compendium of Established Trade Methods and Marketing Policies," which listed many practices as unfair, punitive bases were not among the practices so listed. In fact, the president of Kosmos, one of the respondents which had been subjected to an involuntary base, prepared a memorandum dated December 6, 1935, which he submitted to B. H. Rader, vice president

of Lehigh, the company which had imposed the involuntary base on Kosmos, suggesting the systematizing of the method of imposing involuntary bases. He wrote in part:

Practically all manufacturers want an adequate price for their product. Some however, noting the great effect of volume upon costs and the great effect of a cent or two off the price on sales, try to secure both a satisfactory price and an unusual volume by small secret price cuts. So long as these cuts remain really secret (which is seldom) or so long as the great majority of competitors ignore them, such a policy is highly profitable to its followers. But it is very bad economics for the competitors not to meet the real prices: The great overproductive capacity of our industry is largely due to that policy in the past. At the same time it is bad practice, leading straight to chaos, for each manufacturer to take individual action purely on his own information or suspicions; there is too much room in that for biased reports, personal dislikes, hasty assumptions and so forth.

What is needed is that everyone in the industry shall know that if he reduces the going price, no matter by what subterfuge, the general open price will fall to his figure and that this principle will operate with the same certainty as the law of gravity. As a first step to assure such certainty all available sources of information must be used: short of a complete audit of the books, which probably cannot be had, the consensus of opinion of the competitors directly affected is the best criterion of whether a price has actually, by any means whatever, been changed. As a second step there must be a determination on the part of the individual companies, if there has been a deliberate and intentional cut, to follow it, regardless of an apparent temporary loss by so doing. That is the price of stability and in the long run it is the cheapest way of getting stability at a fair level of prices.

A plan to carry out the foregoing might be as follows:

1. Continue reporting past transactions as under the Code and as permitted by the Supreme Court decree in the cement cases.
2. Elect from time to time a Chairman and a Vice-Chairman for each State (or subdivision of a State if found desirable) and hold regular meetings every two weeks, the days being staggered as between adjoining States. Additional emergency meetings could be had on call or the regular meetings could be reduced if the need for them were less. All companies shipping into a State would be asked to send a representative to each meeting.
3. The meeting would be a fact finding jury, each company present having one vote. Any accusation as to a lowered price would be written to the Chairman with supporting facts, anonymously, far enough in advance to enable him to notify the company suspected so that the latter might have its representative present prepared to reply. The Chairman would read the accusation and as far as possible the identity of the accuser would remain unknown in order to reduce personal feeling. After the reply and any discussion that might follow one representative for each company would vote anonymously as to whether the price had actually been changed and, if so, to what amount. In case a company accused did not attend or answer the jury would have to decide without the aid of that side of the case. Without being bound to do so, which would be illegal, there would be a strong influence upon each individual manufacturer to guide his course by the verdict of the jury (Com. Ex. 817-G, II).

Mr. Rader submitted this memorandum to Joseph S. Young, president of Lehigh, who commented on it in a letter to Mr. Rader dated January 6, 1936, in part as follows:

The basic principle upon which the plan is predicated is that force is the only practical stabilizer. What is meant by force, I presume, is price. As you know, I have always been firmly of the opinion that it is only through price control that stabilization can be accomplished and I agree wholeheartedly with the argument that the threat of general price reductions to meet lower competitive prices in the field is the only method that has yet been discovered to insure price maintenance.

\* \* \* \* \*

To summarize, I question whether there is any difference in principle between Lehigh's conception of market stabilization and the basic theory of price maintenance outlined in the plan. However, before discussions of the plan proceed further I would like to suggest that its proponent submit an outline to his attorneys for a specific opinion \* \* \* (Com. Ex. 817-I, J).

(i) In at least one case failure to conform fully to the pricing and marketing practices established by respondents had results of a personal nature to executives of the company concerned. Harold S. Cree became sales manager of Aetna about 1910 and Oscar Lingeman was general manager of that company for many years. During the time these individuals were its managing officials the company, out of earnings, was able to, and did, greatly improve its original plant and build a much larger plant at Bay City, Mich., which increased the productive capacity of the company to approximately 1,200,000 barrels annually. Aetna's sales cost per barrel was unusually low, and at a time when the average rate of production in the industry was around 23 percent of capacity, Aetna operated at about 70 percent of capacity. The controlling interest in Aetna was held by individuals residing in and near Boston, Mass. F. R. Johnson of Boston, president of the United Shoe Machinery Co. and an official in other companies, was also president of Aetna. Messrs. Cree and Lingeman had followed a somewhat individual course and did not in all instances conform to the pricing and marketing practices used by their competitors. More than once involuntary bases were imposed on Aetna because of such nonconformity, and finally competitors began complaining frequently to F. R. Johnson, bringing to his attention instances of nonconformity. On October 3, 1933, Mr. Johnson wrote Oscar Lingeman, with directions that the letter be read and initialed by Lingeman, Cree, and certain other employees and thereafter returned to him, saying in part:

Referring to the conference which Harold Cree and I attended on Friday last, at which there were also present, Mr. Stone of the Universal Atlas Cement Co., Mr. J. B. John of the Medusa Company, Mr. Rooney of the Huron Company, Mr. Lucas of the Petoskey Company, a representative from the Marquette Company, and later we called on Mr. Emil Stroh of the Wabash Company.

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It seems to me that the results of that conference should be a matter of record.

1. We admit that we had made a blunder when we quoted on the Government—Muskegon and Holland, Mich. Jobs, March, 1933, and I promised that this will not happen again.

2. I did admit that while we quoted regularly on the Indiana letting in December, 1932, we did quote irregularly and different from the others in March, 1933, by using the Wyandotte base. The result of that bidding has been rather disastrous, as I see it.

3. It was stated that the other cement concerns could never find out definitely just what we were doing, when they called us by telephone, and that our answers were evasive. My answer to this was that we *will tell* them at all times how much a particular contract is for; and we are perfectly willing to tell them, if they inquire, at what price we took the order. Moreover, I stated that if we were in doubt or not clear what was going on or we sensed any trouble in the market, we would not hesitate to call up Mr. Rooney or Mr. Lucks, Mr. John or Mr. Jennings, or anyone else, and ask them about the situation, in order that we might know and not unintentionally tear down a situation. They stated that they would answer those questions promptly and freely, and we will do the same.

4. As to the Milwaukee situation and Pipkorn, that was discussed and we agreed that we should not allow a jobber to buy a large amount of cement with an idea that he could use it later on to burst open the market; if he did, then in future we should be careful as to how much cement we sold him, and try to control the situation. I appreciate that when a man buys merchandise and pays for it, it becomes his own and we cannot very well tell him what he shall do, but we must try to prevent a condition of this kind again.

5. We agreed that at any time, whenever we are going to enter a *new territory*, we would carefully survey and look over that territory, to find out what procedure should be followed, what the customs were in that particular territory, in order that we might not knowingly tear down any price structure.

So in summing it all up, I pledged my word and the word of the Aetna Cement Company that we would play the game one hundred percent—there would be no deviation from this in any way; we would be regular in quotations, fair in speech, in impressions and innuendoes, which we would expect others to be. With that general understanding, all trouble caused by chiseling will be eliminated, and we shall go on in a harmonious way (Com. Ex. 20-A, B).

In October 1935 Mr. Cree, in a memorandum to Mr. Lingeman concerning criticisms lodged with Mr. Johnson by competitors, said in part: "This memo would suggest that we do everything that our competitors say that we should do which we know is to their benefit rather than to ours and it makes us realize that they and not ourselves, are running our business, so naturally, to put over their demands, they would hold out an increased price in cement. That is becoming smart business" (Com. Ex. 37-B). On December 13, 1935, Mr. Johnson wrote Mr. Lingeman, saying in part:

I now refer you to our policies, as dated December 6, which were read at the meeting the other day; and for your information I will say there were present at that meeting the following men:

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Mr. Ben Calvin and Mr. William Storey, of the Consolidated Cement Co., Jackson, Mich.;

Mr. J. B. John and Mr. Harry Lucas of the Medusa and Petoskey Cement Companies;

Mr. Burt Rooney of the Huron Cement Co.;

Mr. Frank Mooney, Sales Manager of the Wolverine Cement Company;

Mr. Archie Conkrite (who came in later), of the Universal Atlas;

Mr. Jennings of the Wabash (who likewise came in afterwards);

Mr. D. C. Colburn, Vice Pres. of the Marquette Co.;

Mr. William Russell and Mr. Luck of the Peerless;

Mr. F. R. Johnson, Mr. Oscar Lingeman, and Mr. Harold Cree, of the Aetna Company.

You will remember that at that meeting all things were discussed clearly.

I call your attention to the second page—first paragraph—as it was read at that meeting. Now in the first paragraph, we speak about selling to dealers. It is clearly understood that we sell to a dealer at our regular price. What profit he makes is a matter up to him, and we will not attempt to concern ourselves about that, but he must not deliver that cement, except into his own locality; and he must confine himself to the districts in which he is entitled to operate. If he cannot do that, or will not do that, then we must tell him definitely that we cannot sell him.

Now this is a matter of much importance and I want you and your organization to start at once to see these people, whether it is McCall or who; and no better work can be done than to have Smullens, Sherry, Harold, and yourself if necessary, call on these people and explain the matter clearly to them, so that promised we will do, and we will; and it is up to you, Oscar, to see that it is done; and then when it is done, report to me, but this should not be allowed to drag, and Harold can report to you, as that is his line of operation, and I know he will.

The second thing to be taken up is this question of warehouse situation.

\* \* \*

After discussing warehouses under the control of a distributor named Smith with whom Aetna would continue, Mr. Johnson said:

Other concerns who have had a distributor (as Mr. Smith) have not had good results—perhaps that is because they did not have a good man; so please ask Mr. Smith to assist us in every way, so that we can build up higher prices in the market there, and in Michigan generally, because we have given our word that we will not tear down any price structure—we will build it up—and we don't care if we lose an order now and then; but we do want to sell every barrel of cement that we can, at the full price, and no advantages to be given to the purchaser in any way—trucking or anything else; not that I think he is doing it, but I do want to have him be careful, and be careful with his men.

You know, we in our organization have made mistakes when we should not, and shame on us.

Therefore, those three places are taken care of.

## CLEVELAND

See J. B. John about this. Have that O. K.'d and as soon as it is arranged, write me, and ask Mr. John to write me.

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## PORT HURON

See Mr. Russell and get that straightened out; and when it is, and it is O. K. for both of you, write me and have Russell write me.

As you see, I have started on this thing and I am going to go through with it.

DETROIT IS O. K.  
SAULT STE. MARIE

Withdraw from there.

## GRAND HAVEN AND TOLEDO

See what you can do in both places that will be satisfactory. It may be wise to withdraw from both places.

\* \* \* \* \*

I shall hope and expect that you will get right to work at this immediately. I believe it is the intention of you and Harold to work in accordance with my plans as laid down; in fact, I might say that it is very decidedly essential for your future value to this organization to do so, and I don't believe you will disappoint me (Com. Ex. 45-A, B, C, D).

In the spring of the following year a new dispute arose between Wabash and Aetna and a punitive base was again imposed at Bay City by Wabash in June 1936. Mr. Crapo of Huron wrote to Mr. Johnson on July 9, 1936:

I told Lingemann, at the time of our talk, that I was scheduled to leave within a day or two for the 50th Reunion of my Yale College class. I thought at that time that it would be possible for me to come back via Boston.

Before, I left, the Wabash had dropped the base at Bay City. Such incomplete knowledge as I have of this incident, led me to believe that Cree had highjacked a Wabash contract in a manner similar to one taken away from the Wabash a year or two ago, and that the result at this time was the same as before; i. e., the Wabash dropped the base. In the previous instance, the big brothers in the Cement Industry interested themselves in the matter, and accomplished a reconciliation which restored the base price.

It was my belief that you would be so busy on this matter, that it was not a favorable time to go to Boston to discuss the general situation.

It is too bad that Cree made this move, especially after his previous experience (Com. Ex. 909).

A few days after this, Mr. Johnson went to Detroit, discussed the situation with competitors, and then obtained the resignation of Mr. Lingeman and discharged Mr. Cree. Mr. Ben Calvin, present as a representative of Consolidated at the conference on December 6th, mentioned above, was then placed in charge of Aetna. Mr. Calvin proceeded to conduct the affairs of Aetna in a more cooperative manner, frequently discussing policies and prices with competitors. In a report to Mr. Johnson dated May 7, 1937, Mr. Calvin stated: " \* \* \* we are now merchandising our cement according to the

ethics of the industry" and explained that this involved the employment of additional salesmen because he was "In the process of getting business on a new basis" (Com. Ex. 97-A, B).

PAR. 11. (a) From time to time various developments have occurred which threatened to disrupt the operation of respondents' method of maintaining uniform delivered prices by means of the multiple basing-point system and common freight rate factors. One such development has been the desire of some dealers, contractors, and other purchasers to utilize motor trucks for the transportation of cement from respondents' mills or warehouses to destinations within a reasonable distance, particularly where such transportation may be more economical than shipment by rail or where direct delivery to a job by truck is more convenient, as well as cheaper or at least not more expensive than rail shipment, or where purchases of less than a carload quantity are desirable. It is obvious that if a purchaser is allowed to take delivery at the mill in trucks owned or controlled by him, the seller loses control of the destination price.

(b) The trucking of cement began about 1920. At first it was the general practice to sell cement f. o. b. trucks at the mill at the delivered price applicable to the buyer's destination, less the rail freight to that point. Purchasers quickly realized various advantages from trucking. Many of the respondents also recognized the advantages of trucking to the purchaser, but also began to recognize the effects which it had upon the uniform delivered-price system and began to examine and consider the relative advantages and disadvantages of their individual positions with respect to the trucking of cement in comparison with the positions of their competitors. Finally, around 1929 and 1930, the respondents through cooperation, understandings, and agreements among themselves and with other interested groups, began taking active steps to eliminate, discourage, and control the trucking of cement. The primary reason for this activity by respondents was the destructive effect of trucking upon the delivered-price system. There is testimony by some of the respondents stating objections which they had to trucking, such as added handling and loading expense, difficulty of providing loading facilities, dangers arising from trucks moving around their plants, and similar reasons. However, numerous respondents stated their reasons for making changes in their trucking policies prior to the issuance of the complaint herein. This was done in response to a questionnaire sent to Institute members by Professors Clark and Burns in the course of the study undertaken by them for the Institute in 1934 and continued in 1935, 1936, and 1937. Among the reasons given for eliminating, penalizing, or restricting trucking were the following. Lehigh said in part:

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The manufacturer, striving to figure his prices on indeterminate and fluctuating trucking rates and to meet the equally fluctuating and indeterminate rates from his competitors' plant, quickly found himself engaged in blind, reckless and destructive competition (Com. Ex. 969-14M).

## Alpha reported in part:

We could not control the deliveries and the many trucking prices disrupted our entire marketing and price structure (Com. Ex. 968-8I).

## Lone Star reported in part:

Unsatisfactory marketing conditions due to indiscriminatory trucking \* \* \* To protect our rail markets in the trucking zone from possible arbitrary rail price established by distant competing mills to meet this truck competition (Com. Ex. 969-3V).

## Trinity reported in part:

Because of uncertainty of price at destination when delivery was made to buyer's trucks at mill, whereas carload prices at destination were determinable (Com. Ex. 967-17G).

## Universal reported in part:

\* \* \* therefore we had no control of the delivered price at destination and could not prevent the disruption of marketing practices at destination (Com. Ex. 968-4H).

## Lawrence reported in part:

Our business has been built on a delivered price basis and when we were selling to buyer's trucks at the mill our whole price structure within a trucking radius of the mill was jeopardized (Com. Ex. 969-6P).

Many other respondents gave similar reasons, and there is other evidence of a substantial character that the effect of trucking on prices and distribution was the motivating cause of respondents' action with respect to trucking cement.

(c) One of the earliest restrictive steps taken, as shown by the record, was the addition of a 15-cent per barrel charge to the mill base price for delivery to trucks at the mill. On July 25, 1929, the sales manager of Penn-Dixie wrote to the then president of that company, Blaine S. Smith:

A plan is being developed to improve the trucking situation, particularly in the Lehigh Valley.

I understand this morning that the plan as now contemplated puts in a minimum price F. O. B. destinations of \$2.44 cloth, and a price F. O. B. trucks at all mills in the Lehigh Valley and New Jersey districts of \$2.40 cloth.

I will have additional information for you on this subject next Tuesday (Com. Ex. 2853).

By September and October of the same year the Lehigh Valley and New Jersey mills had in effect a 15 cents per barrel differential against delivery to trucks at the mill. This penalty of 15 cents per barrel for



delivery to trucks at the mill did not spread immediately to the Midwest, principally because Universal did not install the charge at its Buffington mill. On November 19, 1929, an official of Southwestern telegraphed from Chicago to another official of that company, stating in part:

**VERY QUIET MEETING LIGHT ATTENDANCE ESTABLISHING TRUCKING BASIS OUTLINED KLUGSTON LETTER DOES NOT HAVE SUPPORT IMPORTANT MILLS BUFFINGTON REFUSES ADD FIFTEEN CENTS TO MILL PRICE FOR TRUCK DELIVERY USELESS ATTEMPT CHANGE TO NEW BASIS UNDER THESE CONDITIONS (Com. Ex. 1270-A).**

Subsequently, however, Universal did impose the 15 cents premium on truck delivery at its Buffington mill.

(d) Various plans were used by respondents in different localities to discourage or control trucking. Some of these are indicated in a letter of June 16, 1933, from an official of Lone Star to the sales manager of Aetna:

Our company has perhaps the greatest number of plants located close to large consuming centers, and our company is probably better equipped for truck deliveries than any other company in the industry. Yet we have found it absolutely impossible to evolve any plan, and we have tried many, which will permit the use of trucks as a medium of transportation in their present uncontrolled state without seriously affecting our price structure or our earning capacity.

The so-called "Oswego plan" or "Cleveland plan," while not perfect, at least offers a minimum of difficulty as compared with the other plans which have been tried in the past. At Cleveland, for instance, trucking is limited to one county and the price delivered by truck is 5 cents higher than the price f. o. b. cars. Within the limited area of Cuyahoga County, into which trucking is limited from Cleveland, and Lucas County, where trucking is limited from Toledo, the 5 cents surcharge closely approximates the actual cost of moving cement from the nearest rail siding to any destination within the county. The same is true, to a lesser extent, however, around Oswego, yet at Oswego the condition is not so aggravated as to prevent the carload shipper from closely approximating the competition offered by those operating on a trucking basis and makes it possible, to some extent, for the carload shipper to compete without destroying the natural advantage which the local mill or silo should enjoy.

As we have previously stated, this plan is not by any means perfect. There is only one way in our opinion to solve the problem and that is to eliminate trucking entirely until such time as the truck is subject to regulation as a common carrier (Com. Ex. 422-E).

(e) Organized dealers began to oppose trucking because of fear of losing business through direct sales by manufacturers and because of keener competition which resulted among dealers if one dealer was able to deliver cement at a lower price through trucking, and other dealers could not or did not want to truck cement, or for other reasons desired to preserve the conditions existing under rail delivery. While the trucking problem was acute in 1931, W. W. Campbell, president

of the National Builders Supply Association, promoted a conference of interested parties which was held in New York City on July 22, 1931, and was attended by D. H. McFarland, then president of the Institute, and officials of various railway companies and railway associations. The purpose of the meeting was to discuss means of eliminating or controlling the trucking of cement. In a letter to Mr. McFarland dated July 18, 1931, Mr. Campbell included a postscript:

At this meeting I shall make a brief introductory remark, stating the purpose of and reason for calling the conference, then call on Holway to go more into detail. Afterward I shall call on you to give the Mfrs. angle (Com. Ex. 1470).

Mr. McFarland was called upon at the conference, as set out in the Campbell letter. At this conference it was arranged that railroad representatives would confer with cement manufacturers located on their respective lines. This was done, and some of the results are indicated in the following extracts from letters. J. L. Eysmans, vice president of the Pennsylvania Railroad Co., on August 26, 1931, wrote R. N. Collyer, chairman, Traffic Executive Association—Eastern Territory:

With the exception of the Green Bag Cement Company, Pittsburgh, Pa., with which organization the P. & L. E. is endeavoring to arrange conference, the cement companies assigned to us, as per your memorandum of July 27th, have been interviewed with the following results:

**UNIVERSAL ATLAS CEMENT COMPANY:**

President B. F. Affleck, of this concern, was interviewed at Chicago on the 7th instant and corroborated the statements made by Messrs. Campbell, Holway and McFarland at the New York conference on July 22nd as to the injurious effect that trucking is having on the cement industry. Mr. Affleck stated that if there is any reasonable indication that the other manufacturers are willing to discontinue the use of trucks or put on a 15¢ differential in those instances in which trucks are used, his company is willing to cooperate.

**BESSEMER PORTLAND CEMENT COMPANY:**

Representatives of the P. & L. E. and P. R. R. conferred with Mr. J. L. Dankel, Sales Manager, and Mr. G. T. Peterson, Traffic Manager of this company at Youngstown, O., on the 13th instant, in the absence of Vice President Schmutz. These gentlemen expressed themselves as being heartily in accord with the position of the New York conference on the 22nd ultimo and stated that they have been actively interested in the elimination of trucking in the Youngstown district.

\* \* \* \* \*

They further stated that dealers will not object to this as there is great danger under present conditions of their being eliminated altogether through delivery by trucks direct from mills to consumers.

**HERCULES PORTLAND CEMENT COMPANY:**

Mr. MacCarey, Traffic Manager of this company, was interviewed at Philadelphia on July 23rd and stated that while they were compelled to buy four

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trucks and trailers several years ago, that with the establishment of short haul rates in Trunk Line territory and also due to understanding with the other cement companies, they laid up their trucks and trailers about a year ago and have not trucked one ton since nor do they propose to do so. He stated, however, that they had a few cases of outside trucking companies coming to their plant and purchasing a few bags of cement but it was only for odd lots and did not amount in the aggregate to one carload per month.

Mr. MacCarey expressed his hearty accord with the contemplated program and promised his sincerest cooperation (Com. Ex. 1149-A, B).

On August 31, 1931, Mr. Eysmans again wrote Mr. Collyer concerning a conference with officials of the Green Bag Cement Co. of Pennsylvania, including A. P. Meyer, and said in part:

Mr. Meyer will make no commitment to discontinue the use of truck transportation, but indicated that if this is done it will be the result of an understanding within the cement industry rather than through intervention by the National Building Material Dealers Association or the railroads (Com. Ex. 1150).

On September 11, 1931, C. J. Brister, vice president of the New York Central Lines, wrote Mr. Collyer:

The Wyandotte Cement Company, Wyandotte, Mich.; Huron Cement Company and Peerless Cement Company, Detroit, Mich., have been interviewed with the following result.

The Peerless Cement Company stated they endeavor to ship via rail at all times, but are confronted with competition created through trucking on the part of other cement companies.

The Wyandotte and Huron companies expressed their desire toward confining their trucking operations to within a radius of twenty-five miles of their plants, but they likewise are affected by general trucking conditions. \* \* \* (Com. Ex. 1152-A).

On September 23, 1931, Mr. Brister again wrote Mr. Collyer, supplementing his previous letter:

\* \* \* Mr. H. F. Jennings, Secretary and General Manager of the Wabash Portland Cement Company, who have a plant at Osborn, Ohio, was interviewed, and he stated he was heartily in favor of the use of railroads, instead of motor trucks, for his shipments.

Mr. W. J. Jennings, General Manager of the Southwestern Portland Cement Company, who also have a plant at Osborn, was likewise interviewed, and he stated they were endeavoring to discourage their dealers specifying truck service, and in order to bring this about, they are adding 15¢ per barrel on movements via truck over their prices for shipments via rail (Com. Ex. 1153).

Representatives of the Central Railroad Co. of New Jersey, the Reading Co., and the Lehigh Valley Railroad, reporting to Mr. Collyer under date of September 3, 1931, stated:

The undersigned had a conference with Colonel E. M. Young, President, Lehigh Portland Cement Company, at Allentown, Pa., on August 12th. We discussed the question raised by the National Building Material Dealers Association at considerable length and Colonel Young, with reservations due to com-

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petitive conditions in the trade at certain points, assured us of his desire to cooperate with the railroads and the Building Material people (Com. Ex. 1146).

On September 3, 1931, John Duffy, vice president of Lehigh Valley Railroad Co., wrote Mr. Collyer in part:

This is to advise that I have called upon Mr. Blaine S. Smith, President of the Pennsylvania Dixie Portland Cement Company, and Messrs. C. L. Hogan, Executive Vice President, and H. C. Koch, Vice President in charge of Sales of the International Portland Cement Company (Lone Star). \* \* \*

Mr. Smith of the Pennsylvania Dixie Company manifested a sympathetic attitude toward the Building Supply Dealers with respect to the position they have taken in this matter. On the other hand, he felt that the best way to control the situation was the making of an arbitrary charge on all cement loaded on trucks at the mills. As you are aware, there has been an agreement among the cement companies to make a charge of 15¢ a barrel in this connection, but I am told that all the companies have not strictly adhered to the agreement.

Messrs. Hogan and Koch expressed an attitude similar to that of Mr. Smith and asserted that they were not using trucks in the East, and at their mills outside of Eastern territory they were loaded only when competitive conditions demanded (Com. Ex. 1145).

On August 3, 1931, J. H. Day, vice president of the Nickel Plate Road, wrote Mr. Collyer in part:

Have talked to Mr. George Cole, Traffic Manager of the Medusa Portland Cement Co., Cleveland, and he has definitely stated to me that the Medusa Portland Cement Co. will be glad to discontinue trucking if the other cement companies will agree to do likewise (Com. Ex. 1144).

(f) On November 23, 1931, E. J. Holway, one of the participants in the conference of July 22, 1931, wrote J. L. Eysmans, vice president of the Pennsylvania Railroad, in part:

A meeting of cement manufacturers was held at Chicago on November 17, 18, and 19. Realizing that the larger manufacturers would undoubtedly travel Sunday night, I arranged to be in Chicago on Monday, the 18th, and visited a number of them, especially the larger ones, leaving the thot with them, how far the legitimate dealer would go along to correct the trucking evil.

I understand that the Universal and Basic, of Pittsburgh, will close their plants to trucks on December 1, and I think the Ohio plants will have a meeting the latter part of this week, and I believe it will be the unanimous opinion of all the Ohio manufacturers that they should follow the Pittsburgh lead, so that I think all plants in Eastern Pennsylvania and all of Ohio, will be closed to trucking by not later than December 31, 1931. \* \* \*

\* \* \* \* \*

You can readily understand there is no copy of this kept in my files and I would kindly ask that you destroy it (Com. Ex. 1348-A, B).

On November 27, 1931, Universal announced:

In accord with expressed desires of dealers in Pittsburgh District, effective December 1, 1931 platforms at our mill, Universal, Pa., and at our Homestead

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Packing Plant will be closed to all trucking except uncompleted contracts made on a trucking basis prior to that date (Resp. Ex. 2519).

On May 4, 1932, A. P. Meyer of Green Bag of Pennsylvania wrote to Eugene Morris, president of the Central Freight Association, in part:

In November of last year we agreed to discontinue the trucking as of December 1st, at Neville Island, this agreement to continue until July 1, 1932 with the understanding that certain things be corrected in the meantime. \* \* \* (Com. Exs. 2260; 1043-B).

On January 7, 1932, a conference was held in Philadelphia, Pa., attended by W. W. Campbell and E. J. Holway of the National Builders Supply Association, D. H. McFarland, president of the Institute, and representatives of a number of railroad companies, the minutes of which read in part:

It was stated that in southern Ohio and western Pennsylvania substantially all of the cement traffic had been returned to the rails, and that initial steps had been taken having in view like results as to shipments from the lake front district, centering principally at Buffalo, Cleveland, Toledo, Detroit and Chicago (Com. Ex. 1043-4T).

On January 11, 1932, R. A. Williamson, assistant freight traffic manager of the Nickel Plate Railroad, wrote Eugene Morris, chairman of the Central Freight Association, in part:

Cement producers in the entire State of Ohio, with the exception of the northern part of the State, have reached an agreement as far as concerns stabilization of prices, the result of which means that the movement of Cement by truck will be discontinued.

The producers in the northern part of the State, which will include Castalia and Toledo, O., have not as yet reached an agreement but it is hoped that they will do so shortly (Com. Ex. 1043-4V).

(g) The preparation and promulgation of the NRA Code for the Cement Industry afforded respondents an opportunity to consolidate their position with respect to trucking. Section 18 of Article IX of the code declared it an unfair method of competition:

Knowingly to ship cement by any transportation agency which makes payments or concessions by rebates or otherwise for the purpose or with the effect of inducing or influencing the sale or purchase of cement (Com. Ex. 560, p. 18).

Respondents included the same provision in identical language, except for the substitution of the words "industry products" for the word "cement," as section 10 of article V of the "Compendium of Established Terms and Marketing Methods" issued after the Schechter decision. On September 23, 1937, a representative of Universal reported to his superior that trucking was being done from cement

plants in Houston, Tex., and commented, "I thought this wasn't in the rule book" (Com. Ex. 1941). And thereafter, on September 28, 1937, another representative of Universal was instructed to "dig into this and find out all you possibly can about it" (Com. Ex. 1940).

(h) The effectiveness of the movement to control the trucking of cement is shown by the answers of 117 mills of respondents to the Clark and Burns questionnaire previously mentioned. The meaning of the answer by 1 mill is not clear, and of the remaining 116 mills reporting, the status of trucking was approximately as follows: 85 mills reported no trucking permitted under any circumstances; 8 reported trucking permitted, but a penalty in the form of an addition to the price was imposed; 5 reported trucking permitted at full rail destination prices, but 2 of these were limited to trucks under the control of the mill; 1 reported trucking permitted on the basis of destination price at the mill at times, and at other times the addition of a 25 cent penalty to the base price; 4 reported trucking permitted, but limited to certain points; 6 reported trucking permitted at destination prices less freight; and only 7 appeared to have permitted trucking upon the basis of the applicable price at the location of the mill without any restriction. Many of the answers made to the questionnaire, in addition to showing what change, if any, was made in trucking policy, indicated the date of such change. Of the 117 mills, 21 gave no date of change of policy and 5 indicated that trucking had never been permitted. Of the remaining 91 mills, approximately 56 changed to the policies stated above in 1932; and of the others, about one half changed to such policies before 1932 and the remainder after 1932.

PAR. 12. (a) As heretofore pointed out, respondents' multiple basing-point delivered-price system is directed toward the maintenance of uniform prices for cement by all respondents at any given location. Under this system, until recently, purchasers of cement generally paid the freight charges thereon directly to the railroad. This often afforded an opportunity for purchasers to secure cement at a delivered cost lower than the delivered price quotation in effect at the point where the cement was to be used. This was done by making a purchase at the delivered price in effect at some destination where such price included, under respondents' pricing formula, a freight factor higher than the actual freight charges to the purchaser's true destination, and then causing the railroad to divert the shipment to the true destination. Such diversions in transit did not change the amount received by the seller from the amount he would have received had the diversion not been made (though not the same amount as he would have

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received had the purchase been made on the basis of the delivered price in effect at the buyer's true destination), but the purchaser, after paying the actual freight to the railroad, received the cement at a delivered cost lower than he could have secured by purchasing at the delivered price in effect at his true destination. This interfered with respondents' desire to maintain uniform delivered prices at each destination, and they undertook, by means of understandings and agreements, to prevent purchasers making diversions in transit.

(b) The "Code of Ethics" adopted by respondents when the Institute was organized contained a provision prohibiting diversions in the following language:

For manufacturers to divert, or to permit purchasers or users of cement to divert, carload shipments of cement, made to one destination, to other destinations in cases where the result of such diversion is to enable purchasers or users of cement to secure cement less than the manufacturer's market price at the point of final delivery, is discriminatory as between purchasers or users, and is therefore an unfair trade practice (Com. Ex. 138-S).

The Institute included a provision in the code which it proposed to NRA similar to that which appeared in the "Code of Ethics" quoted above, and the NRA Code as approved contained a provision making it a violation of the Code:

To divert or permit purchasers or users of cement to divert shipments of cement from one destination to another destination, the result of which will enable the purchaser or user to secure cement at less than the member of the industry's published market price at the point of final destination (Com. Ex. 557, p. 338).

The "Compendium of Established Terms and Marketing Methods" approved by the trustees of the Institute after the expiration of the NRA Code contained a similar provision declaring the following to be an unfair method of competition:

Diverting or permitting the diversion of shipments of Industry Products, the effect of which will be to enable a purchaser or user to secure Industry Products at variance with Member's published price-terms for point of final destination (Com. Ex. 561).

The Compendium also recommended the use of a standard form of sales contract which provided that in the event a buyer diverted a shipment of cement he would pay the seller's price applicable at the place of final delivery. This provision reads:

If any of the cement shipped hereunder is reconsigned or diverted by Buyer from the place of delivery specified herein or used for any other purpose, Seller may cancel this contract and refuse to ship any more cement and Buyer agrees to pay Seller's market price at the place of final destination for such cement as has been diverted by Buyer from the place of delivery specified herein or has been used by Buyer for any other purpose than the purpose above specified;

\* \* \* (Com. Ex. 561, p. 21).

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(c) Under respondents' pricing formula it was the practice to quote delivered prices which included freight charges. When a shipment was invoiced to a purchaser, the total amount was ordinarily shown on the invoice and the amount of the freight charge was also stated separately. The purchaser paid the freight charges to the carrier and remitted payment for the balance of the invoice to the seller. The Institute approved a recommendation for a change in this practice, as shown by the minutes of a meeting on December 13, 1929:

Mr. Storey brought up the question of the application of Paragraph 14 of the Code of Ethics. After discussion, on motion of Mr. Kind, seconded by Mr. Storey, it was recommended that in order to prevent diversions in violation of Paragraph 14 of the Code of Ethics, it is desirable that no freight allowances be shown on manufacturers' invoices and that the following notation appear on all such invoices: "Freight allowance does not appear on invoice. Receipted freight bill showing payment of freight charges to destination shown on Bill of Lading will be accepted as part payment of the invoice" (Com. Ex. 136-X).

On January 3, 1930, Luther G. McConnell, then manager of the Institute, telegraphed Hercules concerning this recommendation:

COMPANIES GENERALLY FOLLOWING RECOMMENDATION IN SOUTH-EAST TERRITORY STOP NORTHEAST TERRITORY STILL UNDER DISCUSSION (Com. Ex. 141-5).

In general, respondents were not successful in inducing purchasers to send the receipted freight bills with their remittances, and with a few exceptions respondents did not continue to require receipted freight bills before allowing credit for freight payments made by purchasers.

(d) Traffic representatives of a number of the corporate respondents, in their association on the committee on transportation of the Portland Cement Association and otherwise, worked upon the problem of inducing the railroads to accept bills of lading stamped with a prohibition against diversion without the shipper's consent. In testifying about this, F. M. Coogan, president of Alpha, said in part:

Q. Now, referring again to this matter of diversion in transit, would your traffic manager, Mr. Apgar, work with traffic managers of other cement companies in inducing the American Association of Railroads to accept the stamp on bills of lading regarding diversion?

A. Yes, sir; I think he did.

Q. Do you draw some distinction between your company working with competitors in some such way as that and understanding or agreement between them?

A. I certainly think that we have a perfect right to act with our competitors on anything that will improve or bring about a better freight rate and freight service situation at our mills.

Q. Well, did the stamp restricting diversions come within the category you just named?

A. I think it does, yes.

Q. In what way?



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A. Well, it puts a certain moral obligation on the railroads not to divert shipments without the approval of the shipper, and inasmuch as we sell at delivered price we feel that we have a perfect right to control the shipment until it reaches destination (T. 24626).

In March 1935 the traffic advisory committee of the Association of American Railroads recommended the acceptance of bills of lading stamped with a clause prohibiting diversion, and this privilege was availed of by many of the respondents. In a letter to numerous competitors dated December 18, 1935, the traffic manager of Penn-Dixie stated:

As information, the Traffic Executive Committee of the Association of American Railroads at their meeting on March 14, 1935, under Topic #24 approved the acceptance of bills of lading by the railroads bearing notation reading as follows:

"This is the property of the shipper and no reconsignment or diversion is to be made unless authorized by the consignor."

This notation has been stamped on the bills of lading covering shipments moving in the east since the middle of last May and has worked out very satisfactorily. Therefore, if you desire you can tender your bills of lading bearing the same notation.

It would be well if you should desire to use this notation to notify the railroads serving your mill of your intention so as to initiate a smooth working arrangement (Com. Ex. 584-G).

In writing the traffic manager of Lehigh in July 1936 concerning approval of the stamp on bills of lading prohibiting diversion, the freight traffic manager of the Pennsylvania Railroad said in part:

Under advice of Trunk Line Counsel, however, should a consignee request a diversion, the carriers are obligated under their tariffs to ascertain who the real owner is and comply with his instructions (Com. Ex. 749-A).

(e) In July 1930 the Institute recommended to its members that their contracts of sale for cement include "A loss and damage clause protecting seller from liability after delivery to common carrier or against any other loss occurring in transit or storage" (Com. Ex. 153-P). The actual performance of respondents with respect to claims for loss or damage in transit was not entirely uniform. Some respondents declined to assume any responsibility for such loss or damage; some respondents did assume such liability; and other respondents undertook to secure adjustments of freight overcharges or claims for loss or damage in transit for and in behalf of their customers. Over a long term of years respondents have shipped cement to purchasers without prepaying the freight charges and purchasers have paid such charges directly to the carrier. Respondents have, until quite recently, opposed in organized fashion the prepayment of freight charges, except where shipment was made to a point where the carrier required that charges be prepaid or some unusual condi-

tion existed which made prepayment desirable or necessary. Beginning about January 1937, increasing numbers of respondents added to the provision in their terms of sale for the payment of freight charges by the purchaser directly to the carrier an additional provision that such payment be "for the account" of the seller. In practice, there was no accounting between the carrier and the seller respecting the payments received from purchasers, and the procedure of the parties pursuant to this provision was not different from what it previously had been. Some 2 years after the issuance of the complaint in this proceeding the corporate respondents generally began prepaying the freight charges on all shipments of cement. When freight is prepaid, there can be no diversion of shipments by the consignee to his advantage in price.

PAR. 13. (a) For many years it has been customary for the corporate respondents to contract with dealers or contractors for the delivery of a specified quantity of cement at a specified price over a stated period of time, and these contracts are ordinarily referred to as "specific job contracts," although in practice they are merely an option granted to the purchaser. The contractor who undertakes a construction job desires to be protected against price increases until the job for which he has contracted is completed, and if he has purchased cement through a dealer, the dealer desires similar protection. This practice presents the possibility that the dealer and perhaps the contractor, may contract with one or more manufacturers for more cement than is needed for a specific job, and if the price of cement should advance in the meantime, the purchaser may take the excess amount of cement at the lower contract price and resell it or otherwise use it to his advantage or profit. When this occurs, it affects the respondents' ability to control the delivered price of cement and tends to disrupt the market and break down the uniform delivered price established pursuant to the multiple basing-point formula. In order to prevent such interference with prices and marketing practices, respondents have engaged in the cooperative checking of such contracts and have taken collective action to effect their cancellation. The articles of association of the Institute provided for the collection and dissemination of "Information concerning actually closed specific job contracts and other contracts for the future delivery of Portland Cement" (Com. Ex. 138-B).

(b) The interest of respondents in the cancellation of specific job contracts for excessive quantities of cement was largely limited to periods immediately following an advance in price. It was at such times that respondents' interest was most actively expressed. This limitation upon the value of contract checking was recognized by the In-

stitute. In a memorandum describing the activities of the Institute, its general manager, George H. Reiter, wrote in part:

The Institute's present method of filing and reporting contract information is undoubtedly of less value than during a period of a rising market (Com. Ex. 595-E).

(c) The effect of these contracts upon respondents' prices for cement was not a new problem. The report of the committee on trade conditions published in 1915 by the Association of American Portland Cement Manufacturers, of which some of the respondents herein were members, in discussing this subject, stated in part:

Urging dealers to place orders for extended delivery for specific work, and permitting such dealers, at their option, to take more or less cement on such orders *than actual quantity used* in the work, has been one of the most objectionable devices and practices known, and has done more than any other one thing to bring about demoralization (Com. Ex. 3193, pp. 8, 9).

The Portland Cement Association, in which numerous respondents herein were active at the time, published in 1919 a compilation of reports of the trade practice committee "intended to eliminate unfair methods of competition," and for other purposes, stating in part:

Great demoralization results from the ability of dealers to place orders with manufacturers for large amounts for deferred delivery upon the representation that the cement is for specific work which the dealer has sold, all or part of which has in reality not been sold by dealer for such work (Com. Ex. 3192, p. 9).

(d) Very early in its history the Institute organized a method of checking contracts entered into by its members for the sale of cement. Such contracts were reported to the Institute daily by its members, thus enabling the Institute to determine whether there were duplications; that is, whether cement for the same job had been contracted for with more than one member, and also afforded a basis for determining by checking in the field, if necessary, whether the amount contracted for was in excess of the amount needed for the particular job. Members also reported on changes in outstanding contracts previously reported to the Institute, and a summary of the contract information was sent by the Institute to all its members. In 1930 a number of the corporate respondents loaned the services of some of their salesmen as a field force to check specific jobs to determine whether the amount of cement contracted for was excessive, and the Institute also had field engineers in its employment who did like work.

(e) Having collected and furnished to its members information concerning excessive quantities of cement contracted for and duplications of contracts for specific jobs, the Institute did not then leave the matter to the independent judgment of individual members. Collective action and the pressure of collective opinion were exerted to

bring about contract cancellations. The minutes of a meeting of the board of trustees of the Institute on March 14, 1930, contain the following:

The principal subject discussed was the matter of checking contracts and cancelling any that were found to be without proper supporting evidence (Com. Ex. 604-A).

On April 29, 1930, William J. Jennings, an official of Southwestern, wrote another official of the same company in part:

I spent last Wednesday and Thursday in Chicago at a meeting of the Cement Institute. Each cement company representative took his contracts with him to Chicago, and it took us two days to go over all these different contracts and cancel the duplicates and come to an agreement along the different ones on what they were willing to do (Com. Ex. 1270-K, L).

In writing C. L. Hogan, vice president of Lone Star, on April 28, 1930, concerning a meeting of the Institute, G. E. Pierson, also a vice president of the same company, stated:

At our former meeting held two weeks ago a report was made by the secretary indicating that cancellations up to that time totalled approximately 500,000 barrels. The report at the last meeting indicated subsequent to that time and prior to the last meeting additional cancellations totalling 1,050,000 barrels had been made. During the two-day conference in Chicago it was estimated that cancellations approximating 500,000 barrels were made. There remains additional duplicated bookings to be eliminated and it looks on the face of it at this writing that when the slate is finally cleaned there will have been canceled somewhere in the neighborhood of 2,500,000 barrels. This, I think, speaks well for the work of The Institute and indicates very definitely just how effective this work can be made if it is properly supported by the membership (Com. Ex. 1018-A).

(f) During the NRA Code period the standard form of specific job contract annexed to the Code approved in 1933 contained, among other provisions, the following:

Buyer represents that the aforesaid number of barrels of cement will be used in the construction of the above-described work and agrees that no portion of such cement will be used for any other purpose without the written consent of Seller. If any of the cement shipped hereunder is \* \* \* used for any other purpose, Seller may cancel this contract and refuse to ship any more cement and Buyer agrees to pay Seller's market price at the place of final destination for such cement as \* \* \* has been used by Buyer for any other purpose than the purpose above specified; \* \* \* (Com. Ex. 557, p. 349).

The amended NRA Code for the Cement Industry as approved May 11, 1935, contained a provision requiring the filing with the Code Authority of all contracts or orders for the sale of cement, including quantity and price terms, and, further, "Upon receipt of such filed orders or contracts the agent of the Code Authority shall send digests

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thereof to all interested Members of the Industry" (Com. Ex. 560, p. 15). After the Code period, contract provisions similar to those quoted above were incorporated in the specific sales contract form recommended in the "Compendium of Established Terms and Marketing Methods." Collective action to bring about cancellation of excessive or duplicate contracts was also continued after the Schechter decision. On July 22, 1935, George H. Reiter, chairman of the trade practice committee of the Institute, wrote Wabash in part:

The unshipped balance on this contract as of June 30 was 6,538½ barrels and member owning this contract states that they are not shipping at this time and believe that Wabash cement is being furnished.

We find no contract of your company covering this project and inasmuch as there have been raises in price since this contract was awarded we are investigating this matter and request that you advise us whether or not you have a contract covering a portion of these requirements and have failed to file it with this office as required by Section 7, Article VIII, of the Amended Code.

Please make reply within five days of receipt of this letter (Com. Ex. 1014).

On July 23, 1935, the Chicago Division of the Institute wrote the Louisville Cement Co. in part:

We have had our engineer check contract indicated below.

\* \* \* \* \*

The store and apartment building at 4900 Glenway, the address shown above, was completed in 1929. A new building of the same type is being built at 4927 Glenway but the contractor is Harry Ledermeier. Lee Knose, the contractor listed on your contract is not connected with this job in any way.

We, therefore, believe that no obligation exists under this contract for cement (Com. Ex. 1015-A).

On August 22, 1935, Louisville Cement Co. wrote to one of its representatives in part:

I am enclosing a letter from Bass & Co. asking us to extend the expiration date on the 1,000 barrel contract for the W. B. Hudson job from Sept. 1st to December 1st. I don't know just what to do about this. Representatives of other cement companies have been investigating the three contracts we have at Clarksville and reporting to the Institute that these contracts are not legitimate and that they will require a great deal less cement than the contracts call for. The Institute has been questioning the validity of these contracts. We are on the spot concerning them.

We do not want to ruin our reputation for fair dealing in the industry, but on the other hand we want to be absolutely fair with Bass & Co. at Clarksville. We want to supply on these contracts every barrel of cement that is necessary to fill them, and if it is necessary to extend the expiration date on the W. B. Hudson contract to December 1st in order to do so, then we are perfectly willing to make this extension (Com. Ex. 1015-B).

On September 24, 1935, the Chicago Division of the Institute again took this matter up with the Louisville Cement Co., writing in part:

We have had our engineer check contract indicated below.

\* \* \* \* \*

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It is our information that Bass & Company are furnishing this cement at the old price on the Post Office job at Clarksville, so naturally they were able to undersell other dealers, as this was bought at a lower price on these fictitious contracts.

May we have your understanding? (Com. Ex. 1015-C).

(g) In order that the contract checking and cancellation carried out by it might appear to be the result of individual action, the Institute attempted to disassociate itself as far as possible from any public connection with the results of this activity. When a member of the Institute, one of the corporate respondents herein, wrote the Institute suggesting that summaries of contracts and cancellations be sent directly to its salesmen to save respondent the necessity of copying information from these reports for the use of its salesmen, the Institute on March 12, 1936, replied in part:

I am afraid that it is out of order to send copies of our Daily Report to salesmen and this has never been done. The reason is that we merely send to members in this matter information for their guidance, and it is the usual practice for member companies to forward a part of this information to field men without identifying it as coming from the Cement Institute.

The purpose of this procedure is to indicate the fact that the company itself is responsible for the information furnished salesmen and also to avoid the implication that the Cement Institute has any authority in the control of contract obligations (Com. Ex. 1932).

PAR. 14. (a) Prices which appear to be uniform may be affected by differences in the accompanying terms and conditions of sale. Standardization of terms and conditions of sale is needed to effect complete and total price uniformity. Respondents' multiple basing-point delivered-price system has been supplemented by uniformity of terms and conditions of sale brought about by collective action. The process of standardizing these terms and conditions through collective action did not begin with the Institute, although it carried forward, supported, and supplemented the uniformity previously created.

(b) The record shows that collective action to establish and maintain uniformity of terms and conditions of sale was carried on by cement manufacturers over a long period of years. At a meeting of the Association of America Portland Cement Manufacturers in September 1905, at which representatives of a number of the corporate respondents herein were present, the following occurred:

Mr. HARDING (Bonneville). I should like to know how many companies are really living up to the agreement with reference to discounts to be made on and after September 1st? We all signed the report in good faith, but I understand that some companies are still making quotations covering 2 percent off in ten days, good until the end of the year.

After considerable discussion on this question the report of the Committee on Trade Conditions was read by the Secretary (Com. Ex. 3235-23).

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At a meeting of the same association in December 1905, also attended by representatives of a number of the corporate respondents herein, the president of the association called attention to a change made in the report of the Miller committee in order to eliminate therefrom the references to price and said that all members who signed the original report had, with one exception, agreed to the change. As thus modified, the agreement read in part:

### AGREEMENT TO STANDARDIZE THE CUSTOMS AND USAGES IN THE CEMENT TRADE

WHEREAS, We, the undersigned, Manufacturers of America Portland Cement, desire to standardize the customs and usages in the cement trade for the purpose of making all our business transactions more easy, simple, safe and economical;

Therefore, We agree as follows:

\* \* \* \* \*

Concerning terms of payment: In all cases payment within thirty (30) days after date of shipment from the works to be insisted upon. A one (1) per cent discount for cash to be allowed for payment within ten (10) days from date of invoice. Invoices to be stamped "Positively no discount on this bill after -----" No discount to be allowed on freight and sacks under any conditions. This change to take effect September 1, 1905.

Concerning bags, the following recommendations are made: Bags positively to be paid for with the cement. Discount in no case to be allowed on bags or freight. Count and inspection at mill always to govern. Freight on bags to be prepaid by customers (Com. Ex. 3235-Z8, Z7).

At the same meeting the association unanimously adopted the report of the bag committee and appointed a committee "to put that Resolution in shape for signature, and to present the same to the Association this afternoon." The report referred to reads:

I respectfully report, on behalf of the Committee on Bags, that I have communicated with all members of our association, and have received written replies, in which they express their opinion relative to the charge which should be made for cotton sacks, and also the price of their repurchase, and find that a large majority of the companies are in favor of uniform action. From this information I respectfully report as follows: "That all cotton sacks be charged at the rate of 10 cents each, and be included in the price of cement, and when the cotton sacks, having the label of the respective manufacturers, are returned in good condition, freight prepaid, that each company repurchase the cotton sacks at 7½ cents each" (Com. Ex. 3235-Z8, Z9).

The minutes of a meeting of the same association in March 1906, attended by representatives of a number of the corporate respondents herein, show:

The reason the Association did not act upon Mr. Gerstell's motion (i. e., that the Association agree to charge 15 cents per barrel for cement in paper) was—

some of the members were of the impression that if we should issue another agreement which would necessitate each member sending out a number of circulars, it would cause much comment among the dealers about the so-called "Cement Trust" (Com. Ex. 3235-Z11).

The minutes of a meeting of the same association in September 1915, attended by representatives of a number of the corporate respondents herein, contain the following:

(The report of the Committee on Trade Conditions was here presented, read and—after discussion—the recommendations approved, but since the Committee were authorized to prepare a special booklet containing their report, the same is not included as part of these minutes.) (Com. Ex. 3236-Z85.)

In the introduction to the publication thus authorized it is stated:

The magnitude and importance of the cement industry demand that the sale and distribution of the product be conducted upon firm and definitely fixed principles, and that doubt and uncertainty be eliminated.

It appears that the importance of this attitude is being more fully appreciated by the cement manufacturers, and that the membership is desirous of a full and free discussion of the various subjects involved in order that the consensus of opinion may be ascertained and established as custom, and so recognized by all cement manufacturers (Com. Ex. 3193, p. 1).

Some of the recommendations made were, in substance:

1. In making delivered prices the manufacturer only guarantee cost at destination and not be responsible for shortage or damage occurring in transit; and, further, that no sales or quotations be made subject to any specifications except those of the United States Government or the American Society for Testing Materials.
2. When cement is tested and kept in sealed bins for the purchaser, a charge of not less than 3 cents per barrel be made.
3. The use of standard forms, as per the accompanying examples, for specific job contracts, contracts with dealers, and orders.
4. Sale of the packages provided for cement on the same terms as the cement is sold, and that cloth sacks be repurchased from the original purchaser only when in serviceable condition or readily repairable.
5. No rebates or concessions in any form to be made to any purchaser or his agent.
6. Trade quotations to be limited to one car for immediate acceptance and 15-day shipment.
7. Change of the cash discount from 2 to 5 cents per barrel.
8. A statement of the conditions necessary for a purchaser to be considered as a dealer, constituting a definition of dealer.
9. No sales to a dealer for shipment to any town other than his home town except at consumer price, excepting towns adjacent to his home town where there is no dealer.
10. In quoting contractors or consumers add not less than 5 cents per barrel to dealer price.
11. No payment of commissions to dealers.
12. Price changes to be effective upon announcement.
13. No guarantees against decline in price (Com. Ex. 3193).



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(c) In 1919 the Portland Cement Association, largely composed of respondents herein, published a pamphlet containing various recommendations adopted by that association. The substance of some of the recommendations was:

1. No sale of cement subject to specifications other than those of the American Society for Testing Materials.
2. When cement is tested and kept in sealed bins for the purchaser, a charge of not less than 3 cents per barrel be made.
3. The use of standard forms, as per the accompanying examples, for dealer contracts and orders.
4. Sale of the packages provided for cement on the same terms as the cement is sold and that cloth sacks be repurchased from the original purchaser only when in serviceable condition or readily repairable.
5. Trade quotations to be limited to one car for immediate acceptance and 15-day shipment.
6. That the 5 cents per barrel discount for payment in 10 days be continued.
7. A statement of the conditions necessary for a purchaser to be considered as a dealer, constituting a definition of dealer.
8. No sales to a dealer for shipment to any town other than his home town except at consumer price, excepting in towns adjacent to his home town where there is no dealer.
9. Manufacturers have for some years made a differential in price between dealers and consumers, first of 5 cents and later 10 cents per barrel (though in some sections of the country some manufacturers still use a 5-cent differential).
10. No payment of commissions to dealers except where clear liability for such payment exists.
11. Price changes to be effective upon announcement.
12. No guarantees against decline in price.
13. Only two classes of buyers to be recognized—dealers and consumers (Com. Ex. 3192).

(d) Having in preceding years created substantial uniformity in terms and conditions of sale, it was not necessary to go over the same route again in minute detail when the Institute was organized in 1929. Affirmation in broad terms was sufficient, and this was given in the Code of Ethics agreed to by members of the Institute. Included in the provisions of this code were prohibitions against:

1. Selling cement except under specifications of the American Society for Testing Materials, American Standards Association, or the United States Government.
2. The payment or absorption by the manufacturer of costs for testing cement for a purchaser.
3. The use of contracts in the sale of cement which do not contain definite statements of price, quantity, terms of payments, time and place of delivery, and all other items necessary to form a complete contract. (The adoption of a standard form of sales contract by the industry was recommended.)
4. Failure to require payment of the manufacturer's published charges for packages and the making of payment or allowances for unserviceable sacks returned or for sacks of another manufacturer.

5. The granting of any form of rebate, refund, credit, or unearned discount, or special services or privileges to one customer not given to others (Com. Ex. 138-N-U).

(e) The differential in price previously granted to dealers was wiped out in 1930 when the effects of the depression caused dealers to cut prices and pass on to purchasers a portion of the trade discount received by them. Lehigh reduced the differential to dealers to 5 cents per barrel, withheld payment until the end of the year, and made payment contingent upon the dealer's satisfactory conduct with respect to the discount. Other respondents followed Lehigh's action, but there was some division among the respondents upon this matter. In a letter of December 12, 1930, Charles L. Hogan, vice president of Lone Star, said in part:

The Lehigh Company and some of those who have joined with them have been making very strenuous efforts to bring all the members of the industry to the Lehigh selling plan. They have been successful to a marked degree, for as stated in a previous letter, the only companies in the East who have not announced that they were going to follow the plan are Whitehall and ourselves. In the Middle West Wabash, Standard Portland Cement at Painesville, Ohio, Marquette and our company are the exceptions, although Missouri Portland has also put in a modified plan which recognizes the 5¢ differential but allows deduction when the invoice is paid. They have not been so successful in the Kansas field for there all of the companies are following the old plan, with the exception of Atlas, Lehigh and Alpha (Com. Ex. 1131-J).

Substantial dealer opposition to the "Lehigh" plan developed. Leaders of the cement industry met and discussed the situation thus created and sought to work out a basis of settlement. The final result was that no differential has been granted to dealers since 1931, and the manufacturer's price was made the same to dealers as to those consumers who are accepted by manufacturers as direct customers.

(f) Each of the above provisions in the Code of Ethics had its counterpart in the NRA Code for the Cement Industry, but such Code was by no means limited to those provisions. The cash discount of 10 cents per barrel appeared in the Code, and the standard forms of contracts annexed to the Code included the package charge of 10 cents for cloth sacks and a refund of 10 cents for each of the seller's bags returned in good condition.

(g) The "Compendium of Established Terms and Marketing Methods" published by the Institute after the NRA Code period contained, among other recommendations, the substance of the provisions mentioned as appearing in the Code of Ethics and the NRA Code. The standard forms of contracts annexed to the Compendium provided for a package charge of 10 cents each for cloth sacks and for the refund thereof to the sellers on sacks returned in good order. The charges

of 15 cents per barrel for packaging cement in paper bags and of 40 cents per barrel for packaging in cloth bags have been continued unchanged for more than 35 years.

PAR. 15. (a) With a view to maintaining a price level considered satisfactory, some of the respondents have been concerned for a long period of years with means of harmonizing production with shipments of cement. These activities have included the inculcation of a philosophy of maintaining a static condition in the production of cement to the extent of preserving the individual manufacturer's proportion of the total business and acceptance of the theory of dividing available business among producers in accordance with some predetermined formula. Respondents have, by agreement, carried on an extensive program of cooperatively collecting and disseminating detailed figures showing the production, shipment, and stocks on hand. These figures are arranged in various ways, not only including totals, but also revealing to each member of the Institute the individual figures for each of the other members. Each member was thus informed of the exact position of each of his competitors.

(b) The minutes of a meeting of the Association of American Portland Cement Manufacturers in September 1903, attended by representatives of a number of the respondents herein, show that consideration was then being given to a situation resulting from an overproduction of cement and lower prices resulting therefrom. A committee was appointed to consider a plan for overcoming these difficulties, the chairman of which suggested that they should have figures—

\* \* \* actual figures of the various mills \* \* \* showing from month to month, stocks on hand and the cement production and capacity of the various mills, \* \* \* (Com. Ex. 3225-O).

The minutes of a meeting of the same association in March 1904, also attended by representatives of a number of the respondents herein, show that arrangements were made for the collection, compilation, and dissemination of statistics for the industry. The minutes of a meeting of the same association in June 1910, attended by representatives of a number of respondents herein, show that by unanimous agreement the statistical reports were broadened to include monthly reports of production and shipments expressed in both actual figures and percentages. In the course of a discussion of stocks on hand, production, and other data at a meeting of the same association in June 1911, also attended by representatives of a number of the respondents herein, W. S. Mallory said:

Yes, sir—that is right, from 25 to 30%; but in the meantime if we continue manufacturing at the present rate—and that is what we are doing now—if we

continue making cement for the balance of the year as we are making it now, it means just one thing—trouble (Com. Ex. 3235-Z-9).

\* \* \* \* \*  
 Now, in regard to that, I have only this suggestion to make. \* \* \* I cannot speak for all the companies. There is one, however, I can speak for, and that is the Edison Company; \* \* \* We have decided on an amount of stock and clinker that we will accumulate, and the moment our shipments fall off in volume, and we have that stock on hand, that moment the Edison Company shuts down. \* \* \* I cannot help saying that it seems to me that every company represented here could do the same thing. If they would do so, that would be a form of co-operation that would be very effective in remedying present conditions, and a plan of operations that would absolutely and effectively solve our problem of over-production for the balance of the year, \* \* \*.

\* \* \* \* \*  
 Mr. KELLEY (Virginia). Then, in your opinion, the crux of the whole matter is this: the people who have thirty days' production on hand should shut down for a time?

Mr. MALLORY (Edison). Well, every one can do as they think best, but that is what we are going to do (Com. Ex. 3235-Z100, Z101, Z102).

(c) In September 1933, W. S. Mallory was employed by the Institute as its statistician. From 1926 to 1933 Mr. Mallory had furnished a statistical service on a subscription basis to some 50 of the corporate respondents herein and for many years prior to 1926 he had been active in statistical work designed to aid in controlling the production of cement. His first connection with this work apparently began about 1906 while he was an official of Edison. In 1932 Mr. Mallory began furnishing the figures for individual mills, including production and shipment figures, the mills being identified by key numbers known to all subscribers. The statistical service furnished by Mr. Mallory, both prior to and after the organization of the Institute, included figures purporting to show the productive capacity of each mill. These were said to have been estimated on the basis of the "three highest consecutive months' actual clinker production" of each mill (Com. Ex. 821-M). The total of these figures, however, is less than the total compiled from the individual reports of producers as reported by the United States Bureau of Mines.

(d) In a telegram sent from Chicago under date of November 19, 1929, F. H. Powell, president of Southwestern, stated to a vice president of that company in part:

VERY QUIET MEETING LIGHT ATTENDANCE \* \* \* CONSENSUS  
 GENERAL OPINION IF CURTAILMENT PRODUCTION COULD BE BROUGHT  
 ABOUT OTHER GRIEVANCES WOULD SOON BE CLEARED UP \* \* \*  
 (Com. Ex. 1270-A).

In writing to another official of Southwestern on January 10, 1929 (1930?), concerning an Institute meeting he attended in Chicago, W. J. Jennings stated in part:

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The meeting of this Cement Institute started in the morning and we were still at it along about 8 o'clock at night, and I want to say it was probably the most intensive meeting ever held by the cement industry.

\* \* \* \* \*

Now, Mr. Merrill, this formation of the Cement Institute is going to put a different aspect on the cement business in this territory. During the meeting, Mr. Mallory, who is statistician for the Cement Institute and who has developed the amount of cement available for each plant throughout the U. S., was called upon to give the capacities of the different plants in the mid-west district. \* \* \* He had us down at 1,500,000 barrels and he had Wabash down at 980,000, and they called on each one of us to state if these amounts named were anywhere near correct. I told them that we could manufacture a great deal more than this and that by the end of this year our capacity would be over 2,000,000. Harry Jennings stated that they also had a 2,000,000 barrel plant or would have by the end of this year. But they would not allow him any advance. I have a promise from Mr. Mallory that he will advance no one in this district until he advises me beforehand. This Mallory was very willing to do as it was after I had been appointed to the Executive Board!

It is the idea of the Cement Institute to get all the member companies to reduce their output to 70% of the capacities allowed them by Mallory, and of course the price would then automatically go back to what it originally was, and some are talking of 40¢ over the present price. This operation on 70% capacity would continue until such time as the country was able to consume more or stocks on hand are reduced to zero (Com. Ex. 1270-B-J).

(e) According to Mr. Mallory's figures, the average percentage of production to capacity for 1930 for the several districts did not exceed 70 percent in any district, the closest approach being 69.9 percent in eastern Missouri, Iowa, Minnesota, and South Dakota; the same in Texas and 69.8 percent in western Missouri, Nebraska, Kansas, Oklahoma, and Arkansas. The average percentages for other districts varied considerably but were substantially below 70 percent (Com. Ex. 2895-A-D). It is not practicable to determine to what extent this resulted from cooperation among respondents or from the effects of general economic conditions in 1930.

(f) The effect of keeping continually before manufacturers the individual production of each, and its relation to the total, aided in creating among many respondents a philosophy of sharing the available business and of not seeking too strenuously to increase their individual shares of the total. In his testimony B. F. Affleck, formerly president of Universal, said that he understood before 1930 and 1931 the futility of attempting to increase his proportion of the total business by price reductions and that others learned that lesson in those years. He also said:

Q. You think it is futile for competitors to attempt to change their percentage of the total business that is available to the whole group?

A. I don't think my opinion as to whether it was futile or not is important. It just is futile.

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Q. Well, why?

A. Because he can't get away with it.

Q. In other words, you don't think it is possible for a concern that has ten percent of the business this year or last year to make it fifteen percent this year?

A. Oh, I didn't mean to convey that idea. The fact of the matter is, our percentage of the total underwent quite a severe shrinkage. We didn't get our percentage in 1931 or 2 and others got more.

Q. And others got more?

A. So I should qualify that by saying it wasn't entirely futile. They could get by with a certain increase in percentage for a certain time but they soon ran out (T. 34933, 34934).

In a memorandum prepared in 1931 or early 1932 by Diamond and circulated by it to competitors, it was stated:

In the year 1930, according to Mr. Mallory's yard-stick, we shipped only 4500 barrels in excess to our fair share of the business, which should be a clear indication that we have not abused our position (Com. Ex. 2662-B).

In a memorandum dated March 9, 1934, Albert Moyer, president of Vulcanite, stated in part:

\* \* \* our tonnage has, even from the start, been in accord with the shipments of other plants in this district (Com. Ex. 426-P).

In a memorandum sent by Mr. Mallory to Nazareth on April 5, 1934, it was stated in part:

First I want to try and show that the theory that it is good business to increase the volume of shipments of any company in excess of its quota share by cutting the market price in order to reduce manufacturing costs is a very costly fallacy not only for the company, but also for the entire industry. \* \* \* (Com. Ex. 821-E).

In writing to the same respondent on November 15, 1933, Mr. Mallory had stated in part:

You may be interested in the results of my last tabulation of the 1933 shipments (January 1st to October 31st), figured out on the percentage share plan. I know there are one or more companies in each district who have ignored this plan entirely and, in the following calculation, I have omitted their shipments in order to learn the results of the operations of the companies who are more inclined to co-operate for the common good.

To enable you to understand just what I mean by "out of balance," I will explain it by using the figures of Districts 1 and 2 \* \* \* the total shipments from the thirty-six plants for the ten months of 1933 (January-October) amount to 13,611,000 barrels and the "out of balance" shipments are 549,000 barrels or 4% of the total shipments, which means that, if the 549,000 barrels were properly redistributed, each of the thirty-six plants would have shipped its percentage share of the total 1933 shipments.

The following gives the results in the districts my work covers:

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	Total plants in district	Number plants in this calculation	Out of balance
Ea. Pa., N. J., Md., N. Y., and Me.....	38	36	4.0%
Ohio, Western Pa., and W. Va.....	19	16	8.1%
Wis., Ill., Ind., and Ky.....	11	10	12.2%
Va., Tenn., Ala., Ga., Fla., and La.....	19	16	7.4%
Ea. Mo., Ia., Minn., and S. Dak.....	13	12	4.5%
W. Mo., Nebr., Kans., Okla., and Ark.....	13	12	8.0%
Texas.....	8	8	13.2%
	121	110	-----

Average for 110 plants out of balance 6.9 percent (Com. Ex. 821-2J).

(g) When the NRA Code was approved November 27, 1933, it contained a provision under which the board of trustees of the Institute was authorized to formulate a plan for the sharing of available business for presentation to the Code Authority for consideration by the Administrator. Earnest and continued efforts to formulate such a plan were made. The Mallory formula, based on productive capacity, and also the so-called "Storey" plan, based upon shipments, were considered. Substantially all members of the industry desired a pro-ration plan, but there was difficulty in agreeing upon a basis for pro-ration. Some respondents had been unable to establish a three-month production record which they felt properly reflected their productive capacity; some objected to any plan which would allow those mills which had failed to cooperate and had expanded their production at the expense of others to retain their gains; and some objected because they thought chain mills might be favored as against individual mills: Consideration was given to other methods of allocating business, but no plan or method was ever approved by NRA.

(h) A plan was suggested by the chairman of the committee on sharing available business (Joseph Brobston) for the allocation of business by districts, dividing the total in each district between chain mills as a group and individual mills as a group and allowing each group to decide upon further division among its individual members. The minutes of a meeting of the members of the Institute for Districts 1 and 2 held on September 12, 1934, show:

The Chair recognized Mr. Conn, who stated that the meeting was called because of a Resolution passed by the Board of Trustees to the effect that the final Storey Committee report be again submitted to the membership in Districts #1 and #2 for such action as those members desire to take.

The Chair recognized by Mr. Coffin, who addressed the meeting relative to his position regarding a plan for sharing available business. After a discussion, the roll call showed that the membership in Districts #1 and #2 was unanimous for some plan of Sharing of Available Business (Com. Ex. 637-L).

Thereupon Mr. Brobston presented his plan in detail and the minutes further show:

After considerable discussion the Chair recognized Mr. Coffin, who moved that the trustees of Districts #1 and #2, calling in such assistance as they may deem advisable, attempt to formulate a plan of allocation of business in Districts #1 and #2; seconded by Mr. Conn and unanimously carried (Com. Ex. 637-O).

In writing C. F. Conn on September 27, 1934, George F. Coffin stated in part:

A canvass of all the members in Districts 1 and 2 seemed to indicate that in the past the business seemed naturally to fall in figures which showed that 62% of the going business in Districts 1 and 2 fell to the so-called "Chain Companies," and that naturally the remaining 38% fell to the individual or smaller operating units. I think the statement was made that from whatever angle you looked at the picture, the division remained practically the same (Com. Ex. 577-2P).

The minutes of meetings of producers located in these districts do not show the adoption of any plan of allocation but do show that "much labor has already been expended" (Com. Ex. 637-T) upon the subject. Figures for these Districts for the years 1936, 1937, and 1938 prepared by Mr. Mallory and rearranged and translated into terms of percentages, show the extent to which shipments conformed to the 62 percent and 38 percent pattern and the relationship of shipments to clinker capacity.

*Districts 1 and 2*

	Percent of total shipments			Percent of shipments to capacity <sup>1</sup>		
	1936	1937	1938	1936	1937	1938
Total, chain mills.....	63.42	63.93	62.58	33.28	37.46	34.03
Total, individual mills.....	36.58	36.07	37.42	37.90	38.82	37.37
Lehigh.....	16.15	16.72	15.58	29.74	42.41	36.68
Universal.....	12.31	13.03	12.75	31.19	34.30	31.14
Penn-Dixie.....	7.77	7.55	7.82	33.05	33.36	32.06
Alpha.....	6.78	5.78	7.31	30.43	26.96	31.64
Lone Star.....	6.46	6.99	6.16	42.02	47.18	38.59
North American.....	6.49	6.78	6.25	39.41	42.73	36.54
Lawrence.....	5.61	5.21	4.98	35.75	34.51	30.57
Medusa.....	1.85	1.86	1.72	53.01	55.40	47.55
Vulcanite.....	2.14	2.35	2.33	22.41	25.61	23.58
Edison.....	4.53	3.98	3.68	47.46	43.34	37.23
Coplay.....	2.82	2.84	2.96	31.03	32.43	31.34
Nazareth.....	3.22	3.14	3.40	39.08	39.61	39.86
Hercules.....	3.28	3.09	2.95	37.79	37.05	32.75
Giant.....	2.37	2.51	1.86	28.48	31.33	21.52
Allentown.....	4.69	4.88	4.47	48.70	52.62	44.75
Keystone.....	4.22	4.08	4.78	49.65	49.88	54.18
Glens Falls.....	1.83	2.14	3.26	32.37	39.24	55.43
Federal.....	1.63	1.74	1.66	33.01	36.63	32.45
Whitehall.....	5.85	5.31	6.06	71.95	67.80	71.85

(Com. Ex. 3203-A; 3205-A.)

<sup>1</sup> Includes estimated capacity of National Portland Cement Company. Shipments of this company not available.



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(i) The nature of the statistical data collected and disseminated to its members by the Institute is shown in a letter dated July 26, 1935, from Mr. Mallory to the manager of the Institute:

(A) Gives the percent of clinker production and cement shipments on the basis of clinker capacity for each district for the preceding twelve months; also the amount of clinker and cement produced, and the shipments, for the current year. The purpose of this report is to enable each company to estimate the production and shipments of its plant or plants and to know every month whether it is producing and shipping more or less than the average of all the plants of the district in which the plant is located. Issued monthly.

(B) The purpose of the report marked "B" is to show all stocks on the same basis by using days' supply instead of barrels in order to bring out clearly when the stock of any one district is becoming too large; to illustrate, on June 30th Michigan had enough cement on hand to supply the 1935 rate of demand until about January 15, 1936, without producing any in the meantime. Issued monthly.

(C) Gives the average factory value per barrel of portland cement from 1920 to March 31st, 1935. This report is issued quarterly.

(D) This series of reports gives for each company the amount of clinker and cement produced, the amount of cement shipped, and the clinker and cement stock of the previous month, together with the total production and shipment figures of the previous twelve months. A key sheet for Districts 1 and 2 is attached, as well as the forms used to obtain the information. (Reports for the Rocky Mountain and Pacific Coast districts are not issued.) The purpose of this tabulation is to enable each company to know not only what it is producing and shipping, but also what each of its competitors is doing.

(E) Gives for each State in Districts 1-9 inclusive the dollar amount of building contracts awarded during 1935 up to the current month, together with the amount awarded during the same period for each of the past three years. The purpose of these figures is to indicate in which State or States there is the probability of a change in demand. An estimate of the probable consumption (shipments into States) in each district over a period about six months hence also accompanies these figures in order to give the companies some idea of what the future consumption may be (Com. Ex. 1025-A, B.)

The thought expressed in (D) above was reiterated in a letter by Mr. Mallory to the manager of the Institute dated April 2, 1936, in which he said:

I have no knowledge as to the actual value the reports have to the companies. However, they are issued in the belief that they help the companies by eliminating their suspicions in connection with what their competitors are producing and shipping since they get the facts, and the reports also bring them information about current conditions in the construction industry (Com. Ex. 2379).

A few members of the Institute finally objected to such disclosure of the details of their business to competitors. On July 17, 1936, the president of Marquette wrote the Institute in part:

\* \* \* However, we do object to the manner in which reports are presently issued by the Institute. They show the situation with respect to production, ship-

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ments, and stocks of each individual plant in a given district, designating each plant by a key number. But, since the key is known to us, and we presume to all other manufacturers as well, the result is to make known to each member of the Industry the exact position of each of its competitors.

As in the case of the reporting of contract information, covered by the attached copy of letter, we maintain that such a detailed dissemination of information serves no useful purpose whatsoever. We do not require that information concerning the business of our competitors and we see no reason why they are entitled to such information concerning our business.

All that is necessary or desired is a simple statement once each month exactly similar to the statement produced by the Bureau of Mines. This statement shows the production, shipments, and stocks by districts established by the Bureau many years ago. The district figures cannot be broken down by anyone to show the individual figures of a particular manufacturer. Preferably an effort should be made by the Institute to cause the Bureau of Mines to speed up its monthly compilations and dissemination of these figures. If this were accomplished, there would be no need for duplicating the work through the Institute as is now done (Com. Ex. 1025-G).

The president of Ash Grove, L. T. Sunderland, on August 22, 1936, wrote to Charles F. Conn, chairman of an Institute committee, suggesting the trustees should be advised concerning

The known objections on the part of an uncertain number of the members of our industry to the form in which reports of production, stocks, and shipments have been distributed. Frankly, I question whether we could secure government approval of our present method and forms which reveal to competitors such intimate details of their business operations.

\* \* \* \* \*  
It is well known that such statistics have been misused, and besides, have been a source of constant irritation ever since they were instituted, which I believe was under the NRA. Consideration of this matter is clearly contemplated by Section 2, Page 6 of the report, but I think the Trustees at the time of receiving the report should be informed of the objections which have been registered, both formally and informally, against the revelation of individual statistics (Com. Ex. 870-6H).

In testifying with respect to the above-mentioned letter, Mr. Sunderland said in part:

Q. You said that the revelation of such matters to competitors tended to make a mill who was not increasing its business suspicious of the man who was increasing his business?

A. I did (T. 13665).

\* \* \* \* \*  
Q. Has there been any specific harm result to your company from it?

A. Well, that is rather intangible and I couldn't give you any specific case.

Q. What is your belief in regard to it?

A. Well, I believe that when we have been fortunate enough or enterprising enough to do a larger amount of business than some of our competitors, our jealous competitors thought we ought to do, doubtless it would result in activities of theirs that were harmful to us (T. 13669).

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(j) Continuing as they did a prior cooperative activity of many years' standing, the statistical services of the Institute in furnishing to each corporate member of the Institute intimate details of the business of each of its competitors and the relationship thereof to the aggregate business, accompanied as they were by other activities set out herein, resulted in substantial restraint upon the price, production, and sales policies of the corporate respondents and tended to substitute collective opinion for individual judgment.

PAR. 16. (a) Another aspect of the cooperation among respondents to prevent increases of production of cement which might interfere with price stability appears in their organized opposition to the entry of new production and new competitors into the cement industry.

(b) The proposed code submitted to NRA by the Institute provided that prior to the establishment of a new plant, an increase in capacity of an existing plant, or the moving of a plant to another location, the Institute might, if it believed the facts warranted such action, petition the President to prohibit the contemplated action. The NRA Code for the Cement Industry, as approved, contained such a provision. At a meeting of the trustees of the Institute on December 7, 1933, it was moved that:

\* \* \* It is the position of this Board that there should not be any increase of productive capacity in any area; seconded by Mr. Affleck and unanimously carried (Com. Ex. 616-D).

At a meeting of the trustees of the Institute on May 10, 1934, the minutes show:

The chair also read a report from Mr. John Treanor, Trustee District #11, in which it was recommended that the Southwestern Company be permitted to relocate 50% of its Victorville plant at Torrance and that the members of the Institute in Southern California accept the statement made by the Southwestern Portland Cement Company that this relocation will not, in any way, increase the productive capacity of the District. After discussion, the Chair recognized Mr. Rader, who moved that the Southwestern Portland Cement Company be granted this permission in accordance with the statements made in their letter; seconded by Mr. Sunderland; unanimously carried (Com. Ex. 620-C, D).

(c) In a circular letter to Institute members dated December 14, 1935, George H. Reiter, general manager of the Institute, advised that:

\* \* \* Colonel John B. Reynolds of the Cement Information Bureau of this organization appeared before the Resolutions Committee for the purpose of presenting and discussing a resolution which he had been requested by officials of the National Association of Manufacturers to draft in regard to the policy of the Reconstruction Finance Corporation in extending loans to units of industries already in a state of excess capacity of production (Com. Ex. 674).

The resolutions committee recommended the insertion of a resolution in opposition to "this harmful practice" in the report of the committee on relations of government to industry. Mr. Reiter then suggested that members of the Institute who were members of State and local associations "can do much by urging these organizations to take similar action and by bringing the matter to the attention of their senators and representatives in Washington."

(d) At least a portion of the mechanics of the opposition to new capacity appears in the activities shown by the record with respect to the completion of a cement plant at Foreman, Ark. On January 11, 1934, a vice president of Arkansas wrote Charles Boettcher, president of the Ideal Cement Co., which controls Arkansas, and stated in part:

We have heard several rumors here to the effect that the cement plant at Foreman, Arkansas, is trying to resume building operations and operate under the Code Authority.

\* \* \* \* \*

With the curtailment of production of other going concerns, it would be a catastrophe if any additional tonnage were put on the market at this time (Com. Ex. 415-28).

Mr. Boettcher on January 13, 1934, wrote B. H. Rader, chairman of the Code Authority, enclosing a copy of the letter received from Arkansas and stating in part:

My understanding is that the NRA does not encourage building or finishing any old plants. Will you kindly let me know something about this, whether the completion of the Foreman Plant can be stopped, or not (Com. Ex. 415-27).

On March 10, 1934, Mr. Rader wrote Joseph S. Young, president of Lehigh:

I enclose herewith letter from the Reconstruction Finance Corporation, in regard to a loan they are requested to make to complete a Cement Plant in Southwestern Arkansas. Also attached is all the data the Portland Cement Association has available. I am sending this to you as Chairman of the Committee on Building New Cement Plants.

I am also enclosing a few letterheads of the Code Authority, and if you can add some data to this, I wish you would write a letter. You can sign my name to it and forward it. I thought also it might be advisable to have someone call on the Reconstruction Finance Corp., 33 Liberty Street, New York City.

If you agree with me on this method of handling it, wish you would do so and send copies back to me for our files. You will notice he asks for two copies of the data (Com. Ex. 415-22).

On May 24, 1935, Mr. Boettcher wrote Blaine S. Smith, president of Penn-Dixie, who was active in Institute affairs, and stated in part:

At a court hearing connected with the foreclosure sale of the cement plant equipment at Foreman, Arkansas, the other day, I am informed there was

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testimony offered to the effect that the management of the defunct Company anticipated that you would join with them and complete building of the Plant.

I trust that this statement he made was without foundation, Mr. Smith, as I feel that two Plants located as close together as would be ours at Okay and yours at Foreman would be unable to earn returns on the investment. In fact, it has been my intention to bid on this equipment and if possible, purchase it in order to remove it as a menace to the market in Arkansas. As you know, there are so many Plants which sell into the State of Arkansas that there is very little business for any one of them, and placing this promotion at Foreman into production would make conditions much worse than they are at present, with probable resulting price demoralization (Com. Ex. 500-H).

Mr. Smith replied to this letter on June 8, 1935, in part:

We naturally are interested in seeing no increase in cement productive capacity in the country. There is too much already. But, if this plant is going to be completed anyway, and of course that is their intention, we thought we might be interested in it.

The result of our investigation was not favorable and I doubt if we could become interested. I understand the sale which was scheduled was postponed to a later date (Com. Ex. 500-G).

On September 30, 1935, Coy Burnett, an official of Monolith, telegraphed F. M. Coogan, president of Alpha, who was active in Institute affairs, as follows:

LEARN THAT R. F. C. AUTHORIZED THREE HUNDRED THOUSAND LOAN TO AMERICAN PORTLAND CEMENT AT FOREMAN ARKANSAS FOR PLANT COMPLETION STOP BELIEVE THIS MATTER MERITS INTELLIGENT OPPOSITION (Com. Ex. 942-B).

Mr. Coogan replied by telegram on October 1, 1935, as follows:

TELEGRAM RECEIVED CEMENT INSTITUTE WIRING PROTEST AGAINST LOAN TO FOREMAN ARKANSAS PLANT COPY OF WHICH WILL BE SENT YOU THIS WILL BE FOLLOWED UP VIGOROUSLY BY PERSONAL CONTACTS (Com. Ex. 942-C).

On October 1, 1935, G. F. Coffin, in his capacity as president of the Institute, telegraphed the Chairman of the Reconstruction Finance Corporation, making a strong protest against a loan for the completion of the Foreman plant. On October 8, 1935, Mr. Coffin advised the members of the Institute of the reply received from the Reconstruction Finance Corporation, and stated in part:

I am, therefore, sending you a copy of Mr. Jones' reply. It is evident that additional and energetic effort be made by the membership to forestall this additional excessive capacity. Copy of the letter follows:

"Permit me to acknowledge your telegram of October 1.

"This Corporation has made a commitment to the American Portland Cement Company. The economic justification for this loan was that the Engineers' reports indicated that the plan could operate at a profit if completed according

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to plans and specifications. The record further showed that a very large number of innocent stockholders had invested six or seven hundred thousand dollars in the stock of this Company, which investment represented a total loss to them unless the plant could be completed.

"If the applicant is able to meet the conditions imposed, the Corporation will be compelled to comply with its commitment" (Com. Ex. 1029-B).

On October 10, 1935, R. J. Morris, vice president of the Ideal Cement Co., wrote B. F. Affleck, president of Universal, setting out in detail the conditions imposed by the Reconstruction Finance Corporation with respect to the Foreman loan, and stated:

As I stated to you over the 'phone, this loan is apparently a menace to the entire cement industry, as it will constitute the entry of the U. S. Government in the manufacture of cement (Com. Ex. 553-5Z, 6A).

On October 14, 1935, George F. Coffin, president of the Institute, addressed a letter to all members of the Institute in which he advised of a further protest made by him to the Reconstruction Finance Corporation against a loan for the Foreman plant and continued:

On the whole, I would say that my previous request for help in this situation has met with a very generous response, and R. F. C. by this time, in addition to The Institute's protest, has a large number of individual manufacturers' protests. I think we are making real progress, but additional help is highly desirable. Kindly advise me of any steps that you take along the line of backing up The Institute's protest (Com. Ex. 500-B).

On November 12, 1935, an article by B. C. Forbes entitled "Wasted Taxes" appeared in the Chicago Herald and Examiner sharply criticizing an RFC loan authorized for the Foreman plant. A circular letter to all members of the Institute on November 18, 1935, by George H. Reiter, general manager, contains the following:

The attached syndicated article by B. C. Forbes may already have reached your attention.

The article indicates very clearly Mr. Forbes' friendly interest in this industry, as has previously been shown on a number of occasions. This present article was based on information from various sources compiled and prepared by the Cement Information Bureau of The Cement Institute and personally presented to and discussed with Mr. Forbes by Colonel Reynolds (Com. Ex. 1032-G).

On February 11, 1936, the manager of the Washington office of the Portland Cement Association wrote the Institute in part:

Sorry to be delayed in thanking you for the material which you so promptly sent to us regarding the proposed RFC loan to the American Portland Cement Company at Foreman, Arkansas, and the Washington-Idaho Lime Products Company at Orofino, Idaho.

I am holding the material regarding the former item until we are approached again by Mr. Macartney of the RFC (Com. Ex. 1028-G).

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This and other correspondence in the record indicates that the assistance of the Portland Cement Association, composed largely of members of the Institute, was enlisted in the opposition to the completion of the Foreman plant. This plant was not put into operation.

(e) A similar cooperative plan of opposition through the Institute, and otherwise, against a Reconstruction Finance Corporation loan for a plant at Orofino, Idaho, was carried out in 1936 by respondents but in this instance was unsuccessful. The Institute, through its Cement Information Bureau, also interested itself in opposing the construction of cement plants by States or municipalities.

(f) When the Tennessee Valley Authority had in contemplation the use of millions of barrels of cement and called for bids on cement for its construction work, it received bids from various of the corporate respondents which were substantially identical in price. Thereupon, a study was undertaken by TVA to determine the practicability of building and operating its own cement plant. While this study was in progress John Treanor, president of Riverside and a trustee of the Institute, arranged a meeting of Chairman Arthur E. Morgan of the TVA; Charles F. Conn, president of the Institute; John J. Porter, a trustee of the Institute Blaine S. Smith, president of Penn-Dixie; and himself. In a memorandum to the Board of Directors of TVA dated February 28, 1934, Dr. Morgan dealt in detail with this conference. He stated in part:

We discussed the Tennessee Valley Authority and its building program, and then discussed our need for cement. Mr. Conn and the others present undertook to explain to me the general nature of the organization of the industry. The personal impression I received from listening to them is that, in their opinion, uncontrolled price competition in a staple industry will tend to destroy that industry, that some kind of control is necessary for stabilization, and that the cement industry has sought to bring about such control; that the problem is a difficult one and has not been completely worked out, especially in its relation to the public. There might be superficial appearance of collusion and conspiracy against the public, when in fact there was only an honest effort to stabilize the industry for the benefit of everyone concerned. \* \* \*

He stated a preference for purchasing cement but said that:

Inasmuch as a call for bids results in receiving identical bids for cement, from our point of view as consumers there is no competition; \* \* \*

He suggested a joint examination of costs to determine a fair price which TVA would pay for cement and then stated:

If bids received should not be reasonable in the terms of these findings, then the Tennessee Valley Authority would take such action as it should see fit toward the production of its own cement (Com. Ex. 344-A-E).

After long-continued negotiations, Dr. Morgan, on September 3, 1934, telegraphed Blaine S. Smith in part:

IT IS IMPERATIVE THAT WE DETERMINE OUR COURSE AS TO PURCHASE OR MANUFACTURE OF CEMENT WITHOUT FURTHER DELAY STOP WE PLAN TO ADVERTISE FOR BIDS FOR CEMENT AND ALSO FOR BUILDING A CEMENT PLANT IMMEDIATELY AFTER THURSDAY MEETING STOP BIDS RECEIVED FOR CEMENT WILL THEN DETERMINE OUR COURSE STOP THURSDAY MEETING SHOULD BRING NEGOTIATIONS TO A CONCLUSION STOP \* \* \* (Com. Ex. 354-A).

On September 5, 1934, John Treanor telegraphed Blaine S. Smith the substance of a telegram he proposed sending to Dr. Morgan. Replying on the same day, Mr. Smith wired Mr. Treanor:

RETEL JUST RECEIVED CONSIDER YOUR PROPOSED WIRE ENTIRELY JUSTIFIED AND WITH SUCH REVISIONS AS YOU MAY MAKE BELIEVE IT SHOULD BE SENT AS NIGHT LETTER TONIGHT AS OUR MEETING IS AT TEN THIRTY CENTRAL STANDARD TIME THURSDAY MORNING SEPTEMBER SIXTH WILL KEEP YOU POSTED (Com. Ex. 562-12H).

Thereupon Mr. Treanor telegraphed Dr. Morgan in part:

\* \* \* THE FACT THAT I HAVE LONG MAINTAINED AND DO MAINTAIN A PERSONAL LOYALTY TO YOU ENTIRELY FREE FROM SELF-INTEREST ALSO ENTITLES ME IN MY JUDGEMENT TO EXPRESS MYSELF FREELY AND FRANKLY IN A PERSONAL WAY NOT IN ANY WAY AS MEMBER OF INDUSTRY COMMITTEE STOP I AM DISCOURAGED AND DISILLUSIONED BY THE CONDUCT OF THIS INVESTIGATION PURPORTING TO BE A FAIR INQUIRY TO DISCOVER THE TRUTH STOP TO MY MIND YOU HAVE KEPT THE WORK [WORD?] OF PROMISE TO THE EAR AND BROKEN IT TO THE HOPE STOP YOU HAVE DONE THIS UNWITTINGLY I BELIEVE THROUGH A DEEPSET GENERAL PREJUDICE AGAINST BUSINESS MEN A PREJUDICE UNWARRANTED AS I BELIEVE IN YOUR CASE AT ANY RATE STOP I THINK THAT WHILE YOU HAVE GONE THROUGH A FORM OF INVESTIGATION OF THIS CEMENT MATTER AND WHILE YOU MAY BELIEVE THAT YOU HAVE TRULY INVESTIGATED IT YOU HAVE NOT OPENED YOUR MIND STOP YOU HAVE IN FACT AS I SEE IT ADOPTED A COURSE CALCULATED MERELY TO COERCE THE COMPANIES BY THREATENED USE OF ARBITRARY POWER TO BUILD THE SHEFFIELD PLANT \* \* \* IS YOUR JUDGMENT FINAL INFALLIBLE AND NOT TO BE QUESTIONED BY THE PEOPLE WHOSE VITAL INTERESTS ARE SO DEEPLY INVOLVED STOP TO ME YOUR PRESENT ACTION IS BALD ASSERTION OF THE IMMENSE POWER WHICH IS YOURS THROUGH YOUR CONTROL OF VAST GOVERNMENT FUNDS STOP IT IS A RUTHLESS DECLARATION THAT THIS POWER CAN BE USED AT WILL WITHOUT OBLIGATION TO JUSTIFY ITS USE STOP IT IS TANTAMOUNT TO ARBITRARY DETERMINATION OF THE INDUSTRY PRICE UNDER THREAT OF DIRE PUNISHMENT IN CASE OF RESISTANCE \* \* \* YOU HAVE THE OPPORTUNITY TO AID IN THE DEVELOPMENT OF A PROCESS OF COOPERATION BETWEEN INDUSTRY AND GOVERNMENT OR TO DEAL THE PROSPECTS OF SUCH COOPERATION AS TO THIS PARTICULAR INDUSTRY A SERIOUS IF NOT A FATAL BLOW STOP I



TELL YOU ALSO AS A FRIEND IN CANDOR AND IN ALL SINCERITY THAT IT IS MY BELIEF THAT IF YOU EMBARK ON THIS PROJECT IN THE FACE OF THE ALTERNATIVE WHICH IS BEFORE YOU COMMA IT WILL RESULT IN DISAPPOINTMENT AND CHAGRIN TO YOU AND YOUR ASSOCIATES AND AN INJURY TO THE ADMINISTRATION OF WHICH YOU ARE A PART STOP I REMAIN WITH KINDEST FEELING (Com. Ex. 354-B-D).

Within a few days thereafter a formula worked out between TVA and members of the industry was accepted. Subsequent thereto, identical bids equivalent to \$1.30 per barrel f. o. b. the second nearest mill, made pursuant to the agreed formula, were accepted and cement was purchased by the Tennessee Valley Authority.

PAR. 17. (a) A large proportion of the cement sold by the corporate respondents is distributed to and through dealers. Irregularities, in price or otherwise, in the sale of cement by dealers tend to disturb uniformity of price and terms of sale among respondents. Means of eliminating or avoiding such disturbances were sought by respondents through agreements and understandings among themselves and with groups of dealers and dealer organizations to secure uniformity in their dealer policies; to minimize competitive conflicts between themselves and dealers, as well as among dealers; to reduce irregularities in sales by individual dealers; and to minimize price competition among dealers.

(b) As in the case of other concerted action by respondents, that taken with respect to dealers and dealer policies began many years ago and the Institute has continued, adapted, and supplemented previous actions as changing conditions and circumstances dictated. As set out in paragraph 14, the Association of American Portland Cement Manufacturers, in which numerous respondents herein were members, recommended in 1915 that a dealer be defined as:

\* \* \* a merchant, firm, or corporation regularly engaged in selling Portland cement and other building materials purchased by him for resale only who is also properly equipped with storage facilities; supplied with teams or trucks; and is recognized in his home town as a building-material dealer (Com. Ex. 3193, p. 12).

and, further: -

\* \* \* that no dealer be quoted for shipment to any town other than his home town except at consumer price, excepting only in towns adjacent to his home town in which there is no dealer (Com. Ex. 3193, p. 2).

The Portland Cement Association, largely composed of respondents herein, recommended in 1919 the adoption by manufacturers of the following dealer definition:

A dealer is a person, firm or corporation *regularly engaged in selling Portland Cement and other merchandise*, especially building materials, purchased by him

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for resale; who is also properly equipped with storage facilities; supplied with teams or trucks; and is recognized in his home town as a building material dealer (Com. Ex. 3192, p. 4).

and, further:

\* \* \* *a dealer should be quoted the consumer price on cement for shipment to any town other than his home town, except that it is proper to quote the dealer price to such a dealer on cement for delivery in towns adjacent to his home town in which there are no dealers (Com. Ex. 3192, p. 9).*

(c) A chronological outline of the cement marketing structure published by Lehigh in 1931 reads in part:

Prior to 1913—Dealers generally were not protected in any way. In some sections attempts had been made to establish dealer protection in one form or another, but none succeeded.

January 1913—On operations requiring less than 7500 barrels each, first efforts were made to quote only through dealers. On jobs requiring more than 7500 barrels, the minimum price was quoted to contractors.

December 1913—The quantity per operation on which the dealer received protection was increased to 15,000 barrels.

Throughout 1914—No general protection was given to dealers on any quantity. However, late in 1914, in the Northeastern States, protection was once more given to dealers generally on jobs of less than 3000 barrels. The quantity was again successively increased to 7500 barrels and 15,000 barrels. In the central West dealers were protected to the extent of 5¢ per barrel regardless of quantity.

February 1915—In all territories contractors were quoted 5¢ per barrel higher than dealers, regardless of quantity.

February 1916—The differential was increased from 5¢ to 10¢ per barrel.

August 1926—The Trade Discount method of quoting was advanced, making price to dealer and consumer the same, but with a 10¢ per barrel dealer discount to dealers on business handled by them.

November 1930—The Service Payment Plan of dealer protection was created.

And, in 1931—The flat price method of quoting without general dealer protection, returned (Com. Ex. 971-33N, 330).

In commenting upon some of the changes made and the underlying causes, Lehigh stated in part:

Before 1913 the flat price method of quoting prevailed most generally—the same price being made to dealers and consumers. The difficulty with this method was that while some manufacturers did not sell carloads to consumers where they had dealer representation, others, without such representation, did quote and sell direct. With the rapid growth of carload business this difficulty led to market conditions so disturbed that both dealer and manufacturer sought to develop methods that would correct these conditions and give both a stable basis of operations

\* \* \* \* \*

\* \* \* Price discriminations brought the invariable result of secret concessions, inside commissions, unequal and unfair dealing as between buyers in the same market and inevitable trade resentment and resistance (Com. Ex. 971-330).

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With regard to the 10¢-per-barrel differential, Lehigh stated in part:

While the entire industry observed the 10¢ per barrel differential, disquieting happenings indicated that there would be difficulty in maintaining it.

In a desire to obtain attractive carload business, many dealers continued to sell on a 5¢ margin, and thus quoted the manufacturer's product to the consumer at a lower price than the manufacturer himself would quote. The manufacturer who endeavored to uphold the 10¢ differential for dealers soon found himself at a disadvantage in actual selling—the business going to competitive brands on which split differentials were quoted.

\* \* \* \* \*

The practice of selling through cut dealer differentials again became so general that a complete breakdown of the structure of dealer protection was impending. Manufacturers, dealer associations, and prominent individual dealers again renewed their activities to correct the evils, and there was an urgent call for a new marketing structure (Com. Ex. 971-33V, 33W).

Difficulties arising under the trade discount plan were stated as:

Cutting the Trade Discount by competition between dealers in their own markets. Often this was done to sell other materials.

Shipping for the account of a dealer to markets other than his own. By this practice the manufacturer, using for the purpose a dealer who would cut his differential, sold carload tonnage over a wide territory at less than the manufacturer's own price to the consumer.

The subterfuge dealer, created by the manufacturer to secure attractive business at split discounts.

The "assigned contract," where the dealer—real or subterfuge—received a small commission for the use of his name, enabling the manufacturer to sell direct and pass the Trade Discount on to the consumer (Com. Ex. 971-34B).

(d) Having returned to the practice of giving no discount to dealers, a method of controlling competition between dealers and manufacturers and among dealers was desired. The next step taken appears in the code agreed upon and presented to NRA by the Institute.

Among the provisions proposed were the following:

1. Except as otherwise specified, portland cement shall be marketed in each community through the building material dealers, regularly serving such community. This applies to all classes of buyers except as in Paragraph 2. Importers, brokers, and so-called distributors shall be considered as competitors.

2. The following classes of buyers shall be sold direct by a manufacturer and at the same price and under the same terms and conditions of sale as to dealers, except as provided in Paragraph 6:

United States Government.

State Government, counties and parishes when properly authorized to purchase cement for public improvements or maintenance.

Contractors doing any of the foregoing classes of work, except where such work is located entirely within cities or villages.

Railroads filing tariffs with State or Interstate Commissions, including Terminal Railroads and contractors doing work for such railroads.

Owners or contractors buying for power development, flood control, and water supply projects not requiring dealer service.

Concrete product manufacturers including block, tile, roofing, pipe, piling, and all other precast concrete units, when for their own manufacturing operations but not for resale.

Commercial concrete mixing plants for their own processing operations but not for resale.

3. *Definition of a dealer.*—A cement dealer in the Industry is one who has an established place of business where he is regularly engaged in selling portland cement and other building materials to the public, with facilities to serve the retail trade in a given territory and able and willing to perform all functions devolving upon him in securing, performing and protecting contracts for the delivery of portland cement for specific work on his account.

The dealer's compensation shall come from the sale of his materials to his customer, based on services rendered and the cement manufacturer shall not pay a dealer commissions or other remuneration (Com. Ex. 556, pp. 13, 14).

When approved on November 27, 1933, the Code for the Cement Industry contained the above provisions in substantially identical language. Numerous interpretations of these provisions were issued by the Code Authority during December 1933 and January 1934, determining the application of such provisions in specific cases. On January 24, 1934, by order of the Administrator, these provisions were set aside and were never thereafter a part of the approved NRA Code for the Cement Industry. In response to a subpoena duces tecum calling for communications between Colorado and various parties, including Baxter McClain, manager of the Kansas City Division of the Institute, Colorado produced a mimeographed memorandum dated 2/17/34, bearing no signature except the printed letters "McC.," and reading in part:

Memo to Sales Managers:

Attached hereto a complete copy of Cement Trade Practices revised to and made effective February 17th, 1934.

The pertinent changes from former revisions are in Sections 7 and 8, and specifically in reference to NRM projects (Section 7) and CWA projects (Section 8) \* \* \* If not clear after study call up (Com. Ex. 947-16L).

The above memorandum was accompanied by a mimeographed circular bearing the same date and entitled "Cement Trade Practices (revised to date)" (Com. Ex. 947-16M). This memorandum contains in almost identical language the definition of a dealer which appeared in the provisions of the Code which were set aside on January 25, 1934, and provides, though in much greater detail and with some modifications respecting Government work, for substantially the same division of sales as between manufacturers and dealers as appeared in the stricken portion of the code. The record does not show similar action by other divisions of the Institute at that time and there is evidence

that considerable confusion and uncertainty developed. The Code Authority, however, continued to interest itself in and make suggestions concerning procedure in the method of handling sales in various trade classifications. On April 16, 1934, the chairman of the Code Authority advised all members of the industry "how they may quote a contractor for sale by a dealer a price fixed for such resale by such dealer" (Com. Ex. 1020-F). In the meantime, agreements between respondents and dealers were worked out with respect to classification of trade and division of business between respondents and dealers. On June 8, 1934, the chairman of the Code Authority advised all members of the cement industry in part:

I enclose herewith New Article XI. I am able to advise you that the National Federation of Builders Supply Associations, Inc. have accepted this on the basis that it will be put in for a four or six-months' trial period, and if at the end of that time, it is not working satisfactorily to either the dealers or the manufacturers, we will both go to Washington and try to have it corrected so that it will be satisfactory to both of us (Com. Ex. 1021-A).

Hearing upon the proposal was had before NRA on July 11, 1934, at which a statement on behalf of the cement industry was made by Charles F. Conn in an effort to secure reinstatement of the trade-classification and division-of-business provisions which had been stricken from the Code. This attempt was unsuccessful. Finally, in February 1935, some of the corporate respondents began issuing statements of marketing policy. One respondent, in sending the statement to its salesmen, explained the existing situation by stating in part:

Announcement is made at this time because the Consumer's Advisory Board and the legal division of the NRA have definitely and finally blocked all efforts to include any classification of buyers in our Code. Please understand that the industry was perfectly willing to compromise with the dealers, and in fact, several such compromises were arrived at during the past year. Action in each case was blocked by the National Recovery Administration. This statement of policy represents practically the last compromise (Com. Ex. 1923).

In making its announcement of policy, Lehigh stated in part:

For sometime efforts have been directed by both dealers and manufacturers toward establishing a policy for the sale of cement which would adequately protect all interests concerned \* \* \* (Com. Exs. 643-B; 873-C).

(e) The policies thus announced provided in substance for approximately the same division of business between respondents and their dealers as was contained in the provisions stricken from the NRA Code. Similar policies which grew out of conferences and agreements between respondents and dealers having been announced by various of the corporate respondents, the National Federation of

Building Supply Associations advised its directors "and also several hundred outstanding dealers through the United States" under date of February 25, 1935, in part:

You will find enclosed a typical statement of policy such as is being issued by individual cement companies throughout the United States. So far as they have been issued by the cement companies, we believe the statements of policy are identical.

This is not now a Code matter but an Association problem, and the officers of the Federation must ascertain the position which the Industry wishes them to take in regard to this matter.

Will you give this problem your immediate and thoughtful consideration. Before March 4, I would like to have a reply from you, giving the Federation officers your opinion of this announced policy for the distribution of cement and your considered advice as to what action, if any, should be taken by the Industry (Com. Ex. 2300).

The secretary of the Southwestern Lumbermen's Association, in writing to Oklahoma on March 16, 1935, stated in part:

It is our understanding that there will be a meeting of the cement industry in Chicago next Tuesday. We attach herewith a purported declaration of what is being considered at this time by certain manufacturers. Believing that in its final analysis, these are matters that should be negotiated between the dealers and the manufacturers, and recognizing the fact that the Oklahoma Portland Cement Company has strongly favored a dealer policy, we trust the attitude of the Oklahoma Portland Co. in this Chicago conference will be favorable toward maintaining a strong dealer policy (Com. Ex. 737-2B).

On or about March 19, 1935, there was a meeting in Chicago between representatives of the dealers and representatives of the Institute at which changes proposed in the dealer policies announced by cement manufacturers in February were considered. A similar meeting was held in Chicago in April 1935. At these meetings dealer policies were decided upon. On April 29, 1935, the Nebraska Lumber Merchants Association wrote "TO ALL CEMENT COMPANIES SERVING THIS AREA" in part:

We have been informed that the cement distribution policy developed in Chicago on March 19th has been accepted by the majority of the cement industry (Com. Ex. 461).

In writing to the Mountain States Lumber Dealers Association under date of March 2, 1936, the Nebraska Lumber Merchants Association stated in part:

I am rather surprised at your letter regarding cement distribution, for this reason—I was under the impression that the cement distribution statement which was worked out nearly a year ago, was applicable to the entire United States.

Our Trades Relation Committee as well as the Southwestern and Northwestern's Committees, sat in with the heads of the cement industry and worked

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out a cement distribution statement, copy of which is enclosed. I might say that this is the accepted distribution statement used by all cement companies in the Central Middlewest.

\* \* \* \* \*

You will be interested in knowing that since this statement was adopted, April 30, 1935, there is no record of any cement company having violated it in their transactions. I regret to say that we cannot say that much for our retail dealers (Com. Ex. 1904-A, B).

At a meeting of members of the Sixth District of The Cement Institute held on July 17, 1935, at which George H. Reiter, manager of the Institute, was present, a method of marketing cement substantially identical with the method adopted in the Chicago meetings was agreed upon. The district trustee of the Institute, M. C. Monday, in writing on July 24, 1935, to the various members of the Institute in that district, stated:

I beg to enclose herewith three (3) copies of the Method of Marketing Cement and three (3) copies of the Interpretations in connection with Section 2 of Method of Marketing Cement on State Government Work.

These Plans and Interpretations were unanimously concurred in by all members of the Southeastern District and approved at the meeting held in Knoxville on Wednesday, July 17, 1935 (Com. Ex. 547-4C).

The various understandings and agreements provided in exact and detailed terms for the division of business between manufacturers and dealers; that is, the types of business that would be accepted by cement manufacturers and the types that would be refused and therefore handled by dealers. The details of this division appear in the dealer policies announced by the corporate respondents. The practices thus established were almost completely uniform and were effective over areas which account for the major part of the national cement consumption.

(f) Having agreed upon dealer policies, steps were taken to maintain uniform compliance with such policies. On April 24, 1935, B. H. Rader addressed letters to other trustees of the Institute stating:

Mr. Harloe S. Chaffee, of Buffalo, New York, has been appointed contact man between the National Federation of Builders Supply Association and cement manufacturers by the National Federation.

You will undoubtedly hear from him from time to time on alleged violations of the Sales Policies by manufacturers, and I hope you will give him any information you can that he asks for, as he is trying very hard to do a constructive piece of work between the dealers throughout the country and the manufacturers. I am sure you will find him fair, open and above board with you. He does not want to put any one on the spot but does hope to straighten out as many of the difficulties as he can (Com. Ex. 832-G).

Various of the trustees acknowledged this letter from Mr. Rader, saying: "It will be a pleasure for me to cooperate with Mr. Chaffee

in any and every way that would seem helpful in this connection" (Com. Ex. 832-D); "We will be glad to be of any service possible to him" (Com. Ex. 832-C); and "Will be glad indeed to cooperate to the fullest possible extent with Mr. Chaffee. If you say he is O. K., that is enough for me" (Com. Ex. 832-E).

PAR. 18. (a) The concerted action of respondents in establishing a specific division of business between themselves and dealers included a division of sales to agencies of the Federal Government. For many years prior to 1935 it was the established practice for producers of cement to make direct sales to Federal agencies. The new dealer policies put into effect in 1935 provided, however, that sales of cement to the Federal Government for emergency or unemployment relief agencies such as the Works Progress Administration, Civilian Conservation Corps, and Federal Emergency Relief Administration should be made by dealers. This change resulted in the Government being unable to make purchases of cement for such uses directly from respondents and in its being obliged to purchase its cement requirements in those categories from dealers. The prices paid dealers necessarily included the dealer mark-up and were higher by that amount than would have been the case in direct purchases from producers. Purchases from dealers also prevented the Government from taking advantage of land-grant rates in order to reduce its delivered cost of cement. A further result was to limit the sources from which purchases might be made.

(b) In order to smooth the path for these changes, the president of the Institute appointed a committee to maintain contact with Government purchasing agencies and, so far as possible, further the respondents' new dealer policies. In writing to George H. Reiter on May 18, 1935, George F. Coffin stated in part:

For the present, as President of The Institute, I am appointing you chairman of what you might call an informal committee, for the purpose of keeping in close touch with the various departments in Washington; and with you I am also appointing:

G. E. Warren,  
F. M. Coogan,  
E. P. Lucas,

J. F. Neylan,  
L. T. Sunderland,  
S.W. Storey.

The duty that I am assigning to the members of this committee is to keep in close touch with developments in the purchasing end of material for this governmental work, and report back to me \* \* \* (Com. Ex. 415-373).

This Institute committee cooperated with E. J. Mehren and William Kinney of the Portland Cement Association and with L. I. MacQueen, H. S. Chaffee, Frank Carnahan, and other dealer representatives in presenting the agreed program for division of business to officials of the Procurement Division. After an initial conference with purchas-



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ing officials, E. J. Mehren telegraphed George H. Reiter on July 10, 1935:

BELIEVE IT DESIRABLE TO BRING TO WASHINGTON COPIES ORIGINAL CODE AND OF DRAFT OF DIRECT AND DEALER SELLING AGREED ON SUBSEQUENTLY WITH DEALERS ALSO COPIES DECLARED POLICY OF COMPANIES REGARDING DIRECT AND DEALER SELLING (Com. Ex. 415-542).

A letter to all members of the Institute dated July 10, 1935, by George H. Reiter, as chairman of the trade practice committee of the Institute, stated in part:

The Trade Practice Committee met in Chicago on July 9 and designated your Chairman, together with Counsel, to serve as a subcommittee to expedite this work. The subcommittee had a preliminary conference in Washington about ten days ago with Captain H. E. Collins, who is assistant to Admiral Peoples, Director of the U. S. Procurement Division. Also present at this conference was Mr. H. E. Hiltz, who is a commodity chief in that division, serving as adviser on cement problems.

The U. S. Procurement Division will have general supervision of the purchase of all materials under the so-called four billion dollar emergency fund. This will include purchases for resettlement programs, for highways, for federal relief activities and for other projects financed by that fund.

We have just received a request from Captain Collins to attend a joint conference to be held Friday afternoon, July 12, at his office in Washington to discuss cement purchases. He requests that both the dealers and the manufacturers of cement should be represented at this conference by a small committee. We are informed that the dealers will be represented by Messrs. Frank Carnahan of the National Retail Lumber Dealers Association and L. I. MacQueen, Secretary of the National Federation of Builders Supply Association. To represent the cement manufacturers President Coffin has designated Mr. John F. Neylan and Mr. George H. Reiter, who are both members of the Trade Practice Committee (Com. Ex. 1022-N).

In a letter to all members of the Institute dated July 15, 1935, advising of the conference had with the Procurement Division, Mr. Reiter stated in part:

The Committee for the Cement Industry explained to Captain Collins that there had developed in the Cement Industry a method of sales and of distribution which was characteristic of the territory east of the Rocky Mountains—that is, excepting in districts 10, 11, and 12, there was a definitely accepted practice of marketing cement throughout the country.

It was therefore stated that the committee believed it would be in accord with such established practices for the United States Government to purchase direct from cement manufacturers in the following cases:

1. Purchases by or for governmental departments not regularly engaged in emergency relief work.
2. Highway pavements and grade crossing elimination projects.
3. Bridge, culvert and repair work awarded *as part of* highway pavement contracts.

4. Water supply development work located *outside* of and *not designed* to *serve* cities, towns and villages local to such projects.

5. Large water power, flood control and irrigation work located entirely or partly outside of cities, towns or villages.

As to all other purchases and projects, it was indicated that it would be in accord with the established practices of cement manufacturers in Districts 1 to 9 inclusive if the United States Government refrained from purchasing direct. In any such case where the government awards a contract to a contractor such contractor should be permitted to furnish cement which he would secure in accordance with the marketing practices of the cement manufacturers.

Mr. MacQueen, speaking for the dealers, stated that he was in accord with the statement that this plan recognized and preserved the normal method of doing business in the Cement Industry (Com. Ex. 202-E, F).

(c) In a letter dated August 28, 1935, L. I. MacQueen secretary of the National Federation of Builders Supply Associations, stated in part:

There were those who said "it couldn't be done." To them it seemed a hopeless task to buck a Department of the Government which was determined to buy direct. However, it has been done and, in my judgment, it is conservative to say that in excess of \$50,000,000 of business will be held in dealer channels which, but for your help and that of the others who joined with us, would certainly have gone direct. Not only would we have lost this splendid volume, but buying precedents would also have been established which would have continued to cause severe losses for years to come.

Instead of disaster which seemed to be certainly headed in our direction, we have been able to gain a signal victory. We have proved to the Government, to manufacturers and to ourselves that we are alive and willing to fight for our rights. More than 10,000 communications went into Washington, I am informed, either directly to members of Congress or to the Procurement Division. Now they should be convinced that a Builders Supply Industry really does exist (Com. Ex. 2401).

PAR. 19. (a) From time to time the corporate respondents who sell cement in some of the larger seaport cities have encountered competition at such ports, and in territory adjacent thereto, from cement of foreign manufacture imported for sale in this country. The most commonly used method of meeting such competition has been the establishment by respondents of arbitrary prices, or price zones, in the territory affected by the lower prices quoted on foreign cement, at the same time maintaining higher prices elsewhere under the multiple basing-point delivered-price system. For a time beginning late in 1932 or early in 1933 a boycott of dealers who handled foreign cement was established in the Boston, Mass., and New York, N. Y., territories by the corporate respondents engaged in selling cement in those localities. In order for a cement dealer in the affected territory to buy cement from domestic producers during the continuance of this boycott, it was necessary that he discontinue handling foreign cement and

agree not to handle it in the future. After about two years, the respondents concerned reverted to the use of arbitrary price zones. In some localities, including certain Texas ports, persuasion and agreements with dealers were used to combat the importation of cement. The most objectionable feature of imported cement to respondents was its impact upon domestic prices even after the payment of substantial import duties.

(b) In carrying out the boycotts mentioned, the terms used by the participating respondents as the basis on which sales of cement would be made were similar to those stated by Lone Star in its letter of December 31, 1932, to the official in charge of its sales in the New York area:

In keeping with our past performance in other sections of the country, our company has reached the conclusion that in the Metropolitan District, which includes northern New Jersey, you should place in effect immediately the policy of classifying building material dealers who handle foreign cement as competitors, and, as such, decline to sell them Lone Star or "Incor" until such time as it can be shown that they have discontinued handling foreign cement and give their assurance that no additional foreign cement will be handled in the future.

The instructions excepted the sale of any foreign cement which a dealer had on hand, but did not except obligations of dealers for foreign cement not yet received or obligations of dealers for future delivery of foreign cement on bids made on that basis. The instructions continued:

Please arrange to have Mr. Bradley watch as closely as possible the known foreign cement deposits in this town. Likewise instruct the representative of Lone Star Cement Company Pennsylvania covering northern New Jersey to watch the deposits in and around Newark and the other known points with a view to determining whether or not any dealers are drawing cement from these deposits.

The Brooklyn deposits we understand are in lower Brooklyn and at the Bock Terminal. In New Jersey we understand there are one or more deposits at Newark or Port Newark. These should be definitely developed and watched and periodical reports made showing what dealers are drawing cement from the warehouses from time to time (Com. Ex. 1132-A, B).

In the Boston area respondents maintained a cooperative system of watching at the place of business of Jenny & Lux, Inc., importers of foreign cement, to check on dealers' trucks hauling foreign cement from the importer's warehouse. Representatives of various respondents, including Lehigh, Universal, Alpha, Hercules, Lone Star, Lawrence, Allentown Portland Cement Company, Nazareth, Edison, and Giant, took turns in watching the importer's place of business and making lists of dealers' trucks hauling foreign cement. Dealers in New York and in Boston who continued to handle foreign cement

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were unable to purchase cement from any respondent manufacturer. Some dealers, in their efforts to purchase, canvassed all respondents who normally sold cement in the affected territory without being able to purchase. Representatives of a number of respondents, including Lehigh, Universal, and Penn-Dixie, discussed with dealers the ban on purchases of domestic cement by dealers handling foreign cement, and informed some dealers that the matter had been discussed and agreed upon by manufacturers. In these conversations, references were made by respondents' representatives to the Institute and to meetings of respondents for acting upon the question of removing individual dealers from the "blacklist."

(c) In 1935, after the expiration of the NRA Code, arbitrary prices were again established in the areas affected by imported cement. Respondents filed with the trade practice committee of the Institute detailed notices of such arbitrary prices, specifying the price at each destination in advance of the effective date thereof. The trade practice committee immediately sent complete notice of these price filings, before the effective dates thereof, to Institute members doing business in the territory in which the arbitrary prices were announced.

PAR. 20. (a) The matter of making sales of cement subject only to standard specifications has long been a subject of collective action by the cement industry. The minutes of a meeting of the Association of American Portland Cement Manufacturers in December 1904, at which representatives of a number of the corporate respondents herein were present, show the adoption of standard specifications for portland cement. As set out in paragraph 14 hereof, this association recommended in 1915 that no quotations for or sales of cement be made subject to any specifications other than those of the United States Government or the American Society for Testing Materials; the Portland Cement Association, of which many respondents herein were members, in 1919 recommended that no sales of cement be made except subject to specifications of the American Society for Testing Materials; the Code of Ethics adopted by the Institute in 1929 prohibited the sale of cement subject to specifications other than those for the American Society for Testing Materials, American Standards Association, or the United States Government; the NRA Code for the Cement Industry, approved November 27, 1933, provided that all portland cement marketed should comply with specifications of the American Society for Testing Materials, American Standards Association, or Federal Specification Board except if cement was designed to meet unusual conditions not covered by the specifications referred to, the price for such modified cement be filed with the Code Authority; the "Com-

pendium of Established Terms and Marketing Methods" issued by the Institute in 1935, after the NRA Code, provided that portland cement marketed by members comply with specifications of the American Society for Testing Materials, American Standards Association, or Federal Specification Board, and stated that products other than portland cement are sold to meet unusual conditions not covered by the standard specifications for portland cement.

(b) For many years the minimum specifications for portland cement have been standardized and all cement has been sold subject to such minimum specifications. This does not mean that cement was standardized, but merely that it was guaranteed to meet the minimum specifications established. As a matter of fact, the cement produced by some mills has exceeded some of the requirements of the specifications by a relatively small margin, that produced by other mills has exceeded some of these requirements by as much as 100 percent, and that produced by the remaining mills has exceeded these requirements by varying degrees within the extremes stated. In 1930, minimum specifications for high-early-strength cement were adopted. The principal difference between standard cement and high-early-strength cement is the fineness to which the latter is ground, and with the establishment of specifications for high-early-strength cement the fineness requirements for portland cement were discontinued. Some of the cement previously sold as standard approximated in quality the high-early-strength specifications. The cement sold under the high-early-strength specifications has commanded a premium price of approximately 50¢ per barrel more than standard cement.

(c) There is a direct and substantial connection between cement prices and respondents' interest in requiring that only certain agreed specifications be used in making sales of cement, and this connection received recognition at an early date. At the time when specifications were adopted in 1904, a member commented thereon, as shown by the minutes of an association meeting attended by representatives of some of the corporate respondents, as follows:

This will certainly give us a common ground in the cement business on which we can meet, and will enable a standard uniform article to be made at a uniform price, and anything outside of this standard article, will represent additional cost for additional trouble to meet the whims of any individual. I certainly trust this will be dealt with as a commercial question, as well as an engineering one (Com. Ex. 3235-U).

(d) The cement committee of the American Society for Testing Materials, which handles cement specifications, is composed of representatives of manufacturers, consumers, and a general interest group, the manufacturers having representation numerically equal to that of

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all other interests. In fact, however, the tendency has been for the manufacturing representatives to dominate the action of the committee. Over a long period of years there has been an improvement in the quality of cement generally and an increase in the requirements of the specifications, but there has also been considerable opposition to the higher requirements from the manufacturing group.

(e) Respondents have not only refrained almost completely from advertising quality differences in cement, but have in fact given much publicity to the claim that the quality of all portland cement is practically identical. The general attitude of respondents in these matters is well put in a letter dated March 29, 1934, from Charles L. Hogan, president of Lone Star, to B. F. Affleck, chairman of the committee on public relations of the Institute, in which Mr. Hogan in describing conditions which led to public distrust of the cement industry, listed among the reasons therefor:

The absence of quality competition between brands, refusal of manufacturers to bid on non-standard specifications at any price and the resistance which has been put forth by the industry to specifications calling for high quality (Com. Ex. 553-Y).

and:

It is usual in selling a product to claim advantages for it over the competition. These advantages are advanced as a reason for buying a brand in preference to another. We have managed to eliminate brand preference from the marketing of cement, thereby precipitating a scramble for business using weapons wrought from influences which have nothing to do with the product or the merits of the manufacturer's proposition (Com. Ex. 553-2A).

(f) Resistance to specifications other than those collectively accepted by respondents is illustrated by action shown in minutes of Districts 1 and 2 of the Institute for October 26, 1934, as follows:

The Chair recognized Mr. Wetzler, who brought up the question of unfair specifications in the State of New Jersey. After discussion, Mr. Coffin moved that members of the Industry, in Districts #1 and #2, respectfully request the Portland Cement Association to take under consideration, steps to eliminate the unfair specifications now in effect in New Jersey. Seconded by Mr. Blaine S. Smith and unanimously carried (Com. Ex. 637-T).

Also, the minutes of the meeting of the Northeastern Division of the Institute on February 13, 1935, show:

The Chair stated the next matter to be brought to the attention of the meeting was New York State Highway Department Specifications for Portland Cement. After considerable discussion the following Resolution was offered by Mr. Robeson:

*Resolved*, That a committee be appointed to wait on the New York State Highway Department with a request that they change the strengths in Specifications 15 and 15S to conform with present standard specifications.

Resolution seconded by Mr. Neylan and carried \* \* \* (Com. Ex. 637-X).

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(g) In its advertising the Institute has stressed the theme that portland cement is a standard commodity and negated the idea of there being a difference in quality between brands. Among advertisements published by the Institute statements such as the following appeared:

Since portland cement is a standard product as uniform as any given grade of gasoline, sugar, or wheat, buyers in any town or city will purchase it only from the cement plant that quotes the lowest delivered price (Com. Ex. 2835).

It is the simple and natural way to sell a standardized product like cement (Com. Ex. 2836).

Since cement is a standard product as uniform as wheat or sugar of any given grade, buyers at any point will buy it only from a cement plant that is quoting the lowest price (Com. Ex. 2837).

Since cement is a standard product, conforming to government specifications, buyers will buy it only from a cement plant quoting the lowest delivered price (Com. Ex. 2839).

(h) In general, dealers and ordinary purchasers are not aware of differences in quality among the brands of cement sold by different producers. The possession of such knowledge by these groups would tend toward making it impossible for respondents to maintain uniform prices for cement.

PAR. 21. (a) When price stability was restored in 1932 and a series of substantial advances in the price of cement were made in that year and in 1933 in the face of the continuing depression, the higher prices and the uniformity of those prices, including identical sealed bids on public projects, brought renewed protests from both public and private sources. As a result of the protests and charges against the cement industry and its members, the Institute and its members engaged in a concerted course of action directed toward allaying the criticism and seeking to convince the public that there was no collusion among cement manufacturers. Measures such as those indicated below were taken to accomplish the end sought.

(b) In writing on May 1, 1933, to Joseph S. Young, president of Lehigh, concerning charges of collusion among cement manufacturers made by Governor Horner of Illinois as a result of identical bids on cement made to that State, H. Struckmann, then president of Lone Star, said in part:

I also wish to confirm my statement to you over the phone, that I am completely in accord with Mr. Mehren's opinion that the public should be fully informed relative to the allegations made by Governor Horner.

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I believe that Mr. Mehren's long experience in publicity work would be extremely helpful in creating a better understanding on the part of the public of the situation which Governor Horner has given wide publicity in a rather unfriendly and unjustified manner (Com. Ex. 829-T).

In writing to A. J. R. Curtis, assistant to the general manager of the Portland Cement Association, on September 29, 1933, Joseph S. Young said in part:

In an effort to absolve the industry from charges of conspiracy and collusion attempts have been made from time to time to describe the operation of the multiple base system. To the lay mind any price formula and especially one that smacks of base prices conjures up visions of Pittsburgh plus and the nefarious practices of the steel barons. Therefore, any academic explanation of the price system in the cement industry which is intended to describe the operation of the basing-point system, is likely, regardless of how ably presented, to prove dangerous (Com. Ex. 836-3S).

After stating that explanations made of the pricing formula have unduly accented the importance of the mill price in describing the operation of the system, Mr. Young continued:

The cement industry should encourage the public to view the price as a market price and not as a mill price. Every writer on this subject on the contrary has purposely diverted the attention of the reader to the importance of the basing-point in building up the delivered price. Faced continuously with such an explanation the public has every reason to believe that the cement industry has developed a very clever and foolproof scheme for price manipulation.

\* \* \* \* \*

Over and above this consideration, however, is the fact that the material included in your release is intended to answer certain of Governor Horner's charges and particularly the charge of collusion in refusing to sell f. o. b. mill. Much of your mimeographed statement is devoted to a reprint of my remarks on delivered prices at the public hearing. The argument I tried to advance was that f. o. b. mill prices, if imposed upon the industry, would result in chaos. If the reader is told on the first page of the release that the industry arrives at a delivered price of adding something to a mill price, it strikes me that he is very likely to wonder why we persist in refusing to sell at a price we say we have. Moreover the reader is bound to cast a skeptical eye at the argument presented in the remainder of the release when in your opening remarks you freely admit that the very mill price that we contend will bring chaos to the industry is not only in existence but in actual use (Com. Ex. 836-3T, 3U).

In replying to Mr. Young on October 7, 1933, Mr. Curtis said in part:

Your point relative to the damaging effect of talking about "mill price" is admirable and I think we were all very dense in our failure to spot that fallacy sooner. With reference to "mill price" discarded, one of the chief stumbling blocks in the discussion of uniformity of prices is removed.

\* \* \* \* \*



## Findings

Public curiosity has been aroused to an extent where unquestionably, we must satisfy it or expect bitter consequences. Certain editors who should be friendly feel that we are gouging. A prominent citizen who has carried on battles for us in an Illinois city informed our fieldmen only a few days ago that he had helped us because he knew there were asphalt, brick and several other rings, but believed the cement people honest; however, he now knew that the latter were tarred with the same stick so he would have to remain quiet and could help us no further.

In an appropriate manner, we should see to it that the incoming and other uninformed public officials are acquainted with this price matter. Isn't it more or less to be expected that a newly elected governor of judicial temperament, lacking in business knowledge but with a political urge suggesting an eye on public expenditures, might be confounded by the riddle of how he can get a dozen bids listing identical quotations at 102 distinctions, except by collusion?

\* \* \* \* \*

Many employees of the industry honestly believe that there is collusion. Some sales managers have told me so. I know some Association employees think so (Com. Ex. 730-H, I).

In acknowledging a copy of the letter from Mr. Young to Mr. Curtis, Max A. Berns, publicity manager for Universal, wrote Mr. Young on October 4, 1933, in part:

The point you bring out about starting a price equation with a mill price is well taken and in the future we might well avoid starting such discussions with an assumed mill price (Com. Ex. 836-3P).

After pointing out that the question of price uniformity had been thrown into the public arena, he contended:

\* \* \* We scarcely can avoid a discussion of uniform prices because the question has been presented by others to the public.

It is for this reason that, although it may require a long drawn-out effort to accomplish results, it seems important to discuss uniformity of prices as well as point-of-delivery prices. Indeed, it is hardly possible to discuss the latter without admitting the former. And since we must in a discussion of delivered prices admit uniformity, we are almost forced to defend uniformity or else leave the matter solely for others to condemn (Com. Ex. 836-3Q).

(c) The committee on public relations of the Institute, and various important figures in Institute affairs, began working assiduously upon the problems arising from criticisms of the industry, diversions of business to other materials, and threats of competition from publicly owned cement plants. On March 21, 1934, B. F. Affleck, as chairman of the committee on public relations of the Institute, sent a letter to various members which began, "The cement business is in public disfavor," listed evidences of such disfavor, and concluded, "How shall we cure the situation? A committee of the Institute has been studying it, and wants your counsel" (Com. Ex. 950-B). A further communication from the committee dated March 26, 1934, after again

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listing causes for the cement industry being in public disfavor, continued:

A study of 2580 recent newspaper articles and editorials mentioning cement shows only 208, or 8 percent favorable to our industry—92 percent were unfavorable or indifferent.

\* \* \* \* \*

Analyzing the various points which have been raised against the cement industry, the committee at work on the problem believes the task to be:

1. Removal of misconceptions regarding our commercial practices.
2. Replacing these misconceptions with a favorable attitude based on appreciation of the outstanding contributions of our industry to public health, safety and comfort.

We must convince—

- (a) public officials—federal, state and local.
- (b) newspaper and other editors.
- (c) individuals and groups in the trade.
- (d) our own stockholders and employees.
- (e) the general public.

Internal education, reaching class (d) is a basic and should seek to make our own people enthusiastic about

—our commercial policies and practices.

—our contribution toward making America a better place in which to live.

A thorough job within our industry should give us hundreds of able helpers in putting our case before the public.

\* \* \* \* \*

Meanwhile your views on the need of a program would be helpful to the committee. Please write promptly (Com. Ex. 950-F, G).

Suggestions received in response to these letters included:

I'm wondering if we cement people might not gain if we followed the program of the packers when they were under fire years ago. They published a good many advertisements giving figures to show they were not getting exorbitant profits (Com. Ex. 950-N).

\* \* \* \* \*

My suggestion is we start a "Good Will Club" in the industry. Pledge everybody to preach good will. Pledge ourselves and divorce from our minds because we are representatives and executives of a large industry that we can do no wrong, and I am making this statement as though I were of a larger company, and eliminate from the minds of your smaller competitors that you are constantly reminded of Shakespeare's quotation in your attitude toward your competitors and your trade, namely "When I speak, let no dog bark" (Com. Ex. 950-Q).

\* \* \* \* \*

The quickest way to dispose of this matter is to give advertising matter to all of the papers in the United States—metropolitan, local and farm.

Quite a few years ago this same matter developed and the Advertising Committee of the Association at that time started a campaign of placing paid advertising in all of the metropolitan, city, and county and local papers in the United States, amounting, I think, to from 4000 to 5000 periodicals—the smaller ones being handled through a press agency. The favorable result was almost instantaneous (Com. Ex. 950-R).

The reply made by Charles L. Hogan, president of Lone Star, under date of March 29, 1934, is noteworthy:

Your letter of March 21st is timely. I cannot recall a time when the industry enjoyed full public confidence. We are in this unenviable position even though we have done much as an industry to merit confidence. Through the Portland Cement Association, we have maintained an agency of public contact which has accomplished many constructive acts that have rebounded to the public interest. That ill will exists despite the high standing of the Portland Cement Association suggests we must look elsewhere for the cause.

Sporadic efforts to promote good will have consisted mainly of programs calculated to minimize or stifle newspaper criticism through the buying of space. This advertising carried a message calculated to lend importance and prestige to the industry which did not, however, reach the root of our trouble. Telling interesting facts about cement has failed to remove the public distrust which probably has its origin in the suspicion that a close working understanding, contrary to the public interest, exists between manufacturers. This suspicion is intensified by some of the industry's trade practices.

That some of these practices may be necessary does not remove the distrust arising from a lack of understanding and a failure on the part of the industry to meet the issue squarely in print and through its representatives in the field. We have to thank this representation to a considerable extent for the attitude which the trade holds toward our industry. Salesmen frequently intimate that company heads consult freely and are seldom able to explain convincingly why cement is sold in a certain manner.

Some of the conditions and practices of the industry which have contributed to the public distrust and enabled politicians to verbally chastise us without fear of reprisal are listed below. Some may be more typical of past performance than of present, but both past and present combined to influence the public's attitude. That some practices are in the consumers' interest helps but little if they are misunderstood.

(1) *Standardize product.*

The absence of quality competition between brands, refusal of manufacturers to bid on non-standard specifications at any price and the resistance which has been put forth by the industry to specifications calling for higher quality.

(2) *Uniform destination prices.*

The uninitiated are mystified by the industry's ability to anticipate competitor's price at a given time and place. The uniform refusal of manufacturers to bid mill prices has contributed to the misunderstanding.

(3) *Uniform terms, sales conditions, trade practices.*

This uniformity which in the main is in the public interest is oft times construed as evidence of collusion.

(4) *Lack of a binding contract.*

Because a specific job contract is not a contract but an option to buy, duplication of bookings giving rise to the checking of contracts has in many instances proved annoying to purchasers. The misunderstandings and unpleasantness which accompanies a price change and the complicated rulings with which we have surrounded the marketing of cement both have their origin in the failure to provide a contract that is binding.

(5) *Wasteful solicitation.*

For many years there have been too large a number of men on the road resulting in an uneconomical and unwholesome scramble for available business which

has raised the question, "Since money can be spent with such freedom, is the price of cement too high?" Some of these doubts have found confirmation in excessive entertainment in which the industry has indulged.

(6) *Cross shipping.*

The ability to buy at a distant point at a very much lower mill net than the manufacturer secures on short-haul business gives rise to a resentment having its origin in the feeling that those who live close to the mill should receive the most favorable price.

(7) *The same price to all classes of users regardless of the volume purchased.*

This is contrary to commonly accepted practice in the marketing of many commodities and results in resentment on the part of the large buyers, particularly those like States which are sold at small per barrel expense.

(8) *Mills without base prices.*

The toleration by the industry of those who poach in high priced areas has not created a feeling of confidence in the desire of management to protect the consumer.

(9) *Concerted action on matters that are properly subject to individual company policy.*

Many instances of this kind have resulted from States asking for bids on bases that differ from accepted trade practice.

(10) *Limitation of competition to a point of sale struggle for an order with all natural differences between companies and products removed.*

It is usual in selling a product to claim advantages for it over the competition. These advantages are advanced as a reason for buying a brand in preference to another. We have managed to eliminate brand preference from the marketing of cement, thereby precipitating a scramble for business using weapons wrought from influences which have nothing to do with the product or the merits of manufacturer's proposition.

It would seem that a logical approach to this problem lies in a careful, thorough and candid scrutiny of our entire marketing system. If we sit around the table and try to analyze the problem and prescribe a remedy for certain ills, both the analysis and the cure will be distorted by tradition and our own experience. Better it is, I think, to learn from the consumer, contractor, dealer, the politician and the well-posted individual, just what our supposed shortcomings are and what they feel we should do to correct them.

I would suggest that a committee made up of younger men in the industry who are familiar with marketing problems and have a knowledge of public relations be designated to conduct this investigation. I would further suggest that the actual contact with the trade and the public be through men not identified with the industry but skilled in making investigations of this type. \* \* \*

Mr. Hogan then listed questions to which answers should be sought and concluded by stating:

After such a survey is made and the report with recommendations distributed, we can then reach a decision based upon facts rather than one based upon hunches (Com. Ex. 553-X-2C).

(d) On April 10, 1934, the committee on public relations of the Institute submitted an elaborate program. It described the objective thus:

## Findings

1. To correct misconceptions regarding the practices of the industry held by
  - a. Public officials
  - b. The newspapers
  - c. The public
  - d. Other groups
2. To replace the misconceptions with a favorable attitude on the part of the aforesaid groups (Com. Ex. 2190-A).

suggested bringing to the public an appreciation of the industry's contribution to public welfare, comfort, safety and health, mentioning as available themes

*Concrete for sanitation,* \* \* \*  
*Concrete for comfort,* \* \* \*  
*Concrete for safety,* \* \* \*  
*Concrete for health,* \* \* \*  
*Concrete and Labor,* \* \* \*  
*Service with Cement,* \* \* \* (Com. Ex. 2190-B).

listed available methods as

- a. \*Personal contact
  - b. Public addresses
  - c. Printed matter
  - d. \*Publicity
  - e. \*Paid advertising space
  - f. Radio
  - g. Moving pictures
- \*Personal contact, publicity, and paid advertising space should be the chief means employed (Com. Ex. 2190-B).

As to public officials, it was stated in part:

In dealing with public officials, personal contact by men who have the right address, entree and full information is important. These public officials fall, chiefly, into the following groups:

1. Federal and State officials
2. U. S. Senators and Representatives
3. State legislators
4. City and County officials.

These contacts should be planned, scheduled and checked up by a central office. Printed work will go on at the same time, will prepare the prospect in advance of the call, will reinforce the effect of the call after it has been made (Com. Ex. 2190-C).

Methods of reaching other groups were listed in part:

*Newspapers* must also be contacted. Here the contacts may be made both by cementmen and by representatives of the Public Relations Bureau.

*Building materials dealers* misunderstand the industry. They have no notion of the way the industry builds business for them—nor of the cost of that effort. Here cement company salesmen can be used. Suitable printed matter should be available for use at and after their calls.

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The following groups will be informed largely by the printed word but also, to some extent, through addresses to civic, professional, and other bodies:

- The public
- Business leaders and financiers
- Contractors
- Engineers and architects (Com. Ex. 2190-D, E).

The necessity for convincing their own employees was also listed:

No matter how clever the planning, adroit the arguments and skillful the execution, no matter if the expenditure be most liberal, a public relations program will fail unless at least two fundamentals are complied with:

1. The proponents themselves must be fully convinced of the soundness of their case and of the need of presenting it.

Specifically, for us, we must "sell" the cement company executives and employees on

- a. The necessity for our public relations program
- b. The soundness of our selling practices
- c. The contribution which the industry makes to individual and public welfare (Com. Ex. 2190-E).

It suggested a study of marketing practices; the planning of contacts and addresses by the public relations officer; listed and described literature to be prepared and distributed; advocated the use of paid advertising, radio, and moving pictures; and outlined the organization and personnel thought necessary. It tabulated the "Approximate Number of Leaders of Groups to be Convinced" as:

1. Federal officials-----	695
State officials (including highway engineers)-----	291
2. Newspapers—primary list-----	2,500
—second class list-----	2,500
Magazines and Journals-----	250
General and Economic Writers-----	200
Financial Editors and Writers-----	305
3. U. S. Senators and Representatives-----	531
4. State Senators-----	1,661
State Representatives-----	5,662
5. County Commissioners-----	8,704
County Engineers-----	2,200
Mayors and City Managers-----	5,750
City Engineers-----	2,120
6. Building Materials Dealers-----	about 30,000
7. Civic Leaders-----	7,500
Financiers-----	15,000
8. Contractors, all lists-----	40,000
9. Concrete Products Mfrs-----	6,500
10. Engineers (civil)-----	2,100
Architects-----	14,500
11. Cooperating Organizations-----	250
12. Other industries on common ground-----	4,674

(Com. Ex. 2190-J).

153,853

## Findings

(e) At a meeting of the board of trustees of the Institute on August 15, 1934, Mr. Affleck reported that:

Representatives of the committee discussed the proposals either formally or informally in all districts but one east of the Rockies. Except in this district, (#10) the underlying strategy of the committee's proposals has been generally approved although some details have been changed in accordance with suggestions submitted.

also that a series of advertisements had been run in a number of publications, and:

In the series of eight ads, the first two were of an introductory nature designed to get the goodwill of the publishers and the readers and the subsequent ads were on various phases of our marketing practices. This series is completed.

The expenditure so far totals, in round figures, \$30,000.

At the meeting in Chicago, the trustees of the Institute also empowered the committee to employ the personnel needed to study the necessary angles of this subject and to carry out a public relations program. On vote of the members of the Public Relations Committee, Colonel John B. Reynolds was employed as of August 1 to head up the Public Relations Bureau.

Temporarily the staff of the committee is headquartered at the offices of the Portland Cement Association in Chicago. This has the approval of the President of the Association. If there is any question about this, this may be a good time to discuss it.

As mentioned in the report of the committee, a vote has been held in districts 1 to 9 inclusive. In some districts this was unanimous—in others it was by a large majority but not unanimous. It may be that representatives of districts 10, 11, and 12 present here today can advise regarding the status in their districts.

\* \* \* The Status of the Public Relation Plan is Districts #10-#11 and #12 was as follows:

District #10—Trustee not present. Previous correspondence indicated disapproval.

District #11—No action taken.

District #12—All but two members approve (Com. Ex. 621-D, E).

Some of the advertisements published as set out above claimed cement was playing a vital part in "Prolonging Our Lives" (Com. Ex. 434); claimed epochal improvements representing "Progress in Cement" (Com. Ex. 435); purported to explain price uniformity in "The 'Going' Price" (Com. Ex. 436), and the delivered price in "Buyers get what they want" (Com. Ex. 2836); compared price uniformity in cement with wheat prices in "wheat and cement" (Com. Ex. 2837); dealt with mill net in "The story of A, B, and C" (Com. Ex. 2838), and with price uniformity in "The Same Economic Law" (Com. Ex. 2839).

(f) The reaction to these advertisements was not entirely favorable and the chairman of the marketing research committee of the Institute, John Treanor, expressed his views in letters to Blaine S. Smith, president of Penn-Dixie, and E. J. Mehren, president of the

Portland Cement Association, dated July 29, 1934 and July 31, 1934, respectively, in part:

I think efforts to make out our case to the public as to our commercial practices through advertising should be suspended, as futile and wasteful, while the effort is being made to establish our case with the authorities. I think it may hurt us with them. I feel strongly that it is ill-timed \* \* \* (Com. Ex. 938-Y).

and

The worst that can be said is that the economic foundation for some of these discussions of price making is frail. With that opinion I am inclined to agree, believing that no sound defense of our methods of selling cement can be made without the admission that some limitation of competition is necessary in such an industry as cement. This is not a subject which can be presented to the public through advertising, or in any way. It is an argument that has to be made and can be made in special places where it may be calculated to do some good (Com. Ex. 938-2A).

Representations similar to those discussed by Mr. Treanor in the letters mentioned above had previously been characterized by him in his letter to B. H. Rader of the Code Authority on May 17, 1934, thus:

Do you think any of the arguments for the basing-point system, which we have thus far advanced, will arouse anything but derision in and out of the government? I have read them all recently. Some of them are very clever and ingenious. They amount to this however: that we price this way in order to discourage monopolistic practices and to preserve free competition, etc. This is sheer bunk and hypocrisy. The truth is of course—and there can be no serious, respectable discussion of our case unless this is acknowledged—that ours is an industry above all others that cannot stand free competition, that must systematically restrain competition or be ruined \* \* \* (Com. Ex. 7-B).

(g) Having been unsuccessful in its efforts during the summer of 1934 to persuade the Federal Trade Commission to undertake a study of the basing-point system "with the cooperation of the cement industry" (Com. Ex. 958-M), the Institute proceeded to employ James M. Clark and Arthur R. Burns, professors of economics at Columbia University, to make a study of the cement industry. In the early stages of this study Blaine S. Smith, president of Penn-Dixie, in writing to John Treanor, president of Riverside, stated in part:

Joe Young and I have been just now discussing the progress that has been made in connection with the survey of the industry now being conducted by Professors Clark and Burns, particularly in reference to your last two letters to me, copies of which have also been sent to other members of the Marketing Research Committee (Com. Ex. 571-2L).



## Findings

He then referred to the suggestions in Mr. Treanor's two letters that each member of the committee "sit down individually and frame his own personal answers to several fundamental points raised by Dr. Clark," pointed out that if this were done "there is every reason to believe that the statements you would receive from the members of the Committee \* \* \* would be at variance and possibly in direct conflict." He also stated:

Altho all of the members of the Committee in the East have had in mind the same objective that you evidently are striving for, namely attempting to mold the professors' minds before any definite conclusions have been reached, it has been our thought that much more could be accomplished by personal contact than through the medium of correspondence. The plan that we have discussed is simply to arrange a meeting shortly with the professors, to which would also be invited—in addition to the members of the Committee—certain sales and traffic experts with general knowledge and wide experience, preferably from companies other than those represented by the Committee. The professors could possibly prepare in advance a list of questions that had proved particularly bothersome. These questions could be submitted to the group of cement men and we would attempt to have those best qualified discuss the points involved with the professors until the matter was threshed out to everyone's satisfaction.  
\* \* \*

\* \* \* If you are inclined to agree with our views on this matter, will you kindly let me know when you next intend to be East, with the thought that a general meeting between the professors and the cement group could be arranged to suit your convenience.

Joe Young concurs in the thoughts expressed above (Com. Ex. 571-2L, 2M).

Members of the marketing research committee advised and collaborated with Professors Clark and Burns throughout the study and read for criticism and suggestions draft copies of various chapters in the proposed report. On May 25, 1937, Dr. Burns wrote Blaine S. Smith in part:

With further reference to my recent telephone conversation with you, I have now mailed mimeographed copies of the last two chapters of the study. \* \* \*

There now remain four chapters which you have not seen. \* \* \*

\* \* \* I shall do my best to see that the whole of the balance of the study is handed to the stenographer before I leave. I imagine that this material will take some time to digest and that active discussions leading up to the final preparation of the material for publication can be taken up as soon as I return (Com. Ex. 971-29D).

The issuance of the complaint in this proceeding intervened and the report was not published.

PAR. 22. (a) The record contains a very substantial volume of opinion testimony by economists concerning the application of the principles and theories of economics in hypothetical situations purporting to present factual situations shown to exist by the record in this

proceeding. These witnesses: Edward A. Duddy, Frank A. Fetter, Benjamin A. Hibbard, Edwin G. Nourse, and Jacob Viner, called by the Commission; and Fred R. Fairchild, Ewald T. Grether, Clare E. Griffin, Roland S. Vaile, and Roy B. Westerfield, called by respondents, were by education, training, and experience qualified as experts to give such opinion testimony. In general, this testimony dealt with economic aspects of the multiple basing-point system, prices, various marketing practices, competition and its manifestations, and the economic effects of various marketing practices. It included detailed consideration of the theory of "imperfect competition"; of whether all forms of competitive rivalry, including those commonly designated as quality or service competition, in fact constitute "price competition"; or the principle of "indifference" where "each unit is of equal desirability," and the application of this theory to sellers and to buyers; whether or not the theory of uniform price for a standardized commodity in a competitive market has any application to identical bids or quotations, as distinguished from the price that results from the higgling of the market; of what constitutes a market and the relative importance of the several elements thereof; of the significance of the lack of buyer participation in forming price; and of many other matters.

(b) In broad outline, the testimony of respondents' economic witnesses is to the effect that the multiple basing-point system, uniform delivered prices, and certain other phenomena of respondents' marketing practices as set forth in hypothetical questions, might be the result of or could result from natural evolution through the operation of competitive forces and do not give rise to an inference of collusion. On the other hand, also in broad outline, economic witnesses called by the Commission testified that the basing-point system, uniform delivered prices, and various other phenomena of respondents' marketing practices as set out in hypothetical questions, contravene a number of recognized principles of economics considered reliable indices of competition, and also that the existence of certain of those practices affirmatively indicated the absence of competition, and that as to others, planning and disciplinary means would be required for their continuation.

(c) It is concluded that, in the circumstances present in this proceeding, the recognized principle of economics that uniformity of price tends to result from free competition in the case of a standardized article sold to well-informed buyers does not serve to explain the identical delivered prices of respondents in the offering for sale and sale of cement. There is a well-recognized principle of economics that in the sale of units of equal desirability the seller will not accept less from

one buyer than from another. Under the price pattern heretofore set out in detail, many of respondents' sales have the characteristics of "dumping." The principle that price uniformity may result from competition has no application to identical offers or sealed bids and cannot explain such uniformity. It is also true that uniformity of price in a given market is equally consistent with a condition of free competition or with a condition of monopoly. When—as in the sale of cement—the price is established by the seller, the price leadership of the governing base mill is accepted by other sellers and there is no bargaining between buyers and sellers, fundamental requirements of a true market in the economic sense are lacking, and prices are not the result of market action in a true economic sense but merely expressions of a noncompetitive or monopolistic price structure.

PAR. 23. (a) The multiple basing-point delivered-price system used by the corporate respondents in the sale of cement is a discriminatory method of pricing. This is true whether the systematic variations in price are viewed before or after consideration is given to the cost of delivery by common carrier. The hypothetical illustration set out in subsection (g) of paragraph 7 indicates the types of discriminatory price differences which are systematically exacted in order that each respondent may match the delivered price of other respondents at any given point. It will be observed by reference to this illustration that Mill A, being a basing-point mill, charges the sum of its base price plus freight to destination at all points where its base controls (Towns A, B, C, and D), but in order to match delivered prices in territory where the base of Mill C controls (Towns E, F, and G), it charges the sum of the Mill C base price plus freight from that mill to destination. Viewed from the aspect of Mill C, also a base mill, the result is the same. Mill B, a nonbase mill, sells at delivered prices lower by various amounts in each town other than its home town. Turning to the mill net recovery of these mills for the cement sold, Mill A receives \$1.50 at all points where its base governs but gets \$1.30 in Town E, \$1.10 in Town F, and only 90¢ in Town G. In reverse order, the same is true of Mill C. Mill B receives \$1.80 in its home town, \$1.60 in Towns C and E, \$1.40 in Towns B and F, and \$1.20 in Towns A and G. Each mill shrinks its mill net by the amount necessary for it to match the delivered prices established pursuant to the aforesaid pricing system. It is plain that each mill sells at different delivered prices in different locations, and that the differences between many of these delivered prices are not the result of and do not correspond to the actual differences in the cost of delivery. It is equally plain that the mill nets received for cement from different customers, after giving considera-

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tion to the actual costs of delivery, also vary systematically and are discriminatory.

(b) The following tabulation illustrates the extent to which it is necessary, in the actual operation of the multiple basing-point delivered-price system, for respondents to make variations in the mill nets recovered on different sales of cement in order to maintain identical delivered prices at each destination where sales are made. In the course of the Clark and Burns survey previously mentioned, many of the respondents submitted figures showing their shipments of cement in the months of June 1925, January 1928, June 1932, and January 1933—or such of those months as their records permitted—arranged to show the number of barrels on which the mill net was equal to or less by specified amounts than on sales in the home town of nonbase mills, or the base prices of base mills. In this tabulation such figures as were furnished for the several months have been consolidated and the quantities sold in the several brackets are expressed in terms of percentage of the total sales of each mill during the months covered. The mills shown are the La Salle mill of Alpha (Com. Ex. 972-L), the Fogelsville mill of Lehigh (Com. Ex. 973-0), the Universal mill of Universal (Com. Ex. 973-2B), the Richard City mill of Penn-Dixie (Com. Ex. 972-U), and the Norfolk mill of Lone Star (Com. Ex. 972-0):

Price	Percentage of total sales				
	Alpha	Lehigh	Universal	Penn-Dixie	Lone Star
Base price.....	1. 37	44. 09	10. 33	8. 75	20. 97
0.01 to 5 cents below.....	20. 73	6. 97	11. 68	. 93	1. 42
5.01 to 10 cents below.....	6. 99	7. 46	9. 97	18. 94	1. 56
10.01 to 15 cents below.....	14. 92	9. 22	19. 68	2. 87	7. 49
15.01 to 20 cents below.....	16. 73	18. 24	14. 89	5. 52	4. 47
20.01 to 25 cents below.....	27. 77	3. 29	9. 10	3. 38	4. 72
25.01 to 30 cents below.....	. 94	2. 40	10. 82	6. 58	4. 63
30.01 to 35 cents below.....	. 04	2. 95	3. 60	7. 57	2. 73
35.01 to 40 cents below.....	. 07	1. 45	3. 70	10. 13	4. 60
40.01 to 45 cents below.....	. 54	. 72	3. 33	3. 51	24. 52
45.01 to 50 cents below.....		. 03	1. 52	13. 63	19. 15
50.01 to 55 cents below.....			. 13	9. 54	1. 25
55.01 to 60 cents below.....		. 04	. 29	4. 75	. 56
60.01 to 65 cents below.....			. 44	1. 45	. 13
65.01 to 70 cents below.....				1. 37	. 74
Over 70 cents below.....				. 99	. 11

The above are merely examples, and corresponding data for other mills and other respondents would show similar results, varying in degree but not in principle. In some cases particular mills receive on a portion of their sales amounts in excess of their base prices or equivalent net recovery. This may be due to various reasons such as

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premiums charged for delivery to trucks; or to delivery by owned or hired trucks at a cost less than the all-rail freight at which the delivered price was calculated; or to delivery by water shipment at rates less than the all-rail rate at which the delivered price was calculated; or to combinations of these factors.

(c) Under the pricing system used by respondents there was much cross-hauling of cement. The system contemplates, and in operation results in, each corporate respondent waiving his advantage in his natural sales territory in return for reciprocal waiver by the other corporate respondents. It tends toward maintaining a price level sufficiently high to permit individual corporate respondents to sell cement outside the territory naturally tributary to their respective mills. There is no way within practicable bounds of determining exactly how much cross-hauling actually occurs, and how much of the total sums paid by consumers for cement results from the additional cost of transportation on sales outside the natural territory of the seller. The Institute statistician, W. S. Mallory, made for the Clark and Burns study certain estimates "to obtain the probable freight loss in 1935 due to cross shipments of cement" in a limited territory and reported the results to the chairman of the marketing research committee of the Institute which had supervision of the study for the Institute. His estimate of such freight losses in Districts 1 and 2 for 1933 was \$783,124.46 (Com. Ex. 971-28H). The conditions and assumptions underlying this estimate were stated, and it is obvious that the estimate materially understates the actual freight losses from the cause stated.

(d) At least since 1913 the cement industry has had a total productive capacity substantially in excess of total consumption. From 1921 to 1931 there was a steady and rapid rise in productive capacity which increased the total annual industry capacity by more than 100,000,000 barrels. In 1928, the year of largest consumption, productive capacity exceeded consumption by approximately 25 percent, and between 1931 and 1937, inclusive, consumption has represented less than half of productive capacity.

(e) As heretofore pointed out, in 1932 and 1933, at a time when consumption of cement amounted to less than 30 percent of capacity and had been declining rapidly during the economic depression then existing, respondents made numerous and substantial increases in their prices for cement. Many of the base prices established during the series of price advances which ended early in 1933 were still in effect, unchanged, in 1938. In the case of other bases, with but a few exceptions, only minor readjustments have been made since early in

1933 and prices have remained unchanged over varying numbers of years. Cement prices have shown a high degree of rigidity.

(f) After considering the testimony and other evidence offered by respondents in explanation of these conditions, including that concerning the use of cement in connection with other materials, as well as that relating to shifting location of demand for cement, it is concluded that the general conditions shown to exist tend to coincide with, rather than contradict, the direct proof of restraints imposed upon competition by respondents.

PAR. 24. (a) Count II of the complaint charges that the multiple basing-point system of delivered prices alleged in paragraphs 4 and 5 of Count I constitutes a combination of respondents to discriminate in price which results, and has resulted, in discriminations in price in the sale of cement by the respective respondents in violation of subsection (a) of Section 2 of the Clayton Act as amended. Count II alleges that the delivered prices at which sales are made pursuant to the multiple basing-point delivered-price system "are not the actual prices received by producing respondents," that to derive the true price received by respondents "the price actually paid to the carrier for transportation of the cement to the buyer must be deducted from the delivered price," that sales are made "at almost as many true prices as there are customers' locations," that the respective sellers thus discriminate in price in substantial amounts among their customers, that the purpose and effect of these discriminations is to prevent, lessen, and destroy competition in price among respondents, and it is only through these discriminations that respondents are "enabled to eliminate price competition." This count further alleges that such discrimination in price is the result of respondents' combination to use the multiple basing-point delivered-price system and that under this system each respondent knows that in reciprocity for its omission to offer a competitive price to customers located in areas adjacent to its mill, where it has a natural advantage and receives its highest actual price, other respondents will reciprocally waive their advantages and thus the advantages and disadvantages of each will be neutralized "in order that there may not anywhere be genuine competition in price."

(b) Upon consideration of the record, the Commission finds that each material allegation of Count II, and in particular each of the above-described allegations, is sustained by the evidence. As heretofore pointed out, the discrimination in mill nets by each respondent seller forms a systematic pattern that is the mathematical counterpart of the delivered-price pattern resulting from the multiple basing-point delivered-price system, which system is an expression of the effort of each respondent seller to match the delivered prices of other

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respondent sellers. It would be impossible for respondents to maintain their multiple basing-point delivered-price system without automatically creating this systematic pattern of discrimination in mill nets in the sales of each respondent seller. The degree of the mill net discriminations among customers of the respective respondent sellers, as heretofore set out, ranges from a fraction of a cent to amounts substantially in excess of \$1 per barrel, and commonly amounts to 25¢ to 50¢ per barrel. Higher mill nets are always exacted from customers closer freightwise to the seller than from customers at more distant points. It would be impossible for any of respondents sellers habitually and openly to obtain these widely varying mill nets in the form of f. o. b. mill prices, and any attempt so to do would undoubtedly arouse a storm of protest from purchasers.

(c) The evidence shows that respondents have for many years pursued a course inconsistent with any conclusion other than that they recognized mill nets as being the true prices of and for cement. This recognition has been evidenced in many ways. As stated in subsections (a) and (e) of paragraph 12, purchasers of cement generally and customarily paid the freight charges thereon directly to the common carrier and paid to the seller only the amount of the invoice after deducting the amount of the freight paid to the carrier. This was the regular and consistent practice until some time after the issuance of the complaint in this proceeding. As found in subsection (e) of the same paragraph, respondents sought, by concert of action among themselves, to avoid the risks and responsibilities of ownership of cement in transit to the purchaser and by contract to impose such risks and responsibilities on the purchaser. These and other actions of respondents have signified their intention to pass title to cement sold to the purchaser at the time of delivery to the common carrier and at the mill nets applicable to purchasers at particular destinations. In the ordinary course of their business respondents have referred to mill net as the price of cement and have used that term as the equivalent of and interchangeably with price. An illustration of this appears in a letter dated July 26, 1935, from Superior to Professor Arthur R. Burns in which it was stated:

This freight rate of course, does not in any way accrue to us and the net price for our cement at such a delivery point, in fact the only price that is of any advantage to us, is the cement price stripped of freight, package and discount, which of course in my own mind becomes the selling price so far as we are concerned (Com. Ex. 971-17P).

The accounting practices of respondents have been consistent only with the conclusion that they recognized mill net as the true price of cement. Mill net being the only part of the delivered price ordi-

narily received from the buyer and passed through the seller's books as sales income, the total of mill net sales becomes the total sales income with which total costs may be compared to ascertain profit or loss. Respondent sellers have been accustomed to compare average mill net per barrel, as well as mill net per barrel on particular sales, with average cost per barrel. Economic experts testified that under the course of business pursued by respondents, mill net is the true price of cement. Economic experts produced by respondents testified that the amount of price discrimination cannot be determined or expressed except in terms of mill net.

(d) The use of the multiple basing-point delivered-price system by respondents for the purpose and with the effect of producing identical delivered prices at any given destination and thereby avoiding price competition, precludes any defense of the systematic variations in mill nets as being made in good faith to meet an equally low price of a competitor. On the contrary, these systematic variations are made in order that the delivered prices of all respondents selling at any given location may be equally high and equally low. As has been heretofore pointed out, if respondents' delivered prices were treated as true prices they would not reflect due allowance for differences in the cost of delivery. The use of the formula of lowest combination of base price plus freight precludes due allowance being made for differences in actual cost of delivery in all cases where the point of shipment is not that of the governing base mill upon which the delivered price was calculated. The failure to make due allowance for cost of delivery in such delivered prices automatically reflects itself in the varying mill nets. The systematic variations in mill nets resulting from respondents' pricing system are conditioned upon and are in proportion to the failure of the respective respondent sellers to make due allowance in their delivered prices for differences in their actual costs of delivery.

(e) The Commission rejects respondents' contention that the legislative history of the Robinson-Patman Act shows an intention on the part of Congress to legalize whatever price discriminations are involved in respondents' multiple basing-point delivered-price system. The failure of Congress to define price as mill net, on which failure respondents rely, does not avoid the necessity of having some definite concept of price in performing the administrative duty of preventing price discrimination under the statute. In the circumstances of this case, whether price be considered as delivered price under respondents' pricing system or as mill net, there are price discriminations which cannot be explained or justified by differences in cost of delivery and which reflect nothing but respondents' plan and effort to



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make their delivered prices identical at each destination. Among the reasons for rejecting respondents' contention is the fact that its acceptance would attribute to Congress the contradictory intention of prohibiting discriminations that fail to make due allowance for differences in cost of delivery and, at the same time, legalizing them. To accept respondents' contention would be to recognize the right of a combination engaged in suppressing price competition to define and treat the word "price" in a manner that promotes and is inextricably interwoven with its price-fixing objectives.

PAR. 25. The Commission concludes from the evidence of record and therefore finds that in the circumstances of this case the systematic discriminations in mill nets by each respondent seller among its various customers which necessarily result from the use of the multiple basing-point delivered-price system are discriminations in price that are unlawful under subsection (a) of Section 2 of the Clayton Act as amended; that the effect of such discriminations in price has been and may be substantially to lessen competition and tend to create a monopoly in the sale and distribution of cement, and has been and may be to injure, destroy, and prevent competition with respondents who grant and exact such discriminations; that such discriminations do not make due allowance for differences in the cost of delivery or for other differentials permitted by subsection (a) of Section 2 of said act; and that such discriminations are not made in good faith to meet an equally low price of a competitor within the meaning of subsection (b) of section 2 of said act.

PAR. 26. The Commission concludes from the evidence of record and therefore finds that the capacity, tendency, and effect of the combination maintained by the respondents herein in the manner aforesaid and the acts and practices performed thereunder and in connection therewith by said respondents, as set out herein, has been and is to hinder, lessen, restrain, and suppress competition in the sale and distribution of cement in, among, and between the several States of the United States; to deprive purchasers of cement, both private and governmental, of the benefits of competition in price; to systematically maintain artificial and monopolistic methods and prices in the sale and distribution of cement, including common rate factors used and useful in the pricing of cement; to prevent purchasers from utilizing motortrucks or water carriers for the transportation of cement and from obtaining benefits which might accrue from the use of such transportation agencies; to require that purchases of cement be made on a delivered price basis, and to prevent and defeat efforts of purchasers to avoid this requirement; frequently to deprive agencies of the Federal Government of the benefits of all or a part of the

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lower land-grant rates available to such purchasers; to require certain agencies of the Federal Government to purchase their requirements of cement through dealers at higher prices than are available in direct purchases from manufacturers; to establish and maintain an agreed classification of customers who may purchase cement from manufacturers thereof; to maintain uniform terms and conditions of sale; to hinder and obstruct the sale of imported cement through restraints upon those who deal in such cement; and otherwise to promote and maintain their multiple basing-point delivered-price system and obstruct and defeat any form of competition which threatens or tends to threaten the continued use and maintenance of said system and the uniformity of prices created and maintained by its use.

## CONCLUSION

The aforesaid combination and acts and practices of respondents pursuant thereto and in connection therewith, as hereinabove found, under the conditions and circumstances set forth, constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act; and the discriminations in price by respondents, as hereinabove set out, constitute violations of subsection (a) of Section 2 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 act 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, the answers of respondents, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, various motions and appeals, briefs in support of the complaint and in opposition thereto, and oral arguments of 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 and of subsection (a) of Section 2 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 act approved June 19, 1936 (the Robinson-Patman Act):

*It is ordered,* That respondent, The Cement Institute, an unincorporated association, its officers, trustees, agents, representatives, and employees, and the corporate respondents, Aetna Portland Cement Co., Alpha Portland Cement Co., Arkansas Portland Cement Co., Ash Grove Lime & Portland Cement Co., Beaver Portland Cement Co., The Bessemer Limestone & Cement Co., Calaveras Cement Co., California Portland Cement Co., Colorado Portland Cement Co., Consolidated Cement Corporation, Coplay Cement Manufacturing Co., Cumberland Portland Cement Co., Dewey Portland Cement Co., Diamond Portland Cement Co., Edison Cement Corporation, The Federal Portland Cement Co., Inc., Florida Portland Cement Co., Georgia Cement & Products Co., Giant Portland Cement Co., The Glens Falls Portland Cement Co., Great Lakes Portland Cement Corporation, Green Bag Cement Co. of Pennsylvania, Green Bag Cement Co. of West Virginia, Hawkeye Portland Cement Co., Hercules Cement Corporation, Hermitage Portland Cement Co., Huron Portland Cement Co., Idaho Portland Cement Co., Lone Star Cement Corporation (the corporation named in the complaint as International Cement Corporation), Keystone Portland Cement Co., Kosmos Portland Cement Co., Lawrence Portland Cement Co., Lehigh Portland Cement Co., Marquette Cement Manufacturing Co., Medusa Portland Cement Co., Missouri Portland Cement Co., The Monarch Cement Co., Monolith Portland Cement Co., Monolith Portland Midwest Co., National Cement Co., Nazareth Cement Co., Nebraska Cement Co., North American Cement Corporation, Northwestern Portland Cement Co., Northwestern States Portland Cement Co., Oklahoma Portland Cement Co., Oregon Portland Cement Co., Pacific Portland Cement Co., Peerless Cement Corporation, Pennsylvania-Dixie Cement Corporation, Petoskey Portland Cement Co., Pittsburgh Plate Glass Co., Portland Cement Co. of Utah, Riverside Cement Co., Santa Cruz Portland Cement Co., Signal Mountain Portland Cement Co., Southern States Portland Cement Co., Southwestern Portland Cement Co., Spokane Portland Cement Co., Standard Portland Cement Co., Superior Cement Corporation, Superior Portland Cement, Inc., Three Forks Portland Cement Co., Trinity Portland Cement Co., Union Portland Cement Co., Universal Atlas Cement Co., Valley Forge Cement Co., Volunteer Portland Cement Co., Vulcanite Portland Cement Co., Wabash Portland Cement Co., West Penn Cement Co., The Whitehall Cement Manufacturing Co., Wolverine Portland Cement Co., and Yosemite Portland Cement Corporation, their respective officers, agents, representatives, and employees, in or in connection with the offering for sale, sale, and distribution of portland cement in interstate commerce, do forthwith cease and desist from en-

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tering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following things:

1. Quoting or selling cement at prices calculated or determined pursuant to or in accordance with the multiple basing-point delivered-price system; or quoting or selling cement pursuant to or in accordance with any other plan or system which results in identical price quotations or prices for cement at points of quotation or sale or to particular purchasers by respondents using such plan or system, or which prevents purchasers from finding any advantage in price in dealing with one or more of the respondents against any of the other respondents.

2. In connection with or in aid or support of any plan, system, acts, or practices prohibited in paragraph 1 above—

(a) Refusing or declining to quote or sell cement at the location of the producing mill at a price effective at such location.

(b) Refusing or declining, when quoting or selling cement at a price effective at the location of the producing mill, to allow purchasers to provide transportation by any means, at any cost, or to any place they may desire.

(c) Quoting or selling cement at f. o. b. mill prices calculated by deducting actual common-carrier transportation charges from delivered-price quotations or delivered prices which are equivalent to the sum of the base price at, plus common-carrier transportation charges from, any point other than the actual shipping point.

(d) Quoting or selling cement ostensibly at f. o. b. mill prices, but which prices, plus common-carrier transportation charges to purchasers' destinations, are systematically equivalent to identical delivered costs to such purchasers from differently located mills.

(e) Quoting or selling cement at delivered prices calculated as or systematically equivalent to the sum of the base price in effect at, plus common-carrier transportation charges from, any point other than the actual shipping point.

(f) Quoting or selling cement at delivered prices which systematically include a common-carrier transportation factor greater or less than the actual cost of such common-carrier transportation from the point of shipment to destination.

(g) Quoting or selling cement at delivered prices which systematically include a freight factor representing transportation by a common carrier having higher rates than the means of transportation actually employed.

(h) Quoting or selling cement at destination-cost figures accompanied by a requirement that for invoicing purposes the f. o. b. mill price shall be determined by making specified deductions from said destination cost figures.

(i) Quoting or selling cement to any instrumentality of the Federal Government in a manner or upon terms which deprive the Government of all or any part of the benefits of land-grant or other special common-carrier rates to which it may be lawfully entitled.

(j) Collecting, compiling, circulating, or exchanging information concerning common-carrier transportation charges for cement used or to be used as a factor in the price of cement, or using, directly or indirectly, any such information so compiled or received as a factor in the price of cement.

(k) Controlling or attempting to control the destination or use of cement after the acquisition of title thereto by the purchaser.

(l) Determining upon any basis for the selection or classification of customers, or using any basis so determined for selecting or classifying customers.

(m) Determining upon the projects or types of projects for which, or the purchasers or classes of purchasers to whom, sales of cement will or will not be made directly by respondents.

(n) Collecting, compiling and circulating, or exchanging statistical data which reveal the individual production, stocks, sales, or shipments of cement of any corporate respondent to other corporate respondents.

(o) Maintaining any form of espionage for the purpose of determining whether or not their customers purchase or deal in imported cement; or discontinuing or threatening to discontinue sales of cement to customers because they purchase or deal in imported cement.

(p) Determining upon any discounts, package charges or refunds thereon, or other terms or conditions of sale, or using any discounts, package charges or refunds thereon, or other terms or conditions of sale so determined.

3. Discriminating in price between or among their respective customers by systematically charging and accepting mill net prices which differ by the amounts necessary to produce delivered costs to purchasers identical with delivered costs available to such purchasers through purchases from other respondents.

4. Using any means substantially similar to those specifically set out in this order with the purpose or effect of accomplishing any of the things prohibited by this order.

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*It is further ordered,* That for the reasons set out in the findings as to the facts in this proceeding, the case growing out of the complaint herein be, and the same hereby is, closed as to respondent, Castalia Portland Cement Company, without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

*It is further ordered,* That 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

ASSOCIATED LABORATORIES, INC., TRADING AS ALLIED  
LABORATORIES, KELP-A-MALT COMPANY, AND SEEDOL  
COMPANY

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

*Docket 2979. Complaint, Nov. 12, 1936—Decision, July 20, 1943*

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of its "Kelp-A-Malt Tablets"; through advertisements and depictions in newspapers and periodicals, and through radio broadcasts, directly and by implication—

- (a) Represented that through use of its product weak, emaciated, thin, and underweight persons could overcome such conditions; and that those who were without shapeliness could acquire attractive form and figure and develop well-proportioned bodies; and
- (b) Represented that such use enabled tired and run-down persons to regain normal health, strength, and vigor; and those who, by reason of undernourishment or underweight were suffering from such conditions as sour or acid stomach, gas and indigestion, to be relieved;

The facts being that the product in question was wholly incapable of accomplishing such results; as to the ingredients which formed the basis for said claims, there is no relation between deficiency of calcium and phosphorus and the conditions for which it recommended its product, and the amounts of vitamin B<sub>1</sub>, iron and iodine in the product were insufficient to be of any therapeutic significance;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties of said product and benefits to be derived from its use, thereby causing substantial purchase of such product as a result, whereby trade was diverted unfairly to it from its competitors:

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

As respects the contention that the amounts of certain minerals and vitamins provided by the daily dosage of a certain product—which fell far short of supplying the minimum therapeutic dosage recognized as sufficient—equalled or exceeded the minimum daily requirements according to standards established by the Food and Drug Administration, and that product in question was a food rather than a drug and also a dietary supplement: Such contention had no material bearing upon the issues involved, in that standards referred to presupposed that individual was in good health and not suffering from a deficiency of any of the minerals or vitamins involved, whereas challenged advertisements were directed to those assumed to be deficient therein, in which cases the standards in question have no application; so that, while for those in health the product in question might serve as a dietary supplement and aid in preventing certain mineral or vitamin defi-

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ciencies, it was wholly incapable of any significant effect where deficiency already existed.

Before *Mr. Edward E. Reardon* and *Mr. John L. Horner*, trial examiners.

*Mr. Clark Nichols* and *Mr. R. P. Bellinger* for the Commission.

*Mr. Francis Finkelhor*, 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 Associated Laboratories, Inc., a corporation, trading as Allied Laboratories, Kelp-A-Malt Co. and Seedol 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, Associated Laboratories, Inc., for several years last past has been, and is located at 27-33 West Twentieth Street, New York, N. Y. It is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent, Associated Laboratories, Inc., has also engaged, and is now engaged, in business under the firm names and styles of Allied Laboratories, Kelp-A-Malt Co., and Seedol Co., each of which trade names represents a company owned, controlled, and directed by respondent.

It has manufactured or caused to be manufactured, and either under its own name or in the name of Allied Laboratories, Kelp-A-Malt Co., or Seedol Co. has offered for sale and sold in commerce between the State of New York and various states of the United States other than the State of New York, and in the District of Columbia, a product which it has described and designated as Kelp-A-Malt Tablets. In the course and conduct of its business, respondent, Associated Laboratories, Inc., itself, or by and through one or the other of its three aforesaid trade names, has transported such product, or caused it to be transported when sold, 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.



In the course and conduct of its business, respondent has been and now is engaged in substantial competition in interstate commerce with individuals, partnerships, and corporations who have been and are offering for sale or selling in such commerce, medicines, compounds, or medicaments containing or featuring iodine, calcium, phosphorus, magnesia, iron, copper, or other minerals or vitamins necessary for the preservation of individual health, or who have been or are offering for sale or selling in such commerce eggs, beef, lettuce, spinach, tomatoes, asparagus, or any other article or articles used as food by human beings containing iodine, potassium, phosphorus, calcium, iron, copper, magnesia, or other minerals, or vitamins, necessary for maintenance or preservation of the health of human beings, or who have been or are offering for sale or selling in such commerce products for gaining flesh, weight, strength, or for cure or relief of gas, gas pains, indigestion, tired feeling, run-down condition, or other distress, resulting from undernourishment or underweight.

PAR. 2. In soliciting the sale of its product "Kelp-A-Malt," respondent advertises in newspapers and other periodicals, and in pamphlets and circulars which it distributes to customers and prospective customers, and by radio broadcasts, in all of which it uses false statements and representations to the effect that by the use of "Kelp-A-Malt," because of its iodine, mineral, and vitamin content, persons who are weak, emaciated, skinny, or run down can recover or gain their normal weight, or gain weight at the rate of 5 pounds per week; that by the use of such product persons who are without shapeliness or grace of form can acquire attractive shape, and beautiful curves, and well-proportioned limbs; that use of such product enables persons tired and run down to recover or regain their normal health, strength and vigor, particularly to cause gas, gas pains, indigestion and the distress commonly experienced by the undernourished or underweight to disappear.

It has been and is the practice of respondent, in order to illustrate and emphasize the alleged merits of Kelp-A-Malt Tablets and the results attributed by them to its use, to offer them for sale by means of advertisements in which it has caused to be displayed and featured, pictures or photographs purporting to be pictures or photographs of individuals before and after using Kelp-A-Malt Tablets. The pictures or photographs purporting to represent the individuals before using Kelp-A-Malt Tablets have exhibited weak, emaciated, thin or so-called skinny persons, and the pictures purporting to be representations of the same individuals after using Kelp-A-Malt Tablets have exhibited strong, vigorous, robust individuals with graceful and

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shapely figures. Typical advertisements employed by respondent in order to attract the attention of purchasers and prospective purchasers, and to sell Kelp-A-Malt, have been the following, to-wit:

**Kelp-A-Malt—Natural Mineral Concentrate From the Sea—Free from Drugs—Rich In FOOD IODINE and health Building Minerals Adds Firm Flesh—New Strength and Youthful Energy.**

\* \* \* \* \*

**Supplies Newer Form of FOOD IODINE.**

Kelp-A-Malt, only recently discovered, is an amazingly rich source of food iodine along with practically every mineral essential to normal well-being. It is a sea vegetable concentrate taken from the Pacific Ocean and made available in palatable pleasant-to-take tablet form. Six Kelp-A-Malt Tablets provide more food iodine than 486 pounds of spinach, 1,600 pounds of beef, 1,387 pounds of lettuce. Three Kelp-A-Malt tablets contain more iron and copper for rich blood, vitality and strength than a pound of spinach, 7½ pounds of fresh tomatoes—more calcium than 6 eggs, more phosphorus than a pound and a half of carrots—sulphur, sodium, potassium and other essential minerals.

Only when you get an adequate amount of these minerals can your food do you any good—can you nourish glands, add weight, strengthen your nerves, increase your vigor, vitality and endurance.

Try Kelp-A-Malt for a single week. Watch your appetite improve, firm flesh appear instead of scrawny hollows. \* \* \* Feel the tireless vigor and vitality it brings you. It not only improves your looks, but your health as well. It corrects sour, acid stomach. Gas, indigestion and all the usual distress commonly experienced by the undernourished and the underweight disappear.

Here is good news for "Naturally Skinny" folks who can't seem to add an ounce no matter what they eat. A new way has been found to add flattering pounds of good, solid flesh and fill out those ugly, scrawny hollows even on men and women who have been underweight for years. 5 pounds in 1 week guaranteed \* \* \* 15 to 20 pounds in a few weeks not uncommon.

This new discovery called Kelp-A-Malt now offers practically all the vitally essential food minerals in highly concentrated form. These minerals, so necessary to the digestion of fats and starches, the weight making elements in your daily diet, include a rich supply of precious FOOD IODINE.

Kelp-A-Malt's FOOD IODINE nourishes the internal glands which control assimilation, the process of converting digested food into firm, solid flesh.  
\* \* \*

Kelp-A-Malt, the new mineral concentrate from the sea—gets rights down to the cause of thin, underweight conditions and adds weight through a "2 ways in one" natural process.

Natural Iodine in Kelpamalt, New Mineral Concentrate, Must Correct Trouble with Tired, Careworn, Haggard-Looking Folks the First Week and Add 5 Lbs. or the Trial Is Free.

As the result of tests covering thousands of weakened, rundown, nervous skinny folks, science now claims that it is GLAND STARVING FOR IODINE that keep folks pale, tired out, underweight and ailing. When these glands—particularly the important gland which controls weight and strength—lack NATURAL PLANT IODINE even diets rich in starches and fats fail to add

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needed pounds. That's why skinny people often have huge appetites yet stay weak and skinny.

Now, however, with the introduction of Kelpamalt—a mineral concentrate derived from a huge 90-foot sea vegetable harvested off the Pacific Coast—you can be assured of a rich, concentrated supply of this precious substance. 1,300 times richer in iodine than oysters, Kelpamalt at last puts food to work for you. Its 12 other minerals stimulate the digestive glands which alone produce the juices that enable you to digest fats and starches. 2 Kelpamalt tablets contain more iron and copper than 1 lb. of spinach or  $7\frac{1}{2}$  lbs. of fresh tomatoes, more iodine than 1,336 lbs. lettuce, more calcium than 6 eggs.

It has also been the practice of respondent to engage in systematic disparagement of competitors by payment to proprietors of drug stores or to one or more of their clerks various sums of money to induce them to substitute the product of respondent, "Kelp-A-Malt," for other products requested by customers, accompanied by the representation that "Kelp-A-Malt" is better than any of them.

In truth and in fact the product "Kelp-A-Malt," offered for sale and sold by respondent by means of statements and representations hereinbefore set forth and reflected by its typical advertisements has not been and is not either a health-giving or flesh-producing product, nor does its use restore normal strength and health to so-called "run down" persons or persons with so-called tired feeling. Its use cannot and does not enable anyone to gain flesh or graceful shapes or alluring proportions. Its use cannot and does not convert a thin, emaciated, or scrawny person into a shapely and well proportioned person with curves or other attractive physical features. Kelp-A-Malt cannot and does not cure or relieve indigestion, sour or acid stomach, or effect elimination, relief, or cure of gas, or gas pains or other results, or distresses commonly experienced by the undernourished or underweight. If it should be that any of such conditions is the result of a deficiency of iodine, a diagnosis of such condition cannot be made by the individual or by any other person than a competent physician or other scientific specialist in thyroid troubles, syphilis or tuberculosis. Self diagnosis and use by any one for internal administration of iodine in any form to supplement the supply furnished by daily consumption of food is dangerous. It is a fact, well known to the medical profession, that a deficiency of iodine, the substance particularly featured in the advertisements of Kelp-A-Malt has no relationship, direct or indirect, with the production of gas, or gas pains or indigestion, or what is known as a run-down condition. The supply of iodine and of all other minerals and of vitamins necessary for normal health and strength is furnished by the ordinary or usual diet of the American people. There is no deficiency in the American dietary of iodine or of any of the minerals or vitamins necessary for the health

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of the individual. Nature has been prodigal in the gift to mankind of foods containing iodine and all of the essential minerals, including the various necessary vitamins. Iodine, the principal ingredient of Kelp-A-Malt, and which is featured as a new discovery and a new food medicine by respondent, is neither a new discovery nor a new food medicine. There is no such thing as new or old food iodine. Its use to produce weight, flesh, or to end indigestion, or sour stomach, or gas and gas pains is new, preposterous, harmful and dangerous. It has been known and used since ancient times for suitable purposes but not as an agency for gaining flesh. On the contrary, it is more likely to reduce weight than it is to increase it.

In truth and in fact, the pictures or photographs so displayed by respondent and which have been conspicuously featured, in its advertisements, have not been, were not, and are not pictures or photographs of individuals before and after using Kelp-A-Malt Tablets. Kelp-A-Malt Tablets constitute a so-called "shotgun" remedy. One deficient in iron may not need more calcium. The supply may be sufficient. One deficient in iodine may be deficient in none of the other minerals, yet Kelp-A-Malt Tablets administer all the body needs of everything according to representations of respondent. It offers a remedy for many abnormal or subnormal conditions, whether or not only one exists. Respondent offers, instead of eggs, beef, tomatoes, asparagus, lettuce, and spinach, a diet of Kelp-A-Malt Tablets.

An excess of some of the vitamins and minerals, particularly iodine, or calcium, may be dangerous in many conditions. The amount of iodine the body requires is so minute and it is so rare any individual fails to obtain it from his daily supply of food that except in such rare cases use of Kelp-A-Malt furnishes an excess, the effect of which, especially on the thyroid gland and metabolism, will produce a condition with alarming, if not fatal, results. Nor are Kelp-A-Malt Tablets better than many products which can supply and furnish in better and more scientific form, iodine, iron, calcium, phosphorus, copper, and other minerals, and also the various vitamins in such form that an excess of many need not be taken in order to supply a possible deficiency of one or more.

PAR. 3. There have been for many years last past and now are individuals, partnerships, and corporations who offer for sale and sell in interstate commerce and who truthfully describe Kelp or products or derivatives thereof, or products which contain iodine, iron, calcium, copper, magnesia, potassium, sodium, phosphorus, and each and all of the vitamins, either in foods, or in medicines, compounds and medicaments of various kinds and preparations for indigestion, sour stomach,

rundown condition, gas, gas pains, and other distresses commonly experienced by undernourished or underweight persons.

PAR. 4. The false representations of respondent set out in paragraph 2 hereof have had, and have, the capacity and tendency to mislead and deceive druggists, wholesale and retail, and the purchasing or consuming public, into the belief that they or one or more of them are true, and into the purchase of Kelp-A-Malt Tablets in reliance on such erroneous beliefs, or one or more of them.

They also have had and have the capacity and tendency to mislead and deceive the purchasing or consuming public into the belief that no other product, offered for sale for the same or similar purpose as Kelp-A-Malt, has had or has the capacity or ability to accomplish the said purposes, or any of them, such as are represented by respondent in connection with Kelp-A-Malt Tablets.

The aforesaid practices of respondent have had and have the capacity and tendency to divert trade to respondent from competitors mentioned in paragraph 3 hereof, and as a result of such practices respondent has been doing and is doing substantial injury to such competitors in course of the competition aforesaid.

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

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 12, 1936, issued and subsequently served its complaint in this proceeding upon the respondent, Associated Laboratories, Inc., a corporation, trading as Allied Laboratories, Kelp-A-Malt Co., and Seedol Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission, and in opposition thereto by the attorneys for the respondent, before trial examiners of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. During the course of the hearings before said trial examiners, the Commission on October 2, 1942,

granted respondent's motion for leave to amend its answer theretofore filed, which amended answer was duly filed by the respondent. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer and amended answer thereto, testimony and other evidence, report of the trial examiners upon the evidence and the exceptions to such reports, briefs in support of and in opposition to the complaint, 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, Associated Laboratories, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 5112 Twenty-first Street, Long Island City, N. Y. The corporation trades under the names "Kelp-A-Malt Company" and "Seedol Company" as well as under its corporate name, and it formerly traded also under the name "Allied Laboratories." Respondent is now and for many years last past has been engaged in the manufacture, sale, and distribution of a product designated by it as "Kelp-A-Malt Tablets."

PAR. 2. In the course and conduct of its business, respondent causes and has caused its product, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is and has been in substantial competition with other corporations and with individuals 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 products intended and recommended for the same purposes as those for which respondent's product is intended and recommended.

PAR. 4. In the course and conduct of its business and for the purpose of promoting the sale of its product, respondent advertises its product by means of advertisements inserted in newspapers and periodicals having wide circulation in the various States of the United States. Respondent also advertises its product by means of radio continuities which are broadcast from various radio stations which

have sufficient power to and do transmit the programs emanating therefrom into various States of the United States other than those in which such broadcasts originate. Among and typical of the various statements and representations made by respondent with respect to its product through such advertising media are the following:

**Natural Iodine in Kelpamalt, New Mineral Concentrate, Must Correct Trouble with Tired, Careworn, Haggard-Looking Folks the First Week and Add 5 Lbs. or the Trial Is Free!**

As the result of tests covering thousands of weakened, rundown, nervous, skinny folks, science now claims that it is **GLANDS STARVING FOR IODINE** that keep folks pale, tired out, underweight and ailing. When these glands—particularly the important gland which controls weight and strength—lack **NATURAL PLANT IODINE**, even diets rich in starches and fats fail to add needed pounds. That's why skinny people often have huge appetites yet stay weak and skinny.

Now, however, with the introduction of Kelpamalt—a mineral concentrate derived from a huge 90-foot sea vegetable harvested off the Pacific Coast—you can be assured of a rich, concentrated supply of this precious substance. 1300 times richer in iodine than oysters, Kelpamalt at last puts food to work for you. Its 12 other minerals stimulate the digestive glands which alone produce the juices that enable you to digest fats and starches. 3 Kelpamalt tablets contain more iron and copper than 1 lb. of spinach or 7½ lbs. of fresh tomatoes, more iodine than 1386 lbs. lettuce, more calcium than 6 eggs. (Com. Ex. No. 53.)

Here is good news for "Naturally Skinny" folks who can't seem to add an ounce no matter what they eat. A new way has been found to add flattering pounds of good, solid flesh and fill out those ugly, scrawny hollows even on men and women who have been underweight for years. 5 pounds in 1 week guaranteed \* \* \* 15 to 20 pounds in a few weeks not uncommon.

This new discovery called Kelp-A-Malt now offers practically all the vitally essential food minerals in highly concentrated form. These minerals, so necessary to the digestion of fats and starches, the weight making elements in your daily diet, include a rich supply of precious **FOOD IODINE**.

Kelp-A-Malt's **FOOD IODINE** nourishes the internal glands which control assimilation, the process of converting digested food into firm, solid flesh. \* \* \* (Com. Ex. No. 58.)

Kelp-a-Malt, the new mineral concentrate from the sea—gets right down to the cause of thin, underweight conditions and adds weight through a "2 ways in one" natural process. (Com. Ex. No. 59.)

**Kelp-a-Malt—Natural Mineral Concentrate From the Sea \* \* \* Free from Drugs \* \* \* Rich in FOOD IODINE and Health Building Minerals Adds Firm Flesh—New Strength and Youthful Energy**

\* \* \* \* \*

**Supplies Newer Form of FOOD IODINE**

\* \* \* \* \*

Kelp-a-Malt, only recently discovered, is an amazingly rich source of food iodine along with practically every mineral essential to normal well-being. It is a sea vegetable concentrate taken from the Pacific Ocean and made available in palatable, pleasant-to-take tablet form. Six Kelp-a-Malt tablets provide

more food iodine than 486 pounds of spinach, 1,600 pounds of beef, 1,387 pounds of lettuce. Three Kelp-a-Malt tablets contain more iron and copper for rich blood, vitality and strength than a pound of spinach, 7½ pounds of fresh tomatoes—more calcium than 6 eggs, more phosphorous than a pound and a half of carrots—sulphur, sodium, potassium and other essential minerals.

Only when you get an adequate amount of these minerals can your food do you any good—can you nourish glands, add weight, strengthen your nerves, increase your vigor, vitality and endurance.

Try Kelp-a-Malt for a single week. Watch your appetite improve, firm flesh appear instead of scrawny hollows. Feel the tireless vigor and vitality it brings you. It not only improves your looks, but your health as well. It corrects sour, acid stomach. Gas, indigestion and all the usual distress commonly experienced by the undernourished and the underweight disappear. (Com. Ex. No. 63.)

PAR. 5. Through the use of these representations and others of similar import and effect (including pictorial representations), respondent has represented, directly or by implication, that through the use of its product persons who are weak, emaciated, thin, and underweight can overcome such conditions; that through the use of such product persons who are without shapeliness of form or figure can acquire attractive form and figure and develop well-proportioned bodies; that the use of such product enables persons who are tired and run-down to recover or regain normal health, strength, and vigor; and that persons who by reason of undernourishment or underweight are suffering from such conditions as sour or acid stomach, gas, and indigestion may be relieved of such conditions through the use of respondent's product.

PAR. 6. Respondent's product is manufactured and sold in tablet form, and the prescribed dosage is as follows:

Dose for adults: 4 to 6 tablets three times daily after meals. Children over six: 2 to 3 tablets three times daily after meals. Tablets may be swallowed whole, or powdered and suspended in fruit juices, milk or water. (Com. Exs. No. 29-A, B.)

While the formula for the product has been changed a number of times by respondent, the changes have not been of a material nature insofar as the therapeutic properties of the product are concerned. An analysis made by the United States Food and Drug Administration discloses that at the time of the issuance of the complaint and for some two years thereafter, the product contained the following ingredients:



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## Findings

<i>Ingredient</i>	<i>Grains per tablet</i>
Iodine as I <sub>2</sub> .....	0. 011
Chlorides as Cl <sub>2</sub> .....	1. 056 —1. 058
Calcium as CaO.....	0. 237 —0. 239
Magnesium as MgO.....	0. 117
Sodium as Na <sub>2</sub> O.....	0. 299
Potassium as K <sub>2</sub> O.....	0. 363 —1. 367
Iron as Fe <sub>2</sub> O <sub>3</sub> (containing traces of Al <sub>2</sub> O <sub>3</sub> ).....	0. 008
Arsenic as As <sub>2</sub> O <sub>3</sub> .....	0. 0005
Phosphorus as P <sub>2</sub> O <sub>5</sub> .....	0. 155
Sulphur as SO <sub>2</sub> .....	0. 255 —0. 256
Alkalinity of water soluble ash as K <sub>2</sub> CO <sub>3</sub> .....	0. 258
Ash.....	3. 579 —3. 590
Acid insoluble ash (silica and talc).....	0. 084 —0. 086
Copper.....	0. 0005

(Com. Ex. No. 1).

For some two years, beginning in 1938, the formula was as follows:

Powdered kelp.....	1½ grains per tablet
Dicalcium phosphate.....	5½ grains per tablet
Powdered malt.....	1½ grains per tablet
Powdered cocoa.....	½ grain per tablet
Powdered sugar.....	½ grain per tablet
Iron and ammonium citrate.....	¼ grain per tablet
Copper sulphate.....	¼ <sub>400</sub> grain per tablet
Vitamin B <sub>1</sub> .....	21 International Units
Flavoring.....	Q. S.

In addition to the calcium, phosphorus, iron and copper indicated above, there were also present iodine (from kelp) and traces of manganese. (Com. Ex. No. 5.)

A bottle of the tablets purchased from a retail drug store in New York City in September 1942, bore the following:

Each tablet contains 67 micrograms (22.2 USP units) of vitamin B<sub>1</sub> as thiamine, calcium (83 milligrams) and phosphorus (67 milligrams) as dicalcium phosphate; iron (2.8 milligrams) as iron ammonium citrate; copper sulfate, kelp, malt, sugar and flavoring. (Com. Ex. No. 29-B.)

PAR. 7. The ingredients which form the basis for the claims made by respondent for the therapeutic properties of the product are vitamin B<sub>1</sub>, iron, iodine, calcium, and phosphorus. Insofar as calcium and phosphorus are concerned, the expert testimony in the record establishes that there is no relation between a deficiency of these minerals and the conditions for which respondent recommends its product. As for vitamin B<sub>1</sub>, iron and iodine, the amount of these ingredients in the product is wholly insufficient to be of any therapeutic significance. The amount of vitamin B<sub>1</sub> in each tablet is approximately 22 International or USP (United States Pharmacopoeia) Units. As the directions for use provide for the taking of eighteen

tablets per day, this would make the total daily intake of vitamin B<sub>1</sub> 396 International Units. It is undisputed that where a deficiency of vitamin B<sub>1</sub> exists, the recognized minimum therapeutic dose of vitamin B<sub>1</sub> is 3300 International Units per day, continued over such period of time as may be necessary to overcome the deficiency. The amount of vitamin B<sub>1</sub> in respondent's product therefore falls far short of the minimum therapeutic dosage, and such amount is incapable of any therapeutic effect.

In the case of iron, the content of each tablet is 2.8 milligrams provided in the form of one-fourth grain of iron ammonium citrate, and one day's dosage of eighteen tablets would supply 50.4 milligrams of iron in the form of 4½ grains of iron ammonium citrate. The recognized therapeutic dosage of iron ammonium citrate ranges from 45 to 135 grains per day. The daily dosage of 4½ grains of iron ammonium citrate in respondent's product would be insignificant and without value from a therapeutic standpoint. As for iodine, the evidence establishes that the amount present in respondent's product is wholly insufficient to have any therapeutic value in the treatment of the conditions referred to in respondent's advertisements.

PAR. 8. Respondent's product is therefore wholly incapable of enabling persons who are weak, emaciated, thin, or underweight to overcome such conditions. The product is likewise incapable of enabling any individual to develop a well-proportioned body or acquire shapeliness of form or figure. It is ineffectual for overcoming tired or run-down conditions, and its use does not result in the recovery of health, strength, or vigor. The product is likewise incapable of exerting any therapeutic effects upon such conditions as sour or acid stomach, gas, or indigestion.

PAR. 9. It is urged by respondent that its product is a food rather than a drug; that it is a dietary supplement; and that the amounts of certain of the minerals and vitamins provided by the daily dosage of the product equal or exceed the minimum daily requirements of such minerals and vitamins according to standards established by the Food and Drug Administration. The Commission is of the opinion, however, that, assuming this to be true, the fact has no material bearing upon the issues involved in the present proceeding. The standards set up by the Food and Drug Administration presuppose that the individual is in good health and that he is not suffering from a deficiency of any of the minerals or vitamins in question. Respondent's advertisements, on the other hand, are directed to persons who are assumed to be deficient in such minerals or vitamins, and the conclusion is inescapable from the record that where a deficiency exists, the standards set up for minimum daily requirements have no appli-

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cation. In such cases nothing short of the recognized minimum therapeutic dosage of the minerals or vitamins is effective. For persons who are in normal health, respondent's product might serve as a dietary supplement and might aid in preventing certain mineral or vitamin deficiencies, but it is wholly incapable of any significant effect where a deficiency already exists.

PAR. 10. The Commission therefore finds that the representations made by respondent with respect to its product and with respect to benefits to be derived from the use of the product, as set forth in paragraphs 4 and 5, are erroneous, misleading and deceptive.

PAR. 11. The Commission finds further that the use by respondent of these misleading and deceptive representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties of respondent's product and the benefits to be derived from the use of such product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's product as a result of the erroneous and mistaken beliefs so engendered. In consequence thereof, substantial trade has been and is being diverted unfairly to respondent from its competitors.

## CONCLUSION

The 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, the answer and amended answer of respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, reports of the trial examiners upon the evidence and the exceptions to such reports, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondent, Associated Laboratories, Inc., a corporation, trading as Allied Laboratories, Kelp-A-Malt Co., and Seedol Co., or trading under any other name, and its officers, agents, representatives, and employees, directly or through any corporate or

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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 respondent's product designated "Kelp-A-Malt Tablets," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from representing, directly or by implication, through the use of words, pictorial representations, or both:

1. That the use of respondent's product will enable persons who are weak, emaciated, thin, or underweight to overcome such conditions.
2. That a well-proportioned body, or shapeliness of form or figure, can be acquired through the use of said product.
3. That the use of said product will enable persons who are tired or run down to overcome such conditions or recover or regain health, strength, or vigor.
4. That said product possesses any therapeutic value in the treatment of sour or acid stomach, gas, or indigestion.

*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

PROGRESS TAILORING COMPANY, ALSO TRADING AS J. C. FIELD & SON; STONE FIELD CORPORATION, W. Z. GIBSON, INC., PIONEER TAILORING COMPANY, AND CERTIFIED TAILORING COMPANY

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

*Docket 3747. Complaint, Mar. 28, 1939—Decision, July 20, 1943*

Where a parent corporation and its four wholly owned subsidiaries with common officers and directors, engaged in competitive interstate sale and distribution of men's suits and coats which—manufactured by a fifth subsidiary from cloth furnished to it by the parent concern under an arrangement by which it charged the parent for cutting, trimming, and tailoring, and latter charged its four other subsidiaries for garments sold by them—were sold directly to the consuming public through canvassers equipped with order blanks, samples of materials, and advertising matter—

- (a) Represented in advertisements in newspapers and periodicals soliciting the services of salesmen that a "free" suit or suits would be given to them, through such statements as "Local agents wanted \* \* \*." "If I send you this fine suit, will you wear it and show it to your friends," "I need a reliable man in your town," "I supply everything free of cost," and "Your own suits free of extra charge"; and thereby indicated that persons answering would receive a free suit which might be used by them in soliciting orders from customers for similar suits;

The facts being that when inquiry was received in response to such advertisement, circular was forwarded to the inquirer prominently displaying and stressing the word "free," but informing him for the first time that it would be necessary to obtain orders for a specified number of suits before receiving his own so-called "free" suit, and it was not until after sale of said number of suits that so-called "free" suit was delivered to him;

- (b) Falsely represented in advertising literature that "Supersheen Linings" and "Deluxe Trimmings", cost of which was included in the sales price paid by the purchaser for the garment bought, were "Furnished Free";
- (c) Falsely represented the size, extent and nature of their business through depiction of a large, four-story commercial or industrial building in their various advertising folders, and thereby caused members of the purchasing public to believe that they owned, operated, and exclusively occupied such building, of which in fact they occupied two floors only;
- (d) Falsely represented through statements in advertising material that all middlemen's expenses were eliminated, and that purchases were made from them at manufacturer's prices; when in fact a substantial part of the price paid by purchasers consisted of retailing costs and agents' commissions, and also charges of the manufacturing subsidiary and charge made by the parent concern against its various subsidiaries, as noted above;
- (e) Falsely represented that they were exclusively wholesale tailors, and that their garments were supplied to purchasers at wholesale prices; when in fact a substantial part, as aforesaid, of the purchase price was made up

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of retailing costs and commissions, and in fact they were engaged in selling at retail and at retail prices; and

- (f) In order to emphasize certain statements contained in their circulars, used a false and fictitious affidavit purportedly executed by one H. J. Graves as president of one of said corporations, notwithstanding no such person had ever been president of any of their concerns, and no such affidavit was ever made;

With tendency and capacity to mislead and deceive prospective purchasers into the erroneous belief that such statements were true, thereby inducing purchase of said products, in reliance upon such belief, whereby trade was diverted unfairly to them from competitors who did not use aforesaid methods:

*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 in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Randolph Preston* and *Mr. James A. Purcell*, trial examiners.

*Mr. R. P. Bellinger* for the Commission.

*Mayer, Meyer, Austrian & Platt*, 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 Progress Tailoring Co., a corporation, trading under its own name, and also as J. C. Field & Son; Stone-Field Corporation, a corporation; W. Z. Gibson, Inc., a corporation; Pioneer Tailoring Co., a corporation; and Certified Tailoring Co., a corporation, 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, Progress Tailoring Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 500 Throop Street in the city of Chicago, in said State. Said respondent also has been and is doing business under the name and style of J. C. Field & Son.

Respondent, Stone-Field Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1300 West Harrison Street in the city of Chicago in said State.

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Respondent, W. Z. Gibson, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 500-532 South Throop Street in the city of Chicago in said State.

Respondent, Pioneer Tailoring Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at Congress and Throop Streets in the city of Chicago in said State.

Respondent, Certified Tailoring Co., is a corporation, organized existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1300 West Harrison Street in the city of Chicago in said State.

In doing the acts and things herein complained of, and during all times material to this complaint, respondents, Stone-Field Corporation, W. Z. Gibson, Inc., Pioneer Tailoring Co., and Certified Tailoring Co., have been, and now are, wholly owned subsidiaries of respondent, Progress Tailoring Co., and under the control and direction of its managing officers.

PAR. 2. For the past several years said respondents have been, and now are, and each of them has been, and now is, engaged in the business of offering for sale and selling garment products, including men's suits and coats, in commerce, among and between the various States of the United States, and in the District of Columbia, and in causing said products when sold or ordered, to be shipped and transported from the States of Indiana and Illinois to purchasers thereof located in States other than the States of Indiana and Illinois, and to purchasers thereof located in the District of Columbia.

In the course and conduct of the aforesaid business, and at all times herein referred to, the respondents have been, and now are, and each of them has been, and now is, in competition with other corporations, firms, partnerships, and individuals engaged in offering for sale and selling garment products in commerce among and between the various States of the United States and the District of Columbia, who do not use the methods and practices herein set forth and complained of.

PAR. 3. In the course and conduct of the business of respondents, as aforesaid, respondents employ agents and salespersons, who canvass, solicit, and sell prospective purchasers, purchasers, and members of the buying public, in and throughout the various States of the United States and in the District of Columbia. For each sale made said agents and sales persons are paid a commission, or percentage of the sales price paid by the purchaser. Said agents and salespersons are equipped by respondents with order blanks, samples, and materials from which purchasers make selections as to color, weave, and quality

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of material from which the garment ordered is to be made, and with certain circulars, folders, literature, and other advertising matter referring and relating to said respondents and to their said products, all of which are circulated, distributed, or exhibited to said prospective purchasers, purchasers, and members of the buying public.

PAR. 4. In the course and conduct of the business of respondents, as aforesaid, it has been and is the practice of each, as an integral part of the sales promotion program employed by each, to advertise for and solicit the services of agents and salespersons through and by means of magazines and other advertising media, and in the course thereof to state and represent that a "free" suit or suits will be given to such persons. Demonstrative of the statements and representations so made by respondents, among others, are the following:

## Free Suit!

A big feature of our marvelous proposition is the suit we offer you  
FREE OF EXTRA COST!

We give you this opportunity to get a suit FREE—without a penny of cost to you.

## THIS FINE SUIT

Made to-your measure

FREE!

Why we make this remarkable offer. As our salesman we believe that you should be wearing one of the suits you are selling.

## LOCAL AGENTS

wanted to wear and demonstrate free suits to friends. No canvassing. Up to \$12.00 in a day easy.

SALESMEN—Amazing new opportunity. Demonstrate for nationally known tailoring company. Start at \$35 weekly. No canvassing. Permanent position. Rapid advancement. Your own clothes free.

## MEN WANTED TO WEAR

## SUITS AND SHOW FRIENDS!

New way to earn up to \$12 in a day! Big clothing manufacturer wants ambitious man in every city to wear all wool, Union made-to-measure suits as demonstrators, and earn money showing friends and taking orders. Sample suits FREE of extra cost!

The above referred to offer and representation of a free suit or suits is false, deceptive, and misleading, in that the suit referred to is not given free by respondents, but requires the payment of a valuable consideration on the part of agent and salesperson in the form of services and the sale of a certain number of suits by the agent or salesperson before the same is delivered to the agent or salesperson.



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The said condition and requirement to the procurement of the suit is not disclosed in the initial advertising in which said offer of a free suit or suits is made. By this means and method respondents thus contact and secure responses from prospective agents and salespersons and induce and secure their services in the sale of respondents' garment products to the public, and their purchases of such garment products for themselves in consideration of services rendered, all to the profit of respondents and to the injure and prejudice of their competitors.

PAR. 5. In the course and conduct of the business as aforesaid, each of the respondents, Stone-Field Corporation, W. Z. Gibson, Inc., Pioneer Tailoring Co., and Certified Tailoring Co., in and by means of letterheads, circulars, folders, and other advertising matter which it has caused and causes to be distributed and exhibited to members of the buying public in connection with the offer and sale of its garment products, refers to and represents itself as a "tailoring" company, or as "tailors," thereby signifying and representing, and inducing members of the buying public to believe, that it is engaged in the business of making and "tailoring" the garments which it offers for sale and sells, and that it operates its own plant, facilities and equipment, and employs its own personnel, for the cutting, sewing, and making of said garments.

In the foregoing connection, also, respondents, Stone-Field Corporation, W. Z. Gibson, Inc., and Pioneer Tailoring Co., further picture and refer to a large, multistory, commercial or industrial building or plant, each of the said respondents thereby employing the same to represent its size and strength and the nature and extent of its business operations, and thereby inducing members of the buying public to believe that it is a large manufacturer, owning, operating, and exclusively occupying the building pictured and referred to.

In certain of the aforesaid circulars, folders and advertising matter distributed and exhibited to members of the buying public by and through respondent, Stone-Field Corporation, the following statements and representations, among other things, have been and are made:

We have our own staff of designers, design and cut our own patterns and manufacture every coat.

We tailor every garment.

We own our own shops.

Many of them (tailors) have been in our employ since the business was founded.

We buy our woolens direct from the mills and cut every garment we sell right from the original piece of cloth.

We are not middlemen and do not "farm" out any part of the work.

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In certain of the aforesaid circulars, folders, and advertising matter distributed and exhibited to members of the buying public by and through respondent, W. Z. Gibson, Inc., the following statements and representations, among other things, have been and are made:

All Middlemen's expenses are eliminated by our manufacturer-to-wearer policy.

**A Challenge To Retailers.**

We are making the flat-footed statement that serges anywhere near the value of Nos. 980-981-982-983 cannot be purchased in a suit from any retail store at this low price.

No other tailoring line offers their equal at anywhere near the price we ask. The retail merchant absolutely requires the additional money he asks to pay his rent, his clerks, his electric light bill, his general overhead.

We have none of these. We send the suit to you direct from our shops. There are no costly showcases to buy or long periods of waiting for customers, to pile up expenses.

Visit this Model Tailoring Plant (accompanied by a picture of a large four-story building and references to its size and "hundreds of skilled workman").

Exclusive Styles, by our own fashion artists.

The aforesaid statements and representations are false and misleading, in that the respondents referred to in paragraph 5 hereof are not "tailors" or "tailoring companies," are not engaged in the business of making the garments which they offer and sell, and do not operate their own plant or facilities and equipment, or employ their own personnel, for the cutting, sewing, and making of said garments, and none of said respondents using the picture of the commercial or industrial building above referred to, owns, operates, or exclusively occupies the building pictured and referred to, or any other building of equal or comparable capacity or size. All of the garment products offered and sold by said respondents are made on contract by Fort Wayne Tailoring Corporation, which is a separate and distinct corporation apart from said respondents. Said respondents do no manufacturing and are selling corporations only.

The aforesaid statements and representations of respondents, Stone-Field Corporation, W. Z. Gibson, Inc., and Pioneer Tailoring Company, further imply and represent, and induce members of the buying public to believe, that said respondents' business operations are those of a large manufacturer, and that purchases from them may be made at "manufacturer's prices" and at a saving to the purchaser of retailer's or middleman's costs and profits; whereas, on the contrary, said respondents are not manufacturers and do not sell at manufacturer's prices, and at prices which save to the purchaser the retailer's or middleman's costs and profits. A substantial percentage or part of the purchase prices paid respondents by purchasers is included in the said

price to cover retailing costs and commissions to agents, and salespersons for effecting sales.

PAR. 6. In certain of the aforesaid circulars, folders and advertising matter distributed and exhibited to members of the buying public by and through respondent, Progress Tailoring Co., also trading as J. C. Field & Son, the following statements and representations, among other things, have been and are made:

We are exclusively wholesale tailors.

Order one of these fine Progress suits yourself, if you wish, at wholesale price.

In certain of the aforesaid circulars, folders and advertising matter distributed and exhibited to members of the buying public by and through respondent, Stone-Field Corporation, said respondent is referred to and represented as "wholesale tailors."

The aforesaid statements and representations imply and represent, and induce members of the buying public to believe that respondents, Progress Tailoring Co., also trading as J. C. Field & Son, and Stone-Field Corporation, are "wholesalers" engaged in the business of selling their garment products at wholesale; that they are not "retailers," and that they offer for sale and sell their garment products to the buying public at "wholesale prices" and at a saving to the purchaser of retailer's costs and profit. Said representations are false and misleading in that said respondents are engaged in the business of selling at retail and at retail prices to the buying public, and not to retailers or jobbers. A "retailer," or one who sells at "retail," is one who sells direct to the buying and consuming public. A "wholesaler," or one who sells at "wholesale," is one who sells usually in "quantity lots," to a "retailer" or a "jobber," a sort of middleman, and not direct to the ultimate consumer of an individual unit. Said respondents do not sell at "wholesale prices," or at a saving to the purchaser of a retailer's costs and profit. A substantial percentage or part of the purchase prices paid respondents by purchasers is included in said prices to cover retailing costs and commissions to agents and salespersons for effecting sales.

PAR. 7. In certain of the aforesaid circulars, folders and advertising matter distributed and exhibited to members of the buying public by and through respondents, Stone-Field Corporation and W. Z. Gibson, Inc., each of said respondents states and represents that it has been in business for 41 years, thereby employing said representation to represent the size, strength and life of said respondent's corporation and business.

The aforesaid representation is false and misleading in that neither of said respondents has been in business for the past 41 years, or any other comparable length of time.

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PAR. 8. Among the folders and advertising literature above referred to and distributed and exhibited to members of the buying public by and through respondent, Stone-Field Corporation, a certain folder describing its No. 230 blue serge suit carries the picture of a face represented to be that of "H. J. Graves, President of the Stone-Field Corporation," together with the following statement:

I Hate to Swear—But there are a few things about this No. 230 blue serge suit that I want to say, and ordinary words aren't strong enough, So I'll swear to 'em;

followed by what purports to be an affidavit with facsimile signatures and notarial seal,

I SWEAR that it weighs a full 15 oz. or more to the yard—almost a pound. The said picture, name H. J. Graves, and affidavit are false and fictitious, in that the picture is not that of H. J. Graves or of the president of the said respondent corporation; no such person is or ever has been president of the said respondent corporation, and no such affidavit was ever made and does not exist. The said statement and representation is further false in that the weight of said wool and material of the blue serge suit referred to is substantially less than 15 ounces to the yard.

Among the folders and advertising literature above referred to and distributed and exhibited to members of the buying public by and through Pioneer Tailoring Company, a certain folder describing its No. 230 blue serge suit, carries the statements and representations that the materials thereof are all wool and a "Full 15 ounces to the yard," "Almost a full pound," and "Almost 50% more than the average serge."

Among the folders and advertising literature above referred to and distributed and exhibited to members of the buying public by and through W. Z. Gibson, Inc., a certain folder describing its No. 980-983 serge suits, carries the statements and representations that the materials of said suits are all wool and "full heavy weight 16-ounce," meaning 16 ounces to the yard.

The aforesaid representations of respondents, Pioneer Tailoring Co. and W. Z. Gibson, Inc., are false and misleading in that the weight of the woolen material of the serge suits referred to is substantially less than 1 pound and substantially less than 15 ounces to the yard.

PAR. 9. In certain of the folders and advertising literature above referred to and distributed and exhibited to members of the buying public by and through respondents, Stone-Field Corporation, W. Z. Gibson, Inc. and Pioneer Tailoring Co., each of said respondents, referring to suits therein offered and represented, states and repre-

sents that the "super-sheen Linings" and "DeLuxe Trimmings" are "Furnished Free." The said representation is false and misleading in that the cost of said linings and trimmings is included in the sale price paid by the purchaser of the garment product referred to, and is not "Free."

PAR. 10. The aforesaid false and misleading statements and representations have had and have the tendency and capacity to mislead and deceive prospective purchasers and purchasers of garment products into the erroneous belief that the said statements and representations are true, and into the purchase of garment products from respondents in reliance upon such belief, thereby unfairly diverting trade in said commerce to respondents from their competitors who do not use the methods and practices herein complained of, all to the injury of said competitors in said commerce, and to the injury of the public.

PAR. 11. The aforesaid acts and practices of respondents, as hereinabove alleged, are all to the prejudice of the public 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 28, 1939, issued and subsequently served its complaint in this proceeding upon the respondents, Progress Tailoring Co., a corporation, trading under its own name and also as J. C. Field & Son; Stone-Field Corporation, a corporation; W. Z. Gibson, Inc., a corporation; Pioneer Tailoring Co., a corporation; and Certified Tailoring Co., a corporation, 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 respondents' answer thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were introduced before trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, briefs filed in support of the complaint and in opposition thereto,

and oral argument 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, Progress Tailoring Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 500 Throop Street in the city of Chicago, State of Illinois. Said respondent does business under its own name and also under the name, style, and description of J. C. Field & Son.

Respondent, Stone-Field Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1300 West Harrison Street in the city of Chicago, State of Illinois.

Respondent, W. Z. Gibson, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 500-532 South Throop Street in the city of Chicago, State of Illinois.

Respondent, Certified Tailoring Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at Congress and Throop Streets in the city of Chicago, State of Illinois.

Respondent, Certified Tailoring Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1300 West Harrison Street in the city of Chicago, State of Illinois.

Fort Wayne Tailoring Co., not named as a respondent herein, is a corporation having its office and principal place of business in the city of Fort Wayne, State of Indiana.

PAR. 2. The Fort Wayne Tailoring Co., and the respondents, Stone-Field Corporation, W. Z. Gibson, Inc., Pioneer Tailoring Co., and Certified Tailoring Co., are wholly owned subsidiaries of the respondent, Progress Tailoring Co., a corporation. Alfred E. Stern, Irvin Stern, Albert Duncan, and Charles A. Olson, are president, vice-president and treasurer, secretary, and assistant secretary, respectively, of the Fort Wayne Tailoring Co., and of the respondents, Progress Tailoring Co., Stone-Field Corporation, W. Z. Gibson, Inc.,

Pioneer Tailoring Co., and Certified Tailoring Co. Alfred E. Stern and D. B. Stern are directors of the Fort Wayne Tailoring Co., and directors of all of the respondent corporations. Irvin Stern is a director of the Fort Wayne Tailoring Co. and of respondent, Progress Tailoring Co. Albert Duncan is a director of the Fort Wayne Tailoring Co. and of respondents, Stone-Field Corporation, W. Z. Gibson, Inc., Pioneer Tailoring Co., and Certified Tailoring Co.

The Commission finds that the respondent, Progress Tailoring Co., as the parent corporation, directs and controls the sales policies and practices of respondents, Stone-Field Corporation, W. Z. Gibson, Inc., Pioneer Tailoring Co., and Certified Tailoring Co., its wholly owned subsidiaries, and that all of the respondent corporations, acting by and through identical officers and substantially identical directors, acted in conjunction and cooperation with each other in performing the acts and practices hereinafter described.

PAR. 3. In the course and conduct of their said businesses, respondents, for several years last past have been, and are now, engaged in the sale and distribution of wearing apparel, including men's suits and coats, in commerce among and between the various States of the United States and in the District of Columbia and cause said products, when sold, to be transported from their places of business in the State of Illinois or from the places of business of the Fort Wayne Tailoring Co. in the State of Indiana to purchasers thereof located in various States of the United States other than the States of Illinois and Indiana. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their aforesaid businesses and at all times referred to herein the respondents have been and are now, and each of them has been and is now, in competition with other corporations and with firms, partnerships, and individuals engaged in the offering for sale and selling of wearing apparel, including men's suits and coats, in commerce among and between the various States of the United States and in the District of Columbia, who do not use the methods and practices hereinafter described.

PAR. 5. The garments sold and distributed by the respondents are all manufactured by the Fort Wayne Tailoring Co. from cloth furnished to it by respondent, Progress Tailoring Co. The Fort Wayne Tailoring Co. charges the respondent, Progress Tailoring Co., for its services in cutting, trimming, and tailoring the cloth furnished to it by said respondent, Progress Tailoring Co. Said respondent, Progress Tailoring Co., in turn makes a charge against the respondent,

Stone-Field Corporation, W. Z. Gibson, Inc., Pioneer Tailoring Co., and Certified Tailoring Co., for garments sold by said respondents.

PAR. 6. In the course and conduct of their businesses the respondents sell said garments directly to the consuming public through the means of agents and salesmen who canvass, solicit, and sell such members of the buying public in and throughout the various States of the United States. For each sale made, said agents and salesmen are paid a commission or percentage of the sales price paid by the purchaser. Said agents and salesmen are equipped by respondents with order blanks and samples of materials from which purchasers make selections as to color, weave, and quality of material from which the garment ordered is to be made and with certain circulars, folders, literature, and other advertising matter referring and relating to said respondents and to their said products, all of which are circulated, distributed, or exhibited to said prospective purchasers and members of the buying public.

PAR. 7. In the course and conduct of their businesses, the respondents have engaged in the practice, as an integral part of the sales promotion plan employed by each of them, of advertising for, and soliciting the services of, agents and salesmen through and by means of advertisements placed in magazines, newspapers, and other periodicals, which advertisements represent that a "free" suit or suits will be given to such agents and salesmen. Typical of such advertisements are the following:

#### LOCAL AGENTS

Wanted to Wear and demonstrate Free Suits to friends. No canvassing. Up to \$12 in a day easy. Experience unnecessary. Valuable demonstrating equipment, actual samples Free. H. J. Graves, Pres. 1300 Harrison. Dept. A-819, Chicago.

IF I SEND YOU

THIS FINE SUIT—

WILL YOU WEAR IT AND SHOW IT TO FRIENDS?

I need a reliable man in your town to wear a fine, made-to-measure, all-wool DEMONSTRATING SUIT—advertise my famous Union clothing—and take orders. \* \* \* I supply everything required FREE of extra cost.

YOUR OWN SUITS FREE OF EXTRA CHARGE

Sensational new liberal bonus plan! No quantity limit—no time limit on FREE SUITS for yourself! It's easy TO MAKE MONEY—easy to get orders—and easy to get your own SUITS FREE of extra charge, with the Certified line.



## WRITE FOR FREE SAMPLE DETAILS:

## YOUR OWN SUITS FREE OF EXTRA CHARGE

New unlimited bonus plan gives you your own suits Free of extra cost—no quantity limit, no time limit. Mail coupon for details.

Through the use by the respondents of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, prospective salesmen and agents are led to believe that upon answering respondents' advertisement they will receive a suit of clothes free and without charge, which may be used by them when soliciting orders from customers for similar suits. When an inquiry is received from a prospective agent or salesman in response to such advertisement, a circular is forwarded to him which prominently displays and stresses the word "free," and which informs such prospective salesman or agent that it will be necessary to obtain orders for a specified number of suits before receiving the suit designated by the respondents as being "free." Such suits, which are delivered to the salesman or agent only after he has sold a specified number of suits, are not free but in fact constitute part of the compensation for services performed in selling respondents' wearing apparel. The condition and requirement to the procurement of the so-called "free" suit is not disclosed in the initial advertisement in which said offer of a free suit or suits is made, and such prospective salesman or agent is only advised of the conditions necessary to obtain such so-called "free" suit or suits when reply is received to his inquiry with reference to said advertisement.

In addition to the above representations, the respondents have also, in folders and advertising literature, represented that "Supersheen Linings" and "Deluxe Trimmings" are "Furnished Free." Such representations are false and misleading in that such linings and trimmings are not furnished free but the cost of said material is included in the sales price paid by the purchaser for the garment referred to.

PAR. 8. In the course and conduct of their businesses the respondents have falsely represented and exaggerated the size and extent of the business of the respective respondents through the use of a picture of a large, four-story, commercial or industrial building or plant in their various circulars and advertising folders. By means of such pictorial representations the respondents are enabled to misrepresent the nature and extent of their business operations and cause members of the purchasing public to believe that they are the owners of, operate, and exclusively occupy the building pictured and referred to in such advertising. In truth and in fact, the respondents do not exclusively occupy the building pictured or any other building of equal or com-

parable capacity or size but instead occupy only a portion, consisting of two floors, of the building so pictured.

PAR. 9. The respondents have also represented by statements contained in circulars, folders, and other advertising material that all middlemen's expenses are eliminated and imply that purchases made from the respondents are at manufacturers' prices and at a saving to the purchaser of retailers' or middlemen's costs and profits; whereas, on the contrary, the respondents do not sell at manufacturers' prices or at prices which save the purchaser the retailers' or middlemen's costs or profits. A substantial percentage or part of the purchase prices paid respondents by purchasers is included in the said price to cover retailing costs and commissions to agents and sales persons for effecting sales, and also to cover service charges of the Fort Wayne Tailoring Co. for the manufacture of such garments and the charge made by the respondent Progress Tailoring Co. against its various subsidiary corporations when the garments are sold by them.

PAR. 10. In certain of their circulars, folders, and advertising material distributed by the respondents they have represented that they are exclusively wholesale tailors and that their garments are supplied to the purchasers thereof at wholesale prices. Such representations are false and misleading in that said respondents are engaged in the business of selling at retail, and at retail prices, to the buying public. A wholesaler, or one who sells at wholesale, is one who sells to a retailer or jobber, usually in quantity lots, and not direct to the ultimate consumer of an individual unit. The respondents do not sell at wholesale prices or at a saving to the purchaser of a retailer's cost and profit. A substantial percentage or part of the purchase prices paid respondents by purchasers is included in said prices to cover retailing costs and commissions to agents and salesmen for effecting such sales.

PAR. 11. The respondents, in order to emphasize certain statements contained in certain of their circulars, have used a false and fictitious affidavit, purportedly executed by one H. J. Graves as president of one of the respondent corporations, when, in fact, no such person is or ever has been president of any of said respondent corporations and no such affidavit was ever made.

PAR. 12. The aforesaid false and misleading statements and representations have had the tendency and capacity to mislead and deceive prospective purchasers and purchasers of wearing apparel into the erroneous belief that said statements and representations are true and into the purchase of garments from respondents in reliance upon such belief, thereby unfairly diverting trade to respondents from their competitors who are also engaged in the sale and distribution of similar items of wearing apparel in commerce among and be-

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tween the various States of the United States and who do not use the methods and practices herein described.

## 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 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, answer of the respondents, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence, briefs filed in support of the complaint and in opposition thereto, and oral argument of 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, Progress Tailoring Co., a corporation, trading under its own name and also as J. C. Field & Son; Stone-Field Corporation, a corporation; W. Z. Gibson, Inc., a corporation; Pioneer Tailoring Co., a corporation; and Certified Tailoring Co., a corporation, and 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 wearing apparel and other similar items of merchandise in commerce as "commerce" 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 designate, describe, or refer to wearing apparel or other items of merchandise which are furnished as compensation for services rendered.

2. Using the term "free" or any other term of similar import or meaning to describe or refer to linings, trimmings, or other portions of garments which constitute a part of any garment, and the price of which is included in the price of the entire garment.

3. Using a pictorial representation of a building, in advertising or in any other manner, which inaccurately portrays or misrepresents the size or extent of respondents' business or the comparative volume of business transacted by the respondents.

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4. Representing directly or by implication that respondents are selling their garments at manufacturers' prices or at prices which save the purchaser the cost or profit of the retailer or middleman.

5. Representing that respondents are wholesale tailors or that their garments are supplied to purchasers at wholesale prices or that respondents are engaged in any business other than the sale of garments at retail.

6. The use of reproductions of any fictitious affidavit in advertising material or in any other manner.

*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  
BERTHA M. URBAN

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

*Docket 4761. Complaint, May 15, 1942—Decision, July 21, 1943*

Where an individual, engaged in interstate sale and distribution of her "Lakota" fruit-juice product; by means of advertisements in newspapers, circulars, etc., including excerpts from testimonial letters, directly and by implication—

Represented that her said product constituted a cure and effective treatment for migraine or sick headache, high blood pressure, abdominal pains, constipation, and ulcers; and that it would remove the cause of migraine headaches and relieve the pain and discomfort thereof;

The facts being that, while said product had some nutritive value and might be considered a very mild laxative if taken in sufficient quantities, it would have no effect upon constipation in the dosage prescribed, and it had no therapeutic significance in the other diseases and conditions listed;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby causing it to purchase substantial quantities of said product:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. J. Earl Cox*, trial examiner.

*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 Bertha M. Urban, an individual, 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, an individual, maintains her office and principal place of business at Ewing, Nebr.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of offering for sale, selling and distributing in commerce, between and among the various States of the United States, a medicinal preparation designated as "Lakota." Respondent causes said preparation when sold to be transported from her aforesaid place of business in the State of Nebraska, to purchasers thereof located in various other States of the United States. Respond-

ent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of her aforesaid business respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning her said preparation, by United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, and respondent has also disseminated, and is now disseminating, and has caused and is now causing dissemination of false advertisements concerning her said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

Removes cause of migraine headache.

For the relief of migraine headache.

—this safe, harmless remedy for migraine headaches.

Get Lakota for the relief of those dreadful sick headaches.

Migraine—I know its source—the laxative effect is to clear away the bile and mucus formation which "Lakota" does to give you the relief really needed—Lakota gets your cause if you give it a good chance.

The new product—relieves the oversupply of bile—. But when the bile-pressure is intense it must be forced in laxative amounts as it must be cleared away—.

I had high blood pressure and abdominal pains and since I began taking Lakota they have left me.

I was so constipated and miserable—I do not know what I should have done if I had not found your Lakota. After I had taken it for a while I began taking less and less all the time

I have taken lots of medicine for my headache and ulcers but never found such grand relief as with Lakota.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent has represented and now represents, directly and by implication, that her preparation "Lakota" is a cure and remedy for and constitutes a competent and effective treatment of migraine headache or sick headache, high blood

pressure, abdominal pains, constipation, and ulcers; that said preparation will remove the cause of migraine headaches and relieve the pain and discomfort thereof; that migraine headache is caused by an excess of bile and mucus formation, which is removed by the use of said preparation.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's said preparation, is not a cure or remedy for and has no therapeutic value in the treatment of migraine or sick headache, high blood pressure, abdominal pains, and ulcers. It will not remove the cause of migraine headache, nor will it relieve the pain and discomfort associated therewith. While said preparation is mildly laxative if taken in large quantities, it does not constitute a competent and effective treatment for constipation. Migraine headache is not caused by an excess of bile and mucus formation, and the use of said preparation will not remove bile and mucus from the system.

PAR. 6. The use by the respondent of the foregoing false, misleading and deceptive statements and representations with respect to respondent's 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 said statements and representations were true, and into the purchase of substantial quantities of respondent's said preparation because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices, 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 May 15, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Bertha M. Urban, charging her with the use of 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 thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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, this proceeding regularly came on for final hearing before the Commission upon said

## Findings

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complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief filed 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, Bertha M. Urban, is an individual, and maintains her office and principal place of business at Ewing, Nebr.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution in commerce among and between the various States of the United States of a fruit juice product designated as "Lakota." Respondent causes said product, when sold, to be transported from her place of business in the State of Nebraska to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of her aforesaid business, respondent has disseminated, and has caused the dissemination of, false advertisements concerning her said product by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated, and has caused the dissemination of, false advertisements concerning her said product by various means for the purpose of inducing and which are likely to induce directly or indirectly, the purchase of her said product in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars, leaflets, pamphlets, and other advertising literature, some of which contain excerpts of testimonial letters, are the following:

Remove cause of migraine headache.

Safe, harmless remedy for migraine headache.

Get Lakota for the relief of those dreadful sick headaches.

I had high blood pressure and abdominal pain and since I began taking Lakota they have left me.

I was so constipated and miserable and other laxatives would not give relief without I took double dose and yet got no relief. I do not know what I should have done if I had not found your Lakota.



## Order

I have taken lots of medicine for my headache and ulcers but have never found such grand relief as the Lakota.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's said product, respondent represents directly and by implication that her product Lakota is a cure and remedy for, and constitutes a competent and effective treatment of, migraine headache or sick headache, high blood pressure, abdominal pains, constipation, and ulcers; and that said preparation will remove the cause of migraine headaches and relieve the pain and discomfort thereof.

PAR. 5. Respondent's product is composed entirely of the liquid obtained from boiling dried prunes, ordinary brown or white sugar, and water, which liquid is strained and sealed, while hot, in sterile bottles. This product has some nutritional value and might be considered a very mild laxative if taken in sufficient quantities. It has no therapeutic significance, and its use would have no effect upon migraine or sick headache. The cause of migraine headache is not generally known, and the usual treatment followed is the use of sedatives to alleviate the pain. Respondent's product will not reach the cause of migraine headache and has no beneficial effect in relieving the pain attendant or associated with such condition. The use of this product has no effect whatsoever upon high blood pressure, abdominal pains, or ulcers, and its laxative value in the dosage prescribed is too small to have any effect upon the condition of constipation.

PAR. 6. The use by respondent of the foregoing false, misleading, and deceptive statements and representations with respect to her said product has had the capacity and tendency to 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 substantial quantities of respondent's said product because of said erroneous and mistaken belief.

## CONCLUSION

The aforesaid acts and practices of 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, the answer of the re-

spondent, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief filed 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, Bertha M. Urban, her agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of her fruit-juice product designated "Lakota," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or through inference that respondent's product has any therapeutic value or beneficial effect in the treatment of migraine or sick headache, high blood pressure, abdominal pains, or ulcers; or that the use of said product will remove the cause of migraine headache or relieve the pain and discomfort associated with such condition; or that said product has any therapeutic value in the treatment of constipation.

2. 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 respondent's product, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

## Complaint

## IN THE MATTER OF

## ALBERT E. VOADEN

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

*Docket 4935. Complaint, Mar. 29, 1943—Decision, July 21, 1943*

Where an individual, engaged in interstate sale and distribution of circulars with reply cards attached, for use by creditors and collection agencies in obtaining information concerning debtors, which informed the recipient that "Cigarette Smoker's Survey" was conducting a national survey to determine the preferred American-made cigarettes, and that if he would answer the questions on the business reply card, including reason for his preference, his name, address and place of employment, his favorite cigarette radio program, and name, address, and place of employment of a friend who smoked the same brand, he would receive free a package of his favorite cigarettes;

Making use of a scheme under which he placed upon his reply cards code numbers identifying his customer-purchasers, latter addressed cards and circulars to last known addresses of persons about whom information was sought, attached postage and caused the same to be delivered to said individual, who deposited them in the mail and, upon receipt of filled-in reply cards, forwarded them to his customers, and to persons returning them sent packages of their preferred cigarettes;

Through use of name Cigarette Smoker's Survey and said circular and card, falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, that he was engaged in completing a national survey to determine which of a number of brands of American-made cigarettes was preferred by the average man so that classification might be made to show preference of different types of workers;

With effect of misleading and deceiving many persons to whom said circulars and cards were sent into the mistaken belief that said representations were true, thereby causing said persons to give information which they would not have otherwise supplied:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted 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 Albert E. Voaden, an individual, 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:

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PARAGRAPH 1. Respondent, Albert E. Voaden, is an individual, with an office and principal place of business at Room No. 211, Charlevoix Building, Detroit, Mich. He formerly maintained an office and principal place of business at 2016 John R. Street, Detroit, Mich. In conducting his business respondent has traded under the names Credit Advisory Service, Cigarette Smoker's Survey, Bankers and Merchants Pen Co., and Alvin's (No-Lose) Key Chains.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of selling and distributing printed mailing cards and forms designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent causes said cards and forms to be transported from his aforesaid place of business in the State of Michigan, to purchasers thereof 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 said forms and cards in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The said cards and forms sold and distributed by respondent when using the name Cigarette Smoker's Survey are substantially in the form exemplified by a photostatic copy of the said card, marked Exhibit A; when using the name Bankers and Merchants Fountain Pen Co. the cards were in the form exemplified by a photostatic copy thereof marked Exhibit B; when using the name Alvin's (No-Lose) Key Chains the cards were in the form exemplified by a photostatic copy thereof marked Exhibit C.

The said exhibits A, B, and C, are attached hereto and by this reference incorporated herein and made a part hereof.

Upon the said cards and circulars, when they were delivered to purchasers thereof, respondent placed numbers, which were his code numbers and identified his customers to him.

Respondent's purchasers addressed the cards and circulars to the persons concerning whom information was sought at their last known addresses, attached the postage necessary for their delivery to such persons and caused them to be delivered to respondent in Detroit, Mich. Respondent then deposited the individual cards and circulars in the United States mail.

Such of the returned cards or returned portions of the circulars as were filled out and mailed were received by respondent, the customers identified by the code numbers, and sent by him to the various purchasers. Respondent sent to each person who returned the Cigarette Smoker's Survey card, a package of cigarettes as indicated by

## Complaint

the sender; to each person who returned the Bankers and Merchants Fountain Pen Co. card, he sent a cheap fountain pen, and to each person who returned the Alvin's (No-Lose) Key Chains card, he sent a key chain of the sort depicted on the post card.

PAR. 4. By means of the Cigarette Smoker's Survey card, respondent has falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, to those to whom the said cards were sent, that respondent was engaged in completing a national survey for the purpose of determining which of a number of brands of American made cigarettes were preferred by the average man and that this survey was made so that a classification might be made to show the preference of different types of workers.

PAR. 5. The said representations were false and misleading. In truth and in fact, respondent was not engaged in making a survey for the purpose of determining the public preference for various brands of American made cigarettes or for the purpose of classifying the cigarette preference of workers in different lines of endeavor. The actual purpose of the card was to obtain information concerning the recipient for the purpose of facilitating the collection of an alleged delinquent account and the whole scheme was merely an attempt to obtain this information by deceit and subterfuge.

PAR. 6. By means of the Bankers and Merchants Fountain Pen Co. card, respondent has falsely represented, and has placed in the hands of his customers means of falsely representing, directly and by implication, to persons to whom the said cards were sent, that the said card was sent and the offer of a free fountain pen made to the recipient in order that the pen might be demonstrated by the recipient to his friends and fellow-workers; that the said pen was given free as a means of bringing its merits to the attention of prospective purchasers, and that respondent was engaged in the business of selling and distributing such pens.

PAR. 7. Said representations were false and misleading. In truth and in fact respondent was not engaged in the business of selling and distributing pens, and the offer of a free pen was not made as a means of bringing its merits to the attention of prospective purchasers. The card was sent only for the purpose of obtaining information concerning the recipient for the purpose of facilitating the collection of an alleged delinquent account and the whole scheme was merely an attempt to obtain this information by deceit and subterfuge.

PAR. 8. By means of the Alvin's (No-Lose) Key Chains card, respondent falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, to

## Complaint

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recipients thereof that the offer of a free rabbit foot key chain was made because the recipient was so fortunate as to have had his name selected from a large number of names; that it was being sent the recipient in order that he might exhibit the same to all of his friends; and that the respondent was engaged in the business of selling said key chains.

PAR. 9. The said representations were false and misleading. In truth and in fact, respondent was not engaged in the business of selling the said key chains, the name of the recipient had not been selected out of a large number of names and the chain was not sent to the recipient in order that it might be exhibited by him to his friends. The card was sent solely for the purpose of obtaining information concerning the recipient for the purpose of facilitating the collection of an alleged delinquent account and the whole scheme was merely an attempt to obtain the information by deceit and subterfuge.

PAR. 10. Through the use of the name, Cigarette Smoker's Survey, respondent has represented, directly and by implication, that he was engaged in the business of ascertaining by means of a survey, the preferences of a large number of individuals as to particular brands of cigarettes, and through the use of the name Bankers and Merchants Pen Co., respondent has represented, directly and by implication, that he was in the business of selling and distributing pens. Both of the said representations were false and misleading since in truth and in fact respondent was not making such a survey nor was he in the business of selling and distributing pens.

PAR. 11. The use by respondent, as hereinabove set forth, of the foregoing false and misleading statements and representations has had the tendency and capacity to, and has, misled and deceived many persons to whom the said cards and circulars were sent, into the erroneous and mistaken belief that said statements and representations were true and by reason thereof has caused them to give information which they would not have otherwise supplied.

PAR. 12. 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.

Complaint

Exhibit A (Front)

Detach This Stub and Mail Card  
No Postage Necessary



Detroit, Michigan

DEPT.

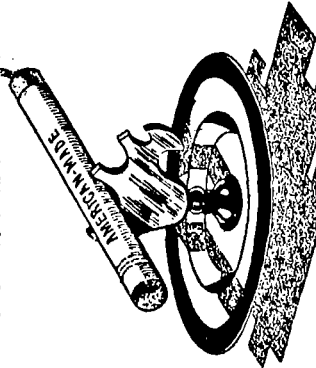
Cigarette Smokers' Survey  
211 Charlevoix Building

**BUSINESS REPLY CARD**  
FIRST CLASS PERMIT NO. 8928, SEC. 510, P. L. & R. DETROIT, MICH.



*Smoke*  
**AMERICAN-MADE  
CIGARETTES**

Give More Work to More Americans



What America Makes - Makes America

**CIGARETTE SMOKERS' SURVEY**  
211 CHARLEVOIX BUILDING  
DETROIT, MICHIGAN

SEC. 562, P. L. & R.

DEPT. \_\_\_\_\_

*Voaden B  
20-2-3785 8-24-42  
W. M. L. Smith Jr.*

POSTMASTER: IF ADDRESSEE HAS MOVED AND  
NEW ADDRESS IS KNOWN, NOTIFY SENDER ON  
FORM 3547. POSTAGE FOR WHICH IS GUARANTEED

**Cigarette Smokers' Survey**

211 Charlevoix Bldg. - - Detroit, Mich.

You may send me a FREE PACKAGE of my FAVORITE CIGARETTES which I have checked below.  CHECK YOUR CHOICE

- |             |                          |               |                          |
|-------------|--------------------------|---------------|--------------------------|
| Camels      | <input type="checkbox"/> | Chesterfields | <input type="checkbox"/> |
| 1 Old Golds | <input type="checkbox"/> | Lucky Strikes | <input type="checkbox"/> |
| Pall Mall   | <input type="checkbox"/> | Philip Morris | <input type="checkbox"/> |

2 WHY I PREFER THEM \_\_\_\_\_

3 My Name \_\_\_\_\_  
Address \_\_\_\_\_

4 Employed at \_\_\_\_\_  
Address \_\_\_\_\_

5 What Cigarette Radio Program do you like best \_\_\_\_\_  
Have you a friend who smokes the same brand of Cigarettes?

6 Name \_\_\_\_\_  
Address \_\_\_\_\_

7 Employed at \_\_\_\_\_  
Address \_\_\_\_\_

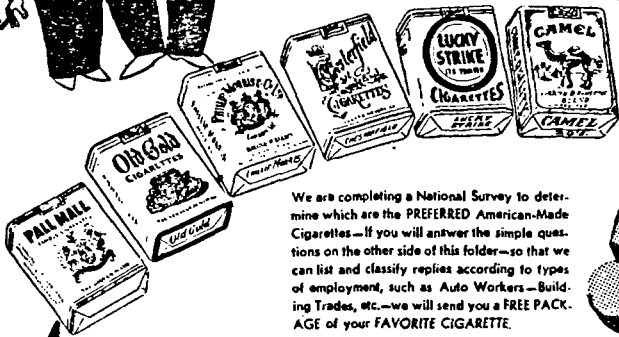
**This Free Offer Expires Soon  
IT IS POSITIVELY  
NOT TRANSFERABLE**

TEAR OFF THIS CARD - MAIL - NO POSTAGE NECESSARY



**We Want To Know ...**

**Which 'American-Made' Cigarette  
Does The Average Man Prefer?**



We are completing a National Survey to determine which are the PREFERRED American-Made Cigarettes—if you will answer the simple questions on the other side of this folder—so that we can list and classify replies according to types of employment, such as Auto Workers—Building Trades, etc.—we will send you a FREE PACKAGE of your FAVORITE CIGARETTE.



**We'll Send You Your Favorite Cigarette  
Absolutely FREE If You Help Us By  
Answering 7 Simple Questions!**


THIS IS NO CONTEST! THERE'S NOTHING TO BUY OR SELL! NOTHING TO SIGN! DO IT NOW!



This FREE offer cannot be transferred, for you only.

**A NEW DEPARTMENT IN FOUNTAIN PENS**

FREE—Introductory offer for



YES! You may send one E-Z-RITE Fountain Pen, without obligation to me. I am to do no selling, just demonstrate it to my friends and fellow employees.

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Town \_\_\_\_\_  
 Employed by \_\_\_\_\_  
 Employer's Address \_\_\_\_\_

To avoid duplication name and address of employer must be given

Fill in this card yourself, so that you may receive a E-Z-RITE Fountain Pen suitable to your handwriting.

**BANKERS & MERCHANTS PEN CO.**  
 2016 John R Street  
 DETROIT — MICHIGAN

Yours For Better Penmanship

**ACT PROMPTLY**— Our supply in this distributing campaign is limited.

That's all we ask

If you like the E-Z-RITE Fountain Pen show it to your friends.

A revelation in smooth flowing Effortless writing

Mail Attached Card To-day



# A Fountain Pen FREE



**BUSINESS REPLY CARD**  
 FIRST CLASS PERMIT No. 778  
 DETROIT, MICH.

**BANKERS & MERCHANTS PEN CO.**

2014 John R Street at Adams

Dept. 8 90

DETROIT, MICHIGAN



# POST CARD

Bankers & Merchants Pen Co.  
 2016 John R St. Room 101  
 DETROIT, MICH.



**RABBIT FOOT KEY CHAIN**

FREE Introductory Offer—

for

YES! you may send me One Rabbit Foot Key Chain without any obligation. I will do so on selling—Just show this precious Rabbit Foot Key Chain, with Horse Shoe attached, to all my friends.

Name \_\_\_\_\_

Address \_\_\_\_\_

I work for \_\_\_\_\_

Emp. Address \_\_\_\_\_

NAME AND ADDRESS OF EMPLOYER MUST BE GIVEN

Kind of work \_\_\_\_\_

Dept. \_\_\_\_\_ Badge No. \_\_\_\_\_

I work with fellow workers that I can show this New "Double Barrel Lock" Key Chain.

(to determine length of chain)

I carry \_\_\_\_\_

Keys at present.

Sign your name in full here

**THIS OFFER IS NON TRANSFERABLE**

Copyright 1936 A. K. C.

ALVIN'S (No-Lose) KEY CHAINS



DETROIT 2014 John R St. MICHIGAN

**POST CARD**

POSTMASTER—IMPORTANT.  
Please Forward if Necessary.



**It's New! A Rabbit Foot Key Chain**  
with a Unique Horse Shoe attached



We will mail you ONE of Alvin's (No-Lose) Rabbit Foot Key-Chains absolutely FREE if you act at once.

You were Lucky to have your name selected from a group of names to receive a Rabbit Foot Key Chain—FREE.

Exactly as pictured, a charming and useful gift.

You must act quickly— Our Free distribution ends soon.

Copyright 1936 A. K. C. — ALVIN'S (No-Lose) KEY CHAINS — 2014 John R Street — Detroit, Michigan

**BUSINESS REPLY CARD**  
No Postage Stamp Necessary if Mailed in the United States

FIRST CLASS  
PERMIT NO. 778  
DETROIT, MICH.

Tear off this half of card at perforation before mailing

2014 John R Street  
Detroit, Michigan

ALVIN'S (No-Lose) KEY CHAINS

Dept. 851A

From \_\_\_\_\_

Complaint  
Exhibit C

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 29, 1943, issued and on March 31, 1943, served its complaint in this proceeding upon respondent, Albert E. Voaden, an individual, 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 said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in said complaint except insofar as the said allegations related to certain cards described in the said complaint as the Bankers and Merchants Fountain Pen Co. cards and Alvin's (No-Lose) Key Chain cards, and waiving all intervening procedure and further hearing as to the facts admitted by such substitute 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. Respondent, Albert E. Voaden, is an individual, with an office and principal place of business at Room No. 211, Charlevoix Building, Detroit, Mich. He formerly maintained an office and principal place of business at 2016 John R. Street, Detroit, Mich. In conducting his business, respondent has traded under the names Credit Advisory Service and Cigarette Smoker's Survey.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of selling and distributing printed matter consisting of circulars with reply card attached, designed, and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent causes said circulars and cards, when sold, to be transported from his aforesaid place of business in the State of Michigan, to purchasers thereof 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 said circulars and cards in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The printed matter sold and distributed by the respondent when using the name Cigarette Smoker's Survey is in the form of a circular with a business reply card attached, addressed to Cigarette Smoker's Survey. The circular informs the recipient that the Cigarette Smoker's Survey is conducting a national survey to determine which are the preferred American-made cigarettes, and that if the recipient will answer the questions on the business reply card he will receive a free package of his favorite cigarettes. The business reply card is in the form of a request for a free package of cigarettes of the brand selected, which is indicated by checking choice. In filling out this card the following information is given: reason for preference of the particular brand, name, address, and place of employment, what cigarette radio program is liked best, and name, address, and place of employment of a friend who smokes the same brand of cigarettes.

When these cards and circulars were delivered to the purchasers thereof, respondent placed certain code numbers upon the reply cards which identified his customers to him.

Respondent's purchasers addressed the cards and circulars to the persons concerning whom information was sought at their last known addresses, attached the postage necessary for their delivery to such persons, and caused them to be delivered to respondent in Detroit, Mich. Respondent then deposited the individual cards and circulars in the United States mail.

When the reply card was returned with the information filled out by the person concerning whom information was sought, the respondent forwarded such cards to his customer as identified by the code numbers, and forwarded to each person who returned such reply card a package of cigarettes as indicated by the sender.

PAR. 4. By means of the Cigarette Smoker's Survey circular and card, respondent has falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, to those to whom the said cards were sent, that respondent was engaged in completing a national survey for the purpose of determining which of a number of brands of American-made cigarettes were preferred by the average man and that this survey was made so that a classification might be made to show the preference of different types of workers.

PAR. 5. The said representations were false and misleading. In truth and in fact, respondent was not engaged in making a survey for the purpose of determining the public preference for various brands of American-made cigarettes or for the purpose of classifying the cigarette preference of workers in different lines of endeavor. The actual purpose of the circular and card was to obtain information con-

cerning the recipient for the purpose of facilitating the collection of an alleged delinquent account and the whole scheme was merely an attempt to obtain this information by deceit and subterfuge.

PAR. 6. Through the use of the name "Cigarette Smoker's Survey," respondent has represented, directly and by implication, that he was engaged in the business of ascertaining by means of a survey, the preferences of a large number of individuals as to particular brands of cigarettes. The said representation was false and misleading, since in truth and in fact respondent was not making such a survey.

PAR. 7. The use by respondent, as hereinabove set forth, of the foregoing false and misleading statements and representations has had the tendency and capacity to, and has, misled and deceived many persons to whom the said circulars and cards were sent, into the erroneous and mistaken belief that said statements and representations were true and by reason thereof has caused them to give information which they would not have otherwise supplied.

#### CONCLUSION

The aforesaid acts and practices of 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 the complaint except insofar as the said allegations relate to certain cards described in the said complaint as the Bankers and Merchants Fountain Pen Co. cards and Alvin's (No-Lose) Key Chains cards, and states that he waives all intervening procedure and further hearing as to the facts so admitted, 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, Albert E. Voaden, individually, and trading as Credit Advisory Service, and as Cigarette Smoker's Survey, or trading under any other name, and 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 respondent's printed matter, consisting of circulars with re-

ply cards attached, or any other printed or written material of substantially similar nature, do forthwith cease and desist from:

1. Using the word "Survey" or any other word or words of similar import to designate, describe, or refer to respondent's business; or otherwise representing, directly or by implication, that respondent's business bears any relation to obtaining information concerning the habits, preferences, or opinions of numbers of people.

2. Selling or distributing circulars and cards or other printed or written material designed to be used for obtaining information to be used in the collection of debts, which represent, directly or by implication, that respondent's business is other than that of selling and distributing such circulars and cards or other printed material; or which represent, directly or by implication, that the information sought through such circulars and cards or other printed material is for any purpose other than for use in the collection of debts.

3. Using, or supplying to others for use, circulars and cards or other material which represents directly or by implication that they are for the purpose of conducting a survey or of obtaining information to determine the preference of members of the public, or the use by them of any brand of cigarettes or other commodities when the information sought is for use in the collection of debts.

*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

J. R. HODGES, TRADING UNDER THE STYLE AND FIRM  
NAME OF AMOGEN COMPANY

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

*Docket 4836. Complaint, Sept. 16, 1942—Decision, July 27, 1943*

Where an individual engaged in the advertisement and interstate sale and distribution of his "Amogen Tablets," through advertisements in circulars, pamphlets, and other written or printed matter, directly and by implication—

- (a) Falsely represented that said "Amogen Tablets" were a cure or remedy and constituted a competent and effective treatment for billousness, temporary constipation, malaria, common colds and fevers, poor digestion, acid or gas on the stomach, overindulgence in food and drink, clogged bowels, headaches, neuralgia, rheumatic pains and fever, sallow complexion, pimples, sores, boils, skin irritations, coated tongue, bad breath, and bad taste in the mouth; would eliminate excess bile, rid the system of poisons and enable one to maintain good health and avoid sickness; the facts being that product in question, essentially a laxative, had no therapeutic value in the treatment of said ailments in excess of affording temporary relief when such conditions were due to or caused by constipation; and
- (b) Failed to reveal facts material in the light of such representations in that continued use of the product in question, which contained the mercury derivative calomel, would be likely to result in mercury poisoning and serious injury to health; use thereof as a laxative was potentially dangerous when taken by one suffering from abdominal pains or other symptoms of appendicitis; and frequent and continued use might result in dependence on a laxative;

With effect of deceiving a substantial number of the purchasing public into the mistaken belief that said representations were true and that said preparation might be used without ill effects, and to induce it because of such mistaken belief, to purchase its said preparation:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce.

Before *Mr. Lewis C. Russell*, trial examiner.

*Mr. Carrel F. Rhodes* 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 J. R. Hodges, individually, and trading under the style and firm name of Amogen Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it

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in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, J. R. Hodges, is an individual, trading under the style and firm name of Amogen Co., with his principal place of business located at 147 North Street, San Antonio, Tex.

PAR. 2. Acting in his individual capacity and trading under the style and firm name of Amogen Co., respondent is now, and for more than 1 year last past has been, engaged in the advertising, sale and distribution of a medical preparation designated as "Amogen Tablets," in commerce among and between the various States of the United States.

Respondent causes said medicinal preparation designated as aforesaid, when sold, to be transported from his place of business in the State of Texas to purchasers thereof located in various other States of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning his said preparation "Amogen Tablets," by the United States mails and by various other means in commerce, as commerce is defined by the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning his said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in the aforesaid advertisements, disseminated and caused to be disseminated by the United States mails, by advertisements inserted in newspapers and periodicals and by circulars, leaflets, pamphlets and other advertising literature, are the following:

AMOGEN TABLETS \* \* \* designed to always get the bile and do you Good.

Many ailments are caused or made worse by billousness, temporary constipation, Malaria, common Colds and fevers, poor Digestion, acid or gas on the stomach, eating and drinking too much, clogged Bowels, etc. Often these things cause Headaches, Neuralgia, Rheumatic or other pains and fevers, sallow Complexion, Pimples, Sores, Boils, skin irritations, a coated tongue, bad breath



or taste in the mouth and all such. Get the poison out of the system. Take one Amogen Tablet at bedtime and get a good cleansing.

A dime makes you a member of the Good Health Club. Don't get sick when so little may be the biggest investment you ever made. Amogen Company, 147 North St., San Antonio, Texas.

PAR. 4. Through the use of the aforesaid statements and others of similar import not specifically set out herein respondent represents, directly and by implication, that his said medicinal preparation is a cure or remedy of and constitutes a competent and effective treatment for biliousness, temporary constipation, malaria, common colds and fevers, poor digestion, acid or gas on the stomach, overindulgence in food and drink, clogged bowels, headaches, neuralgia, rheumatic pains and fevers, sallow complexion, pimples, sores, boils, skin irritations, coated tongue, bad breath, and bad taste in the mouth; that it will eliminate excess bile; will rid the system of poisons and will enable one to maintain good health and avoid sickness.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's said preparation is not a cure or remedy of nor does it constitute a competent and effective treatment for biliousness, malaria, common colds and fevers, poor digestion, acid or gas on the stomach, overindulgence in food and drink, clogged bowels, neuralgia, rheumatic pains and fevers, sallow complexion, pimples, sores, boils, or skin irritations. Said preparation is essentially a laxative and has no therapeutic value in the treatment of the above-enumerated ailments and conditions. It has no therapeutic value in the treatment of headaches, coated tongue, bad breath, and bad taste in the mouth in excess of such temporary relief as may be afforded by a laxative when such conditions are due to or caused by constipation, and has no therapeutic value in ridding the system of excess bile in excess of affording temporary relief by reason of its laxative qualities. Its use will not rid the system of poisons nor enable one to maintain good health and avoid sickness.

PAR. 6. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

In truth and in fact respondent's preparation contains calomel, a mercury derivative, and the continued use of said preparation over a long period of time will likely result in mercury poisoning and serious

injury to the health of the user. Moreover, said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, colic, cramps, nausea, vomiting or other symptoms of appendicitis. Its frequent or continued use may result in dependence on laxatives.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations, has had and now has the tendency and capacity 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 to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's said preparation.

PAR. 8. 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 September 16, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, J. R. Hodges, trading under the style and firm name of Amogen Co., charging him with the use of unfair and deceptive acts or practices in commerce in violation of the provisions of said act. The respondent failed to file an answer.

Thereafter at a hearing held in the matter on April 16, 1943, a stipulation as to the facts agreed to by counsel for the Commission and respondent, subject to the approval of the Commission, was read into the record in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, which stipulation provided that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondent expressly waived the filing of a trial examiner's report upon the evidence.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, and stipulation, said stipulation having been approved and accepted and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and

makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. R. Hodges, is an individual, trading under the style and firm name of Amogen Co., with his principal place of business located at 147 North Street, San Antonio, Tex.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in advertising, selling, and distributing a medicinal preparation designated "Amogen Tablets" in commerce among and between the various States of the United States.

Respondent causes said medicinal preparation, so designated, when sold, to be shipped and transported from his place of business in the State of Texas to purchasers thereof located in various other States of the United States.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his said preparation "Amogen Tablets" by the United States mails, by circulars, pamphlets in commerce, and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his said preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as commerce is defined by the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, and by means of circulars, pamphlets and other written or printed advertising matter disseminated in commerce, are the following:

AMOGEN TABLETS \* \* \* designed to always get the bile and do you Good.

Many ailments are caused or made worse by biliousness, temporary, constipation, Malaria, common Colds and fevers, poor Digestion, acid or gas on the stomach, eating and drinking too much, clogged Bowels, etc. Often these things cause Headaches, Neuralgia, Rheumatic or other pains and fevers, sallow Complexion, Pimples, Sores, Boils, skin irritations, a coated tongue, bad breath or taste in the mouth and all such. Get the poison out of the system. Take one Amogen Tablet at bedtime and get a good cleansing.

A dime makes you a member of the Good Health Club. Don't get sick when so little may be the biggest investment you ever made. Amogen Company, 147 North Street, San Antonio, Texas.

PAR. 4. By the use of the representations hereinabove set forth, and others similar thereto not specifically set out herein, respondent represents directly and by implication, that his said medicinal preparation, Amogen Tablets, is a cure or remedy of and constitutes a competent and effective treatment for biliousness, temporary constipation, malaria, common colds and fevers, poor digestion, acid or gas on the stomach, overindulgence in food and drink, clogged bowels, headaches, neuralgia, rheumatic pains and fever, sallow complexion, pimples, sores, boils, skin irritations, coated tongue, bad breath and bad taste in the mouth; that it will eliminate excess bile, will rid the system of poisons and will enable one to maintain good health and avoid sickness.

PAR. 5. The aforesaid statements and representations are grossly exaggerated, false and misleading.

In truth and in fact, respondent's said preparation, Amogen Tablets, is not a cure or remedy of nor does it constitute a competent and effective treatment for biliousness, malaria, common colds and fevers, poor digestion, acid or gas on the stomach, overindulgence in food and drink, clogged bowels, neuralgia, rheumatic pains and fever, sallow complexion, pimples, sores, boils, or skin irritations. Said preparation is essentially a laxative and has no therapeutic value in the treatment of the above enumerated ailments and conditions. It has no therapeutic value in the treatment of headaches, coated tongue, bad breath and bad taste in the mouth in excess of such temporary relief as may be afforded by a laxative when such conditions are due to or caused by constipation, and has no therapeutic value in ridding the system of excess bile in excess of affording temporary relief by reason of its laxative qualities. Its use will not rid the system of poisons nor enable one to maintain good health and avoid sickness.

PAR. 6. The respondent's advertisements disseminated as aforesaid constitute false advertisements for the further reason that they fail to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

In truth and in fact, respondent's preparation contains calomel, a mercury derivative, and the continued use of such preparation over a long period of time will likely result in mercury poisoning and serious injury to the health of the user. Moreover, said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, colic, cramps, nausea, vomiting, or other symptoms of appendicitis. Its frequent and continued use may result in dependence on laxatives.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading representations with respect to the preparation Amogen Tablets, disseminated as aforesaid, has had the capacity and tendency to, and did, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said statements and representations were true, and that said preparation may be used without harm or ill effects, and to induce a substantial number of the purchasing public because of such erroneous and mistaken belief to purchase respondent's said preparation.

#### 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 stipulation as to the facts entered into by and between counsel for the Commission and the respondent upon the record, 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, J. R. Hodges, trading under the name Amogen Co., or under any other name or names, his agents, representatives, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of his medicinal preparation designated "Amogen Tablets" or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement

A. Which represents, directly or through inference, that said preparation

(a) Is a cure or remedy for or has any therapeutic value in the treatment of malaria, common colds and fevers, poor digestion, acid

or gas on the stomach, overindulgence in food and drink, clogged bowels, neuralgia, rheumatic pains and fever, sallow complexion, pimples, sores, boils, or skin irritations;

(b) Has any therapeutic value in the treatment of biliousness or excess bile in the system, headaches, coated tongue, bad breath, or bad taste in the mouth, in excess of such temporary relief as may be afforded by a laxative when such conditions are due to or are caused by constipation;

(c) Will rid the system of poisons or enable the user to avoid sickness or maintain good health.

B. Which fails to reveal that the continued use of said preparation over a long period of time may result in mercury poisoning, and that said preparation should not be used in cases of abdominal pains, nausea, vomiting, or other symptoms of appendicitis; *Provided, however,* That such advertisement need contain only the statement, "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label and in the labeling, contain warnings to the above effect.

2. Disseminating or causing to be disseminated, by any means, any advertisement for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement fails to reveal the dangerous consequences which may result from the use of the said preparation as required in said paragraph 1.

*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  
GREENING NURSERY COMPANY

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

*Docket 3673. Complaint, Dec. 23, 1938—Decision, Aug. 3, 1943*

Where a corporation, engaged in competitive interstate sale and distribution of fruit trees and other nursery products, to induce purchase thereof, and salesmen and agents to sell its products to the purchasing public—

- (a) Represented, directly and by implication, that it was the only nursery which used the bud selection method of grafting in the propagation of fruit trees, and that fruit trees thus propagated could only be procured from it and its salesmen, through such statements in circulars, newspaper advertisements and other publications as "BUD SELECTION, that remarkable, exclusive Greening feature!"; "For 26 years, Greening \* \* \* have been propagating fruit trees by bud selection, exclusive, amazing, scientific discovery unduplicated in the field"; "Only Greening men can sell BUD SELECTED fruit trees"; and, "Non-competitive field all to yourself;

The facts being that bud selection is a general term used in the fruit industry and the method, known from earliest times, in various forms is followed by most nurserymen; its methods varied from those followed by practically all commercial nurserymen only in the keeping of records of selected trees or limbs; and while it had carried out extensive experimental work in selecting buds for propagation of deciduous fruit trees, and had developed scientific selection to the point where varieties of fruit could be improved thereby, and its method of bud selection might be more scientific than that employed by some of its competitors, said method was not, as aforesaid, exclusive with it;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of said products, and inducing a substantial number of salesmen and agents to deal in said nursery products, whereby trade was diverted unfairly to it from aforesaid competitors who truthfully advertised their products:

*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 in commerce and unfair and deceptive acts and practices therein.

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

*Mr. Jesse D. Kash* for the Commission.

*Smith, Ristig & 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

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Trade Commission, having reason to believe that Greening Nursery 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, Greening Nursery Co., 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 in the City of Monroe, State of Michigan.

PAR. 2. The respondent is now, and has been for more than 1 year last past, engaged in selling and distributing fruit trees and other nursery products. Respondent sells said products to members of the purchasing public situated in various states of the United States and causes said products, 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 other than the State of Michigan and in the District of Columbia. Respondent maintains, and at all times 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 in the District of Columbia with other corporations, and with partnerships, firms and individuals selling and distributing fruit trees and other nursery products. Among such competitors in such commerce are many who do not in any manner misrepresent their said products and who do not make any false statements in connection with the sale and distribution of their said products.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its nursery products said respondent has made and makes by means of circulars, pamphlets, folders and by means of advertisements inserted in newspapers and other publications, all of which are circulated between and among the various states of the United States and in the District of Columbia, many representations concerning the nature and quality of its said nursery products and results that may be expected from the use thereof. Among and typical of such representations made by respondent are the following:

Largest Growers of Trees in the World.

World's Largest Tree Growers.

World's Leading Company.

Right now I'm writing monthly



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## Complaint

Pay checks from  
\$110 Spare Time  
to  
\$882 Full Time.

Non-Competitive field all to yourself.

BUD SELECTION, that remarkable, *exclusive Greening feature!*

For 26 years, Greening

\* \* \* \* \*

have been propagating fruit trees by BUD SELECTION, *exclusive, amazing, scientific discovery* UNDUPLICATED IN THE FIELD.

Bud selection gives fruit trees what blood lines are to livestock "pedigreed" KNOWN PERFORMANCE characteristics, which *eliminate chance or gamble* for fruit tree buyers.

Only Greening men can sell BUD SELECTED fruit trees.

We paid Pifer, month after month \$248, \$413, \$445, \$375, \$282, and he's still going strong!

Lorimer earned \$502 one month, then \$882—yes almost one thousand dollars in a month.

Amazing new nursery development.

Greening famous super-selected Fruit Trees, propagated by our *exclusive* Bud-Selection method.

My offer is different than any nursery company's offer which you may have considered before \* \* \* will be associated with the *largest and oldest* tree nursery in the world. \* \* \* will have as his line, nursery stock of a *decidedly different* character.

Weekly earnings up to \$75.

Greening producers average from \$25 to \$75 a week in Commissions the year 'round.

PAR. 5. Through the use of the statements and representations hereinbefore set out and others similar thereto not herein set out, all of which purport to be descriptive of the nature and quality of respondent's products and the effectiveness of its products, as above described, respondent has represented directly and by implication, among other things, that respondent is the largest grower of fruit trees in the world; that it is the world's leading company; that its salesmen earn from \$110 part time to \$882 full time per month; that the sale of its products is a noncompetitive field which its agents and salesmen will have all to themselves; that bud selection is an exclusive feature of the respondent company only; that respondent has been propagating fruit trees by bud selection exclusively for 26 years and that its bud selection discovery is unduplicated in the nursery field; that its bud selection method gives fruit known performance characteristics which eliminate any chance or gambling on the part of fruit tree growers; that only its salesmen can sell bud selected fruit trees; that the large incomes received by the salesmen mentioned are

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examples and truly indicative of the salary its salesmen would ordinarily make; that its products are an amazing new development; that its fruit trees are superselected; that the Greening Nursery is the oldest in the world; that its line of nursery stock is of a decidedly different character from others; that its salesmen average \$25 to \$75 a week as commissions the year around.

PAR. 6. The aforesaid representations made by the respondent in the manner above described are grossly exaggerated, false, misleading, and untrue. In truth and in fact the respondent is not the largest grower of fruit trees in the world; respondent is not the world's leading company; respondent's salesmen do not earn from \$110 part time to \$882 full time per month; the sale of respondent's products is not a field which offers no competition and which its salesmen have all to themselves; and bud selection is not a remarkable exclusive feature of the Greening Nursery Company alone. Respondent's bud selection is not an amazing, scientific discovery which is not duplicated in the nursery field, nor are there known performance characteristics which eliminate any chance or gambling on the part of fruit tree growers; Greening salesmen are not the only salesmen who can sell bud selected fruit trees. The large incomes allegedly received by the Greening salesmen are not truly indicative of the earnings a salesmen would make under usual and ordinary circumstances. Respondent's products are not an amazing new nursery development, nor are its fruit trees superselected or propagated by an exclusive bud selection method. Respondent's nursery is not the oldest or largest nursery in the world, neither is its line of nursery stock of a decidedly different character from that of other nurseries. Respondent's salesmen do not average from \$25 to \$75 in commissions a week the year around.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to said 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 statements and representations are true and that respondent's said products possess the properties claimed and represented and will accomplish the results indicated, and that agents selling its nursery stock will earn the sums 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 products.

As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise their products and the earning of their agents. In consequence thereof,

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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 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.

## REPORT, MODIFIED 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 subsequently served its complaint in this proceeding upon the respondent, Greening Nursery Co., 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 thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiners upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission, having duly considered the matter, on March 10, 1943, issued and subsequently served upon said respondent its findings as to the facts and conclusion based thereon and its order requiring the respondent to cease and desist from the practices charged in the complaint. Subsequent thereto, this cause again came on for hearing before the Commission upon the request of the attorney for the respondent to modify the findings as to the facts issued on March 10, 1943; and the Commission, having duly considered said request 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.

## MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Greening Nursery Co., is a corporation, organized, existing, and doing business under and by virtue of the

laws of the State of Michigan and has its office and principal place of business in the city of Monroe, State of Michigan.

PAR. 2. The respondent is now, and for several years last past has been, engaged in selling and distributing fruit trees and other nursery products. Respondent sells said products to members of the purchasing public situated in various States of the United States, and causes said products, when sold by it, to be transported from its aforesaid place of business in the State of Michigan to the purchasers thereof located in various other States of the United States. 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.

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 fruit trees and other nursery products.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its nursery products and for the purpose of inducing salesmen and agents to sell said nursery products to the purchasing public, the respondent has made false, deceptive, and misleading statements and representations concerning its said nursery products by means of circulars and pamphlets and by means of advertisements inserted in newspapers and other publications, all of which are circulated between and among the various States of the United States. Among and typical of such representations made by the respondent are the following:

**BUD SELECTION**, that remarkable, exclusive Greening feature!

For 26 years, Greening \* \* \* have been propagating fruit trees by bud selection, exclusive, amazing, scientific discovery unduplicated in the field.

Only Greening men can sell **BUD SELECTED** fruit trees.

Non-competitive field all to yourself.

PAR. 5. Through the use of the statements and representations hereinabove set forth and other similar thereto not set out herein, respondent has represented directly and by implication that the respondent is the only nursery which uses the bud selection method of grafting in the propagation of fruit trees and that fruit trees propagated by the bud selection method of grafting can only be procured from the respondent and its salesmen.

PAR. 6. The aforesaid representations, made by the respondent in the manner above described, are grossly exaggerated, false, and misleading. Bud selection is a broad, general term used in the fruit industry and, in various forms, is followed by most nurserymen. Bud

selection is not an exclusive feature of the respondent company only, and the sale of trees propagated by the bud selection method of grafting is not limited to respondent or its salesmen, but, instead, trees propagated by the bud selection method of grafting are sold by many of respondent's competitors.

The selection of buds from trees of known character or type and grafting them onto seedlings in the variety propagation of citrus and deciduous fruit trees has been known and practiced from earliest times, and literature as far back as the 16th century describes the process of budding and grafting just exactly as nurseries in the United States are doing today. In the ordinary propagation of fruit trees it has long been known that when they are grown from seeds they do not come true to name. Seedlings are different from the plant from which they are taken in many respects, and in order to get them to come true to name, a bud is taken from a tree which it is desired to propagate. This bud so selected is grafted onto the seedling by inserting it under the bark of the seedling, where it grows fast when properly inserted. When it starts to grow, the part of the stalk above the grafted bud is cut away, and the above-ground part of the tree is grown from the cutting or bud. The tree so grown from such grafted bud will have the characteristics of the tree or limb from which such bud is taken. The characteristics having been thus established in the grafted tree, the tree is either sold or itself used for bud wood in grafting other seedlings.

One of the sources of variety in fruit trees which has been long recognized is the existence of the mutation or sport, which is a limb on a tree that bears fruit that is different in some respects from the fruit on the rest of the tree. The buds from such a limb can be grafted to a seedling in the manner above described, and the tree so grafted will bear fruit having the characteristics of the mutation or sport limb.

The methods of bud grafting hereinabove described are followed by practically all commercial nurserymen, including the respondent. The mechanics of the actual selection of vegetative buds for grafting may vary with the ideas of the individual doing the selecting. Some may go to an orchard and find an exceptionally productive tree that is bearing very fine fruit of the variety desired and select or obtain their foundation buds from that particular tree. Others may select the buds from a particular limb of a tree that is producing exceptionally large or exceptionally highly colored or attractive fruits. The methods followed by the respondent in its bud selection vary from the above in that records are kept of selected trees or limbs and they are observed from year to year prior to and after the buds are selected for

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the grafting process. The respondent has carried out extensive experimental work in selecting buds for propagation of deciduous fruit trees and has developed the scientific selection to the point where varieties of fruit can be improved by the elimination of undesirable characteristics and the improvement of desirable characteristics. While the method of bud selection followed by the respondent may be more scientific than the method which may be employed by some of its competitors, bud selection is not exclusive with the respondent but, instead, is practiced in some form or other by practically all nurserymen.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the exclusive nature of its bud selecting process has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of prospective purchasers, salesmen, and agents into the erroneous and mistaken belief that such statements and representations are true and causes a substantial portion of the purchasing public to purchase, and a substantial number of salesmen and agents to deal in, respondent's nursery products 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 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 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 request of the attorney for the respondent to modify the findings as to the facts issued on March 10, 1943; and the Commission having duly considered said request and the record herein and having issued its order modifying the findings as to the facts issued on March 10, 1943, and having issued its modified findings as to the facts and conclusion pursuant to said order,

*It is ordered*, That the respondent, Greening Nursery Co., a corporation, and 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 fruit trees and other nursery products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Representing directly or by implication that the respondent is the only nursery which uses the bud-selection method of grafting in the propagation of fruit trees.

2. Representing directly or by implication that fruit trees propagated by the bud-selection method of grafting can only be procured from the respondent or its salesmen.

3. Representing either directly or by implication that the bud-selection method of grafting is an exclusive feature of respondent's nursery stock.

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

IN THE MATTER OF  
THE ELECTROVITA SALES COMPANY OF OHIO

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

*Docket 4858. Complaint, Oct. 22, 1942—Decision, Aug. 3, 1943*

Where an individual, engaged in interstate sale and distribution of an artificial mineral water made by subjection of ordinary tap water from the city water system to a secret electrolytic process, assertedly altering its chemical and mineral composition, and by the addition also thereto of calcium hydroxide; in advertising in circulars and other advertising material, including testimonial letters, and through instructions to salesmen and dealers, the general theme of which was that practically all diseases and disorders are caused by or associated with an acid condition of the stomach and blood—

(a) Represented that its product was a competent and effective treatment for diseases and conditions due to a calcium deficiency, and would serve as a mineralizing agent where the system had not assimilated the required minerals from ordinary foods; would supply deficiencies where mineral starvation was the basic symptom of any disease or disorder; would supply mineral salts needed to keep the body chemistry in balance; and was an alkalinizing agent which would neutralize the acids of the stomach and blood stream and rid the body of an acid condition, thereby beneficially affecting or overcoming practically all diseases and disorders;

The facts being that while its product might possibly reduce acidity in the stomach slightly, it would have no effect in bringing about a systemic alkalization; diseases and disorders which result solely from a calcium deficiency are rare, and the amount of calcium supplied by its product in the dosage prescribed was insufficient to have any beneficial effect upon any such deficiency; and it had no therapeutic value in supplying minerals which the body had failed to assimilate, would not supply any mineral deficiencies or beneficially affect any disorder or condition resulting therefrom, or supply mineral salts needed to keep the body chemistry in balance;

(b) Falsely represented that its product activated the kidneys and dissolved the waste material therein, thus allowing the free flow of toxic matter from the system, and that it would purify the blood, remove nerve irritation, rebuild body tissue and cell life, and absorb poisons in the system; and that it acted as an oxidizing agent, burning up waste materials which caused irritation of the vital organs; and

(c) Falsely represented that its said product was a competent and effective treatment for numerous diseases, including asthma, kidney and bladder trouble, female disorders, arthritis, diabetes, rheumatism, high blood pressure, epilepsy, heart trouble, paralysis, and gangrenous and streptococcal infections; With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing its purchase of the product in question;

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Randolph Preston*, trial examiner.



## Complaint

*Mr. B. G. Wilson* for the Commission.  
*Carpenter & Freeman* and *Mr. Guilbert W. Martin*, of Norwalk, Ohio, 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 Electrovida Sales Co. of Ohio, 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, The Electrovida Sales Co. of Ohio, is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business at East Main Street and Foster Avenue, Norwalk, Ohio.

The respondent is now, and for several years last past has been, engaged in the business of offering for sale, sale and distribution of mineral water designated "Elsaco Mineralized Water" in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes its said product, when sold, to be shipped from its said place of business in the State of Ohio to dealers located in various other States of the United States and in the District of Columbia. Said dealers in turn sell said product to the general public.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business and for the purpose of inducing the purchase of its said product, the respondent has disseminated, and is now disseminating and has caused and is now causing the dissemination of, false advertisements concerning its said product by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated, and is now causing the dissemination of, false advertisements concerning its said product by various other means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, deceptive and misleading statements and representations contained in said false advertisements dissemin-

ated and caused to be disseminated as hereinabove set forth, by United States mails, and by means of circulars and other advertising material, including testimonial letters, are the following:

It activates the kidneys, dilutes poison which continually forms in the blood \* \* \* and assists notably in the removal or neutralization of acids and other toxic products.

There is a secret process involved in the production of Elsaco \* \* \* it has to do with the electrolytic treatment of water. Special tanks and ingenious apparatus produce the electrolytic effects upon the elements of the water, thus producing Elsaco—clear as crystal and full of health-giving qualities, yet there is no active electricity left in it \* \* \* strange and important changes are made in the nature or character of water by electrolysis \* \* \* it is because of Elsaco's alkaline nature, that the water is enabled to neutralize any excess acids which may be present.

In the early days of Elsaco, we believed its effect to be that of restoring the acid-alkaline balance. Gradually, however, we were compelled to admit that there might be other factors to be considered in order to explain the reported genuine systemic effects from Elsaco compared with other alkalizing mediums. \* \* \* it has what can be called an eliminant; that is, it assists in driving out the poisonous substances that accumulate in the blood and tissue. By this action, Elsaco has a direct influence on oxidation—the "burning up" of waste materials that is so essential to health.

When there is indicated a calcium deficiency in the system, we recommend Elsaco to help supply this deficiency.

I consider Elsaco to be one of the greatest foods for the rebuilding of body tissue, cell life and blood that has yet been discovered.

I feel like telling you that your famous Elsaco Water mineralized by electrolysis \* \* \*. I believe the basic principles are very, very scientific and the water has great therapeutic value, being a blood purifier, a cell builder, as well as being a powerful absorber of toxins.

PAR. 3. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, respondent represents and has represented, directly and by implication, that poison continually forms in the blood and that the use of its mineral water activates the kidneys, thereby diluting the poison, and materially assists in the removal thereof and the neutralization of acids and toxic products in the body; that the electrolytic treatment of its mineral water is a secret process and because of said treatment unusual therapeutic properties are implanted therein; that it has the capacity to neutralize all excess acids present in the body; that said water restores the acid-alkaline balance in the body and acts as an oxidizing agent in that its use results in the burning up of waste materials in the body through the process of oxidation; that the use of said mineral water will materially assist in supplying a calcium deficiency in the system; that said water is mineralized by electrolysis; that it is a food and its use will result in

rebuilding body tissue, cell life and blood, and will purify the blood and absorb poisons that may be in the system.

PAR. 4. Respondent also furnishes sales manuals to its various dealers for their use in familiarizing themselves with respect to its said product and the alleged therapeutic values thereof and as a basis for sales talks to their prospective customers. Respondent causes said manuals to be transported from its place of business to its various dealers located in States other than that in which such shipments originated. By means of direct statements in said manual and by statements contained in copies of alleged testimonial letters printed therein, respondent represents that its said product is a cure and remedy of and constitutes a competent and effective treatment for the following conditions, diseases and ailments: asthma, kidney and bladder trouble, Bright's disease, boils, jaundice, female disorders, liver and gall bladder trouble, varicose veins, colitis, arthritis, diabetes, prostatitis, hot flashes, headaches, chills, rheumatism, constipation, high blood pressure, influenza, run-down condition, piles, epilepsy, neuritis, stomach ulcers, anemia, dermatitis, heart trouble, iritis, sinusitis, multiglandular conditions, amenorrhea, digestive disturbances, nervousness, gas on stomach, intestinal troubles, kidney stones, impetigo, rheumatic fever, meningitis, facial neuralgia, eczema, toxemia, goiter, cataracts, indurative myocarditis, muscular dystrophy, paralysis, nervous exhaustion, under weight, fevers, ovarian trouble, cirrhosis of the liver, tuberculosis of the skin, pleurisy, leakage of the heart, low blood pressure, appendicitis, gastric acidity, tic douloureux, gangrenous infection, streptococcic infection, dropsy, tumors, and palsy.

PAR. 5. The foregoing statements and representations disseminated by respondent in the manner aforesaid are false, misleading and deceptive. In truth and in fact, poisons do not continually form in the blood and the use of respondent's product will not have such an effect upon the kidneys or other organs of the body as to be of material assistance in diluting, neutralizing or removing any poisons or acids that may be in the body. The electrolytic process used by respondent is not secret and the treatment of respondent's product by such process does not give it any special or unusual therapeutic properties. Respondent's product cannot be depended upon to restore the acid-alkaline balance in the body and it will not neutralize all excess acids present in the body. While it has a mild neutralizing effect on the acid in the stomach, it is of no material value as a neutralizing agent in cases where there is such a degree of hyperacidity as will bring about illness or ill effects and it will have no effect in bringing about systemic alkalinization of the stomach. Said product has no value as

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an oxidizing agent and its use will not result in the burning up of waste materials in the body through the process of oxidation. In cases of calcium deficiency in the system the amount of calcium supplied by respondent's product, when used as directed, will not be of appreciable value in overcoming such deficiency since it will supply only about one-half of the minimum daily nutritional requirement of calcium. The electrolytic process used by respondent does not mineralize the water but such minerals as are found therein are contained in the natural tap water used, or are supplied artificially by respondent in the process of the preparation of its product. Respondent's product is not a food, as such term is ordinarily used and understood, and its use will not result in any significant or appreciable degree in rebuilding body tissue, cell life and blood, nor will it have any significant or appreciable value in purifying the blood or in absorbing poisons that may be in the system. Respondent's said product is not a cure or remedy of, nor does it have any therapeutic value in the treatment of the various diseases, disorders and conditions enumerated in paragraph 4 hereof.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements, representations and advertisements disseminated as aforesaid with respect to its said product, "Elsaco Mineralized Water," 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 said statements, representations and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

PAR. 7. 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 October 22, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, The Electrovita Sales Co. of Ohio, a corporation, charging it with the use of 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 thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission

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theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs in support of and in opposition to the complaint (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, The Electrovida Sales Co. of Ohio, is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business at East Main Street and Foster Avenue, Norwalk, Ohio.

Respondent is now, and for several years last past has been, engaged in the sale and distribution of an artificial mineral water, designated "Elsaco Mineralized Water," in commerce among and between the various States of the United States. Respondent causes said product, when sold, to be transported from its place of business in the State of Ohio to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States.

PAR. 2. The respondent purchases its artificial mineral water, designated "Elsaco," from The Electrovida Co., a corporation located in California. The water, however, is processed at respondent's place of business at Norwalk, Ohio. The method of processing or manufacture is to place ordinary tap water from the Norwalk water system into treatment tanks made of wood. This water is then subjected to a secret process involving an electrolytic treatment, which the respondent claims, in its various descriptive advertising, alters the chemical or mineral composition of the water. After the water has been so treated, it is drawn off into metal storage tanks, and from there bottled by the respondent. This product is sold in 1-gallon bottles, 4 bottles to a case. Respondent's usual method of doing business is to sell this water to so-called agents or dealers at the price of approximately \$4 a case, with a 10-percent discount in 10-case lots. These so-called agents or dealers in turn usually resell said water to

members of the general public at the price of \$8 a case or 2 cases for \$15.

PAR. 3. In the course and conduct of its said business, the respondent has disseminated and has caused the dissemination of false advertisements concerning its said product by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and has caused the dissemination of false advertisements concerning its said product by various means for the purpose of inducing and which are likely to induce directly or indirectly the purchase of its said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in the various false advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails and by means of circulars and other advertising material, including testimonial letters and advertising material in the form of instructions to salesmen and dealers, are the following:

1. That respondent's product is a competent and effective treatment for diseases and conditions due to a calcium deficiency.
2. That respondent's product, Elsaco, is an alkalizing agent which will neutralize the acids of the stomach and blood stream and rid the body of an acid condition.
3. That respondent's mineral water activates the kidneys and dissolves the waste material in that channel of elimination, thus allowing the free flow of toxic matter from the system.
4. That respondent's mineral water will serve as an active mineralizing agent where the system has refused or has not had the opportunity to assimilate the required minerals from ordinary foods; will supply deficiencies where mineral starvation is the basic symptom of any disease or disorder; and will supply essential mineral salts needed by the body in order to keep the body chemistry in balance.
5. That respondent's product, Elsaco, will purify the blood, remove nerve irritation, rebuild body tissue and cell life, and absorb poisons that may be in the system.
6. That respondent's product, Elsaco, acts as an oxidizing agent in that its use results in the burning up of waste materials, which cause irritation of the vital organs, such as the heart, liver, gall bladder, and kidneys.
7. That respondent's product, Elsaco, constitutes a competent and effective treatment for asthma, kidney and bladder trouble, Bright's disease, boils, jaundice, female disorders, liver and gall bladder trouble, varicose veins, colitis, arthritis, diabetes, prostatitis, hot flashes, headaches, chills, rheumatism, constipation, high blood pressure, influenza, run-down condition, piles, epilepsy, neuritis, stomach ulcers, anemia, dermatitis, heart trouble, iritis, sinusitis, multi-glandular conditions, amenorrhea, digestive disturbances, nervousness, gas on stomach, intestinal troubles, kidney stones, impetigo, rheumatic fever, men-

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ingitis, facial neuralgia, eczema, toxemia, goiter, cataracts, indurative myocarditis, muscular dystrophy, paralysis, nervous exhaustion, underweight, fevers, ovarian trouble, cirrhosis of the liver, tuberculosis of the skin, pleurisy, leakage of the heart, low blood pressure, appendicitis, gastric acidity, tic douloureux, gangrenous infection, streptococcal infection, dropsy, tumors, and palsy.

PAR. 4. Based upon analyses of respondent's product, analyses of ordinary tap water, and the testimony of expert witnesses, the Commission finds that the composition of respondent's product is essentially the same as the composition of ordinary tap water, with the exception that respondent's product contains an added amount of calcium hydroxide. The added amount of calcium contained in respondent's preparation cannot be obtained through any electrolytic process but has been physically added during the course of the processing of the water. Diseases and disorders resulting solely from a calcium deficiency are rare, and the amount of calcium supplied by respondent's product in the dosage provided is not sufficient to have any beneficial effect upon any calcium-deficient condition.

In the general theme of respondent's advertising, it is maintained that practically all diseases and disorders are caused by or associated with an acid condition of the stomach and the blood, and that its product acts as a neutralizing agent in the blood and body fluids, as well as in the stomach, thereby beneficially affecting or overcoming practically all diseases and disorders of the human system. The ingestion of respondent's product in the dosage prescribed has no effect upon the acid-alkaline balance in the blood and body fluids. It might possibly reduce acidity in the stomach but would be of very slight effect in neutralizing the acidity that might exist in the individual stomach. It has no effect whatsoever in bringing about a systemic alkalization. The ingestion of respondent's product in the dosage specified could not put enough alkali into the human stomach to change the acid-base balance of the blood and body fluids.

Respondent's product has no therapeutic value in the treatment of any disease or condition. It has no special properties which are beneficial in activating the kidneys or in dissolving the waste materials in the kidneys or affecting the flow of any toxic matter from the system. Its effect upon the kidneys is no more than that of the ingestion of equal amounts of ordinary drinking water.

This product has no therapeutic value in supplying minerals which the body has failed to assimilate and will not supply any mineral deficiencies or beneficially affect any disorder or condition resulting from a mineral deficiency or supply essential mineral salts needed by the body to keep the body chemistry in balance.

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Respondent's product will not purify the blood or remove nerve irritation. It has no value in rebuilding body tissue or cell life, and it will not absorb poisons that may be present in the system.

This product has no beneficial value as an oxidizing agent in burning up waste material in the body through oxidation, and it will not prevent or remove irritation of the vital organs, such as the heart, liver, gall bladder, or kidneys.

Respondent's product is not a competent or effective treatment for any of the various specific diseases and conditions enumerated in paragraph 3 hereof and has no therapeutic value whatsoever in the treatment of such diseases and disorders.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations contained in advertisements disseminated as aforesaid with respect to its said product, Elsaco Mineralized Water, 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, representations, and advertisements are true and that respondent's product has therapeutic value in the treatment of various ailments, diseases, and conditions of the human body, and as a result of such erroneous and mistaken beliefs, to induce a substantial portion of the purchasing public to purchase respondent's product.

#### 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, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs in support of and in opposition to 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, The Electrovida Sales Co. of Ohio, a corporation, its officers, agents, representatives, and employees,



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directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of its artificial mineral water, designated "Elsaco Mineralized Water," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly,

1. Disseminating or causing to be disseminated any advertisement, by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference,

(a) That the use of respondent's product has any beneficial effect other than a tendency to decrease acidity in the stomach.

(b) That respondent's product will neutralize any acid condition of the blood stream or rid the body of an acid condition.

(c) That respondent's product has any beneficial effect in activating the kidneys other than that obtained from the ingestion of an equal amount of ordinary drinking water.

(d) That respondent's product has any special properties which are effective in dissolving waste material in the kidneys or in removing toxic matter from the system.

(e) That respondent's product will supply mineral deficiencies or supply essential mineral salts needed by the body to keep the body chemistry in balance.

(f) That respondent's product will purify the blood, remove nerve irritation, rebuild body tissue or cell life, or absorb poisons that may be in the system.

(g) That respondent's product acts as an oxidizing agent or that it will be effective in the burning up of any waste materials which might cause irritation of the vital organs, such as the heart, liver, gall bladder, or kidneys.

(h) That respondent's product has any therapeutic value whatsoever in the treatment of asthma, kidney or bladder trouble, Bright's disease, boils, jaundice, female disorders, liver or gall bladder trouble, varicose veins, colitis, arthritis, diabetes, prostatitis, hot flashes, headaches, chills, rheumatism, constipation, high blood pressure, influenza, run-down condition, piles, epilepsy, neuritis, stomach ulcers, anemia, dermatitis, heart trouble, iritis, sinusitis, multiglandular conditions, amenorrhea, digestive disturbances, nervousness, gas on stomach, intestinal troubles, kidney stones, impetigo, rheumatic fever, meningitis, facial neuralgia, eczema, toxemia, goiter, cataracts, indurative myocarditis, muscular dystrophy, paralysis, nervous exhaustion, underweight, fevers, ovarian trouble, cirrhosis of the liver, tuberculosis of the skin, pleurisy, leakage of the heart, low blood pressure,

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appendicitis, gastric acidity, tic douloureux, gangrenous infection, streptococcic infection, dropsy, tumors, or palsy.

(i) That respondent's preparation has any significant therapeutic value in the treatment of any disease or disorder of the human system.

2. 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 respondent's product, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions 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.

## Order

## IN THE MATTER OF

## SALT PRODUCERS ASSOCIATION, ET AL.

## MODIFIED CEASE AND DESIST ORDER

*Docket 4320. Order, August 10, 1943*

Modified order, pursuant to provisions of section 5 (1) of the Federal Trade Commission Act, and in accordance with decree below referred to, in proceeding in question, in which original order issued on November 10, 1941, 34 F. T. C. 38, and in which Circuit Court of Appeals for the Seventh Circuit on March 8, 1943, in *Salt Producers Association, et al. v. Federal Trade Commission*, 134 F. (2d) 354, 36 F. T. C. 1110, rendered its opinion and on April 20, 1943, issued its decree, modifying said order of the Commission in certain particulars and affirming the same in other particulars;

Requiring respondents, their officers, etc., in connection with offer, etc., in commerce, of salt, to cease and desist from—

Entering into, continuing, or carrying out, or directing, instigating, or cooperating in, any planned common course of action, mutual agreement, combination, or conspiracy, to fix or maintain the prices of salt or curtail, restrict, or regulate the production or sale thereof; and pursuant to any such planned or agreed common course of action, establishing or maintaining uniform prices or terms and conditions for the sale of salt; adhering or promising to adhere to published prices or terms pending the filing of changes with the Association; continuing the delivered price zones heretofore used for making quotations; etc., as in said order in detail set out and specified; and

Doing or performing any of the things forbidden by order in question, or aiding, assisting or cooperating in the performance thereof, on the part of respondent Stevenson, Jordon & Harrison, Inc., and respondents Charles R. Stevenson and D. M. Metzger, as officers thereof, and their agents, etc., all as in detail set out and specified in order in question, and subject to the provisos thereof; and

Subject to further proviso that nothing in such order is to be construed as prohibiting the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are not prohibited by the provisions of an Act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (the Sherman Act), as amended.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on November 10, 1941, the Commission made its findings as to the facts herein and concluded therefrom that respondents had violated the provisions of the Federal Trade Commission Act, and issued and subsequently served upon them its order to cease and desist; and it further appearing that respondents on January 9, 1942, filed in the United States Circuit Court of Appeals for the Seventh Circuit petition to review and set aside the

Commission's order, and that on March 8, 1943, the said court rendered its opinion and on April 20, 1943, issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming the order in other particulars:

*Now, therefore,* Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with said decree:

*It is ordered,* That the respondents, Salt Producers Association, a corporation; Avery Salt Co., a corporation; Barton Salt Co., a corporation; The Carey Salt Co., a corporation; Cayuga Rock Salt Co., a corporation; Colonial Salt Co., a corporation; Detroit Rock Salt Co., a corporation; Diamond Crystal Salt Co., Inc., a corporation; International Salt Co., a corporation; Jefferson Island Salt Co., Inc., a corporation; Hardy Salt Co., a corporation; Morton Salt Co., a corporation; Myles Salt Co., Ltd., a corporation; Mulkey Salt Co., a corporation; Ohio Salt Co., a corporation; Ruggles & Rademaker Salt Co., a corporation; Saginaw Salt Products Co., a corporation; Union Salt Co., a corporation; Watkins Salt Co., a corporation; Worcester Salt Co., a corporation; American Salt Corporation, a corporation, their officers, servants, agents, and employees, and Stevenson, Jordan & Harrison, Inc., Charles R. Stevenson and D. M. Metzger, respectively, president and treasurer of said Stevenson, Jordan & Harrison, Inc., and their agents, servants, and employees, or any two or more of said respondents, with or without the cooperation of others not parties hereto, in connection with the offering for sale, sale, and distribution of salt in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, or carrying out, or directing, instigating, or cooperating in, any planned common course of action, mutual agreement, combination, or conspiracy, to fix or maintain the prices of salt or curtail, restrict, or regulate the production or sale thereof, and from doing any of the following acts or things pursuant to any such planned or agreed common course of action:

1. Establishing or maintaining uniform prices for salt, or uniform terms and conditions in the sale thereof, or in any manner agreeing upon, fixing, or maintaining any prices, including terms and conditions of sale, at which salt is to be sold.

2. Adhering, or promising to adhere, to filed or published prices or terms and conditions of sale for salt pending the filing of changes therein with the Salt Producers Association, or with any other agency, or with each other.

3. Continuing the delivered price zones heretofore used for making quotations and sales of salt, or establishing or maintaining any de-

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livered price zones which are similar to those heretofore used in that their use would result as heretofore in making the delivered prices of the respective corporations identical despite their different costs of delivery.

4. Exchanging, directly or through the Salt Producers Association, or any other agency or clearing house, price lists, invoices, and other records of sale showing the quantity, current prices, and terms and conditions of sale allowed by said corporations to dealers and distributors: *Provided, however,* That nothing herein shall prevent said association from collecting and disseminating to the respective manufacturers figures showing the total volume of sales of salt without disclosing the sales volume of individual producers, for the purpose or with the effect of restraining competition in the offering for sale, or sale, of salt.

5. Exchanging, directly or through the medium of the Salt Producers Association, or any other agency, the names of distributors or dealers who receive special discounts; for the purpose or with the effect of restraining competition in the offering for sale, or sale, of salt.

6. Curtailing, restricting, or regulating the quantity of salt to be produced and sold by said corporations by any method or means during any given period of time for the purpose or with the effect of restraining competition in the offering for sale, or sale, of salt.

7. Doing, or causing to be done, any of the things forbidden by this order through the medium of said Stevenson, Jordan & Harrison, Inc., Charles R. Stevenson or D. M. Metzger, or any other corporation, firm, or individual.

*It is further ordered,* That Stevenson, Jordan & Harrison, Inc., and Charles R. Stevenson and D. M. Metzger as officers thereof, and their agents, servants, and employees, do forthwith cease and desist from doing or performing any of the things forbidden by this order, or aiding, assisting, or cooperating in the performance thereof.

*It is further ordered,* That nothing in this order is to be construed as prohibiting the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are not prohibited by the provisions of an act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (the Sherman Act), as amended.

*It is further ordered,* That for the reasons appearing in the findings as to the facts the complaint herein be, and hereby is, dismissed as to the following respondents: T. M. Harrison, C. H. Ferris, N. M. Peris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson; R. R. Bliss, L. B. Platt, and Howard Marvin.

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IN THE MATTER OF  
UNITED STATES MALTSTERS ASSOCIATION, ET AL.  
MODIFIED CEASE AND DESIST ORDER

*Docket 3555. Aug. 13, 1943*

Order modifying cease and desist order in proceeding in question in which original findings and order issued on December 29, 1942, 35 F. T. C. 797, so as to require respondents, their officers, etc., in connection with offer, etc., in commerce, of malt, to cease and desist from—

Entering into, continuing, cooperating in, or carrying out, or directing, instigating, or cooperating in any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and other not parties hereto, to establish, fix or maintain prices, terms or condition of sale for malt, or adhere or promise to adhere thereto; hold or participate in any meeting, discussion, or exchange of information among themselves or under the auspices of respondent Association; establish, use, etc., basing points and delivered prices; exchange, distribute or relay among manufacturing respondents or through respondent Association price lists or other information showing future prices; etc., as in detail specified in order below set out.

Before *Mr. Robert S. Hall* and *Mr. Webster Ballinger*, trial examiners.

*Mr. Edward L. Smith* for the Commission.

*Mr. William W. Corlett*, of New York City, and *Poppenhausen, Johnston, Thompson & Raymond*, of Chicago, Ill., for respondents; together with *Hubbard, Baker & Rice*, of Chicago, Ill., for respondent *Albert Schwill & Co.*

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before *Robert S. Hall*, a trial examiner of the Commission theretofore duly designated by it, report of *Webster Ballinger*, a trial examiner appointed to prepare and file a trial examiner's report upon the evidence (vice *Robert S. Hall*, deceased), and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having duly made and entered its findings as to the facts, conclusion, and order to cease and desist, dated December 29, 1942; and the Commission having further considered said order to cease and desist heretofore issued and being of the opinion that a modified order to cease and desist should be issued in said

cause; and the Commission having given due notice to counsel for the respondents; and counsel for the respondents having waived objection to the issuance of said modified order; and transcript of the record in the proceeding not having been filed in any Circuit Court of Appeals of the United States; and the Commission, having duly considered the record and being now fully advised in the premises, issues this its modified order to cease and desist:

*It is ordered,* That the respondents, United States Maltsters Association, an unincorporated association; Chilton Malting Co., a corporation; The Columbia Malting Co., a corporation; Froedtert Grain & Malting Co., a corporation; Wm. E. Kreiner & Sons, Inc., a corporation; The Kurth Malting Co., a corporation; The Ladish-Stoppenbach Co., a corporation; George J. Meyer Malt & Grain Corporation, a corporation; Milwaukee Western Malt Co., a corporation; Northwestern Malt & Grain Co., a corporation; Perot Malting Co., a corporation; Rahr Malting Co., a corporation; H. W. Rickel & Co., a corporation; L. Rosenheimer Malt & Grain Co., a corporation; Schreier Malting Co., a corporation; Albert Schwill & Co., a corporation; Daniel D. Weschler & Sons, Inc., a corporation; West Bend Malting Co., a corporation; and Wisconsin Malting Co., a corporation, and their respective officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of malt in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, or directing, instigating, or cooperating in, any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and others not parties hereto to do or perform any of the following acts or practices:

1. Establishing, fixing, or maintaining prices, terms, or conditions of sale for malt, or adhering to or promising to adhere to the prices, terms, or conditions of sale so fixed.
2. Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of respondent United States Maltsters Association or any other medium or agency concerning proposed or future prices, terms, or conditions of sale.
3. Exchanging, distributing, or relaying among manufacturing respondents, or any of them, or through respondent United States Maltsters Association or through any other medium or central agency, price lists or other information showing future prices, terms, or conditions of sale; or which show current prices, terms, or conditions of sale for the purpose, or which have the tendency or effect, of fixing prices for malt.

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4. Authorizing or permitting examination of the books or other records of the respondent manufacturers by any agent of the United States Malsters Association or by any agent of the respondents, or any of them, to determine or check the prices at which any given respondent manufacturer has made sales, is currently making sales, or expects to make sales.

5. Formulating, establishing, putting into operation, continuing, or using in any way, any reporting plan using Chicago, Illinois, or any other common basing point, which results in the establishment and maintenance among the respondent members or any two or more of them of uniform delivered prices to any given destination.

6. Quoting prices, terms, and conditions of sale determined under a method or system of a common basing point for the purpose, or with the effect, of making the delivered price quotation of any two or more of the respondents the same to any given destination.

7. Formulating or putting into operation any other practice or plan which has the purpose, or the tendency or effect, of fixing prices for malt; or employing or utilizing any of the acts or practices specifically prohibited herein as a means or instrumentality of otherwise restricting, restraining, or eliminating competition in the sale and distribution of malt.

8. Employing or utilizing respondent United States Malsters Association or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts and practices prohibited by this order.

*It is further ordered*, That the complaint herein be, and it hereby is, dismissed as to Interior Malt & Grain Co., a corporation.

*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  
DENTISTS' SUPPLY COMPANY OF NEW YORK

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED, AND SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 4915. Complaint, Feb. 18, 1943—Decision, Aug. 17, 1943*

Where the largest manufacturer in the United States of artificial teeth, engaged in competitive interstate sale and distribution thereof, and selling more than 50 percent of the total production to over 200 authorized wholesalers or dental supply houses for resale to dental laboratories and to dentists who, however, customarily purchase such dental requirements from the former;

Selling its said product under a uniform discount schedule under which it granted its said dealers a 40 percent discount, plus 9 percent for payment within thirty days, from list, and an additional 7½ percent in event of sales to laboratories or dentists in \$300 quantities; and under a system of bonus contract agreements superimposed thereon, solicited from dental laboratories as a special inducement to make purchases of its dealers in amounts in excess of \$1,000 annually—

(a) Discriminated in price through such agreements under which said laboratories received 10 percent of free bonus teeth on annual purchases between \$1,000 and \$2,500; 15 percent on purchases ranging from \$2,500 to \$5,000; 20 percent on those from \$5,000 to \$10,000; and 25 percent on those exceeding said sum;

With the result that purchasers able to take advantage thereof, paid a lower price for teeth, and were enabled either to undersell competitors or furnish better facilities and service to dentist-customers, or both;

(b) Granted and allowed chain dental laboratory buyers, under its said system, the bonus applicable to the volume of teeth represented by pooling orders of their unit laboratories, as made up of purchases from many of its dealers;

With result that many such units received discounts, to which, on the basis of their separate purchases, they were not entitled, and which were larger than those received by competitors:

(c) Employed its said bonus system in connection with sales made from its New York City depot to dental laboratories in area concerned in competition with its dealers therein;

With result that purchaser-customers able to take advantage of such bonus system secured a lower unit price than competitors, and, thus favored, were enabled either to undersell latter or to furnish better facilities and service to customers, or both; and

(d) Paid to dealers upon amounts purchased of them by laboratories which had qualified for free products in accordance with terms of such bonus agreements, secondary discounts over and beyond those contained in its aforesaid regular discount schedule, of 8½ percent and, later, 12½ percent;

With result that amount paid by such favored dealers for their regular purchases was decreased accordingly and they paid lower unit prices for its teeth than others not thus favored, and said bonus system, under which the

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dealer did not directly profit in the free products supplied through him to laboratories, was implemented and made effective;

Effect of which discriminations in price—which did not make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which its products were sold or delivered to various purchasers, and were not made in good faith to meet an equally low price of a competitor—had been and might be substantially to lessen competition with it in the line of commerce concerned; and to injure, destroy or prevent such competition and competition with customers who received benefits thereof:

*Held*, That such pricing methods constituted discriminations in price in commerce in violation of subsection (a) of sec. 2 of the Clayton Act, as amended.

*Mr. W. C. Kern* for the Commission.

*Mr. Henry Ward Beer*, of New York City, and *Mr. James Fawcett*, of Brooklyn, N. Y., for respondent.

## COMPLAINT

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), as amended by an Act of Congress approved June 19, 1936, (U. S. C. title XV, sec. 13) (The Robinson-Patman Act), and pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (the Federal Trade Commission Act), the Federal Trade Commission having reason to believe that the respondent named in the caption hereof has violated and is now violating the provisions of subsection (a) of section 2 of the said Clayton Act as amended; and the Federal Trade Commission having reason to believe that said respondent has been and is using unfair methods of competition in commerce, as "commerce" is defined in said Federal Trade Commission Act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint against the said respondent, stating its charges as follows.

## COUNT I

PARAGRAPH 1. Respondent, Dentists' Supply Co. of New York, is a corporation organized and existing by virtue of the laws of the State of New York with an office and principal place of business located at 220 West Forty-second Street, New York City, and with factories located at York, Pa., and Philadelphia, Pa.

PAR. 2. Respondent corporation is now, and has been since prior to June 19, 1936, engaged in the business of manufacturing artificial

teeth which it sells to wholesale dealers known as dental supply houses, to dental laboratories and to dentists, located in States other than the State of Pennsylvania, causing said artificial teeth, when sold, to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania, and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said product across State lines between respondent's factories and the purchasers of such product. Said product is sold and distributed for use, consumption, and resale within the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and during the time herein mentioned has been, in substantial competition with other corporations engaged in the business of manufacturing and selling artificial teeth in commerce between and among the various States of the United States and the District of Columbia. Said corporate respondent is the largest manufacturer and distributor of artificial teeth in the United States, its sales constituting approximately 70 percent of the total United States production, and as such occupies a dominant position in the artificial-teeth industry. The annual net sales of respondent in the United States of artificial teeth total approximately \$3,000,000. Respondent's product is sold to over 200 authorized dealers known as dental supply houses, which are wholesalers and which resell to the ultimate purchasers, dental laboratories, and dentists located in the various States of the United States and in the District of Columbia. Dentists by trade custom seldom make their own false denture requirements but customarily order such work performed by dental laboratories which laboratories constitute the dominant factor in the use and consumption of artificial teeth. While respondent's dealers sell other dental supplies than teeth, approximately 20 percent of their sales are artificial teeth purchased from respondent.

Respondent is now, and has been since prior to June 19, 1936, selling its said dealers on the following uniform discount plan: Respondent grants its dealers a 40 percent discount, plus 9 percent for payment within 30 days, from the unit retail price of the artificial teeth as shown on respondent's price list; and in addition, where a dealer sells to a dental laboratory or dentist in \$300 quantities, respondent grants the dealer making such purchase an additional 7½ percent discount. Dealers' resale prices, as suggested by respondent, are now and have been during said period on the basis of 10 percent discount from list prices on \$100 purchases and 20 percent discount from list prices on purchases amounting to \$300 or more.

PAR. 4. In the course and conduct of its business as aforesaid since June 19, 1936, respondent has been, and is now, discriminating in price between different purchasers buying such products of like grade and quality sold by the respondent for use, consumption and resale, by giving and allowing some of its purchasers of such products lower prices 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 or allowed to other of respondent's purchaser customers. That the respondent has effectuated the discriminations in price referred to herein by superimposing upon the regular schedule of discounts allowed by respondent to its dealers and by its dealers to the ultimate purchasers a variety of additional rebates and discounts given in the form of free or bonus artificial teeth and more particularly hereinafter described in paragraphs 5, 6, 7, and 8 of this complaint.

PAR. 5. Respondent employs some twenty district sales representatives who visit dental laboratories and dentists for the purpose of promoting the sale of teeth by said prospective purchasers from respondent's dealers. Such sales representatives take orders for teeth, and solicit the execution of bonus contract agreements hereinafter described. Any orders for teeth obtained by respondent's sales representatives aforesaid are transmitted to respondent's New York office where they are either filled directly by respondent or referred to a dealer to fill out of such dealer's current stock or are filled by shipping the order to such dealer for subsequent delivery to the purchaser. Respondent's book entries, however, invariably show the sale as having been made to the dealer, and respondent looks to such dealer for payment of the order and credits the dealer's account accordingly.

As a special inducement to dental laboratories to purchase from respondent's dealer selling agencies in amounts in excess of \$1,000 per annum, since prior to June 19, 1936, respondent through its sales representatives aforesaid has been and is now soliciting and obtaining the execution of bonus contract agreements from numerous dental laboratories located in the various States of the United States and in the District of Columbia. If a laboratory agrees to purchase \$1,000, \$2,500, \$5,000, or \$10,000 worth of teeth annually from respondent's dealers or any of them, then respondent in turn agrees to give such purchaser 10 percent or \$100 worth of free bonus teeth computed at unit retail prices on a \$1,000 to \$2,499 annual volume purchase, 15 percent or \$375 worth of free bonus teeth similarly computed on a \$2,500 to \$4,999 annual volume purchase, 20 percent or \$1,000 worth of free bonus teeth similarly computed on a \$5,000 to \$9,999 annual volume purchase, and

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25 percent or \$2,500 worth of free bonus teeth similarly computed on a \$10,000 or greater annual volume purchase. That said bonus contracts contain among other provisions the following clauses, to-wit:

(1) The CONSUMER covenants and agrees to purchase from the Company's regular selling agencies named herein teeth of the Company's manufacture, namely "Trubyte," "Solila," "Twentieth Century," "Dentsply," "Famous" and "Trubridge" teeth (Steele's facings excepted) and/or "Trubase" and "Truwax" and/or White's teeth to the total purchase price and amount of \_\_\_\_\_ Dollars during the term of this agreement.

(5) Upon the faithful carrying out by the CONSUMER of the aforesaid covenants, the COMPANY hereby covenants and agrees to give direct to the CONSUMER a bonus on all such teeth and on "Trubase" or "Truwax" of its manufacture and on White's teeth purchased and paid for by the consumer during the term of this agreement by supplying free of charge to the CONSUMER porcelain teeth of the Company's manufacture (Steele's facings excepted), as specified by the CONSUMER of the value of \$ \_\_\_\_\_ Dollars. The value of the teeth so delivered as said bonus to be computed at the Unit Prices of such teeth published in the price list of the Company, current December 31, 194\_\_\_\_, or at the date of the termination of this agreement in case of its earlier termination.

(6) It is mutually covenanted and agreed that as evidence of the purchase of such teeth or wax by the CONSUMER, the CONSUMER shall present to the Company on or before January 20, 194\_\_\_\_, receipted bills or other evidence, satisfactory to the Company, showing the quantities purchased, from whom purchased and amounts paid for same by the CONSUMER during the term of this agreement; and the amount of such purchases upon which the bonus shall be computed shall be the amount actually paid by the CONSUMER for said teeth and wax; and within thirty days after the presentation of such evidence by the CONSUMER, the Company agrees to give to the CONSUMER the quantity of teeth so due as said bonus.

That the amount of dollar purchases of teeth which the dental laboratory entering into such a contract agrees to purchase is either \$1,000, \$2,500, \$5,000, or \$10,000 annually as heretofore alleged, one of which amounts being inserted in the space provided in clause (1) of such contract above set forth. That the dollar amount of bonus or free teeth agreed to be supplied by respondent to such dental laboratory purchaser in consideration for the agreed annual dollar volume purchase is a sum certain computed in the manner alleged, said dollar amount of bonus or free teeth being inserted in the space provided in clause (5) of such contract above set forth. If the amount which a dental laboratory agrees to purchase is not reached, but one of the lower brackets is obtained within the period covered by the contract, then such dental laboratory is paid in accordance with the bracket it does reach, whereas if a higher bracket is reached than agreed upon under the bonus contract, then such dental laboratory is paid at the rate provided for such higher bracket. The bonus provided by such bonus contract agreement is cumulative. For example, a dental laboratory purchasing \$9,500 in teeth is given 20 percent of \$9,500 or \$1,900 in free teeth.

If, however, it purchases an additional \$500 it will reach the \$10,000 bracket and be paid a bonus at the rate of 25 percent of its entire purchases or \$2,500. That approximately 1,400 of such bonus contracts have been executed by respondent and respondent's purchaser customers annually since June 19, 1936, and that minimum annual volume purchases provided for under such contracts were completed and bonus or free teeth given in the amount provided as to approximate 65 percent of the total number of bonus contracts executed. That respondent through its sales representatives not only personally solicits such dental laboratories for both regular teeth orders and for bonus contract agreements but also makes effective its special price policies and schedules as applied to them, which price policies and schedules are reduced to writing and formally executed by both respondent and by such dental laboratories in the form of such bonus contracts aforesaid. That such dental laboratories are purchasers from and customers of respondent within the intent and meaning of the provisions of subsection (a) of section 2 of the act described in the preamble hereof. That such bonus system results in a lower unit price being paid for teeth by respondent's purchaser customers who are able to take advantage of such bonus system by purchasing in the required volume and enables such purchaser customers in whose favor such discrimination is made either to undersell their competitors or furnish better facilities and services to their dentist customers, or both.

PAR. 6. That, for the purpose of granting and allowing the bonus or free teeth discounts under its bonus system described in paragraph 5 hereof, respondent has permitted the main office of some chain dental laboratory buyers to pool the orders of the unit laboratories thereof and has granted and allowed to such chain dental laboratory buyers the bonus applicable to the volume of teeth purchases during the bonus contract period represented by the pooled orders. For example, if the pooled order has totaled over \$10,000 in teeth ordered from respondent during the bonus contract period, each unit laboratory through its main office has received a 25 percent free teeth bonus on all its purchases even though the individual unit laboratory may not have ordered a sufficient quantity to qualify for any or for more than a 10 percent bonus under respondent's bonus system. That the respondent granting and allowing such pooling privilege in connection with the granting and allowing of bonus teeth under its bonus system aforesaid did not make shipment of the teeth purchased from all the unit laboratories during the bonus contract period to the main office or warehouse of such dental laboratory chains. That in fact the teeth purchased by such dental laboratory chains were and are now purchased in small amounts from time to time by each unit laboratory from many of respondent's dealers.

## Complaint

That the chain dental laboratories receiving such pooling privilege in the calculation of bonuses under respondent's bonus system aforesaid were and are now in competition with other dental laboratories competing with such dental laboratory chains in the sale of respondent's teeth but which by virtue of not being a unit laboratory of a chain do not receive any bonus or as large a bonus from respondent.

PAR. 7. Respondent since prior to June 19, 1936, has and now does operate a dental depot in New York City, where it keeps a complete stock of artificial teeth manufactured in its factories in the State of Pennsylvania and shipped to said dental depot located in New York City, State of New York. That in connection with the operation of such dental depot it sells directly to dental laboratories in competition with its dealers located in New York City. That in connection with such direct sales made to its purchaser customers it solicits and procures the execution of bonus contract agreements identical in form to said bonus contract agreements described in paragraph 5 of this complaint. That such bonus system employed in connection with sales made from respondent's New York City depot to purchaser customers located in the New York City area results in a lower unit price being paid for teeth by respondent's purchaser customers who are able to take advantage of such bonus system by purchasing in the required volume and enables such purchaser customers in whose favor such discrimination is made either to undersell their competitors or furnish better facilities and services to their dentist customers, or both.

PAR. 8. The prices at which respondent sells its teeth products to its dealers are uniform and are as set forth in paragraph 3 of this complaint with the following exceptions: In fulfilling its agreement to furnish a specified amount of bonus or free teeth to its bonus contract holders, respondent since June 19, 1936, has and now does issue to such purchaser customers holding and completing bonus contracts certificates entitling the holder thereof to bonus or free teeth in the dollar amount specified therein upon presentation of such certificates to respondent or to any of respondent's dealers. Prior to January 1, 1939, respondent allowed its dealers a secondary bonus or discount of 8 percent of the dollar value of bonus certificates and in proportion to the dollar amounts of respondent's teeth purchased by the bonus certificate holders from such dealers. To illustrate: Abel Dental Laboratory, of Houston, Tex., having a \$1,000 bonus contract, purchased during the period specified therein \$56.48 worth of teeth from A. P. Cary Co. and \$979.17 worth of teeth from Pendleton & Arto, two of respondent's dealers located in Houston, Tex.; respondent issued to said dental laboratory purchaser two bonus certificates, one in the

amount of \$97.91 and another in the amount of \$5.65. Both of such certificates were redeemed by said Pendleton & Arto and its account was credited for the amount of the teeth given in such redemption at dealers' list prices; however, Pendleton & Arto, which handled the redemption of both certificates, was allowed by respondent 8 percent of \$97.91 as \$979.17 of the merchandise had been purchased from such dealer, and A. P. Cary Co. was allowed by respondent 8 percent of \$5.65 as \$56.48 of the merchandise had been purchased from such dealer. Since the dealer redeeming the bonus certificates is credited with the full amount of teeth given in redemption of such certificates at dealers' prices, no profit is made by the dealer on the transaction as is the case in ordinary dealers' sales. It is only in the event that the dealer has originally sold some of the merchandise to the bonus certificate holder upon which the bonus certificate is issued that the dealer redeeming the certificate obtains any part of the above described secondary bonus or discount. From January 1, 1939, and thereafter respondent increased such secondary bonus or discount paid to its dealers upon bonus certificates in the manner aforesaid from 8 percent to 12½ percent. The dealer's account is credited by respondent in the amount of such secondary bonus or discount allowed, thereby reducing the cost to the dealer of the teeth purchased by such dealer at regular dealers' prices. That the practice aforesaid of respondent's secondary bonus system to dealers results in a lower unit price being paid for teeth by some of respondent's dealers than is paid by other of respondent's dealers. Moreover, said secondary bonus or discount paid by respondent to its dealers and predicated upon the bonus certificates issued to dental laboratories under respondent's bonus system described in paragraph 5 hereof, implements and makes effective such bonus system to dental laboratories, thereby contributing to the discriminations and competitive injuries resulting from said bonus system or respondent described in said paragraph 5 hereof.

PAR. 9. The effect of the discriminations in price set forth in paragraphs 5 to 8, inclusive, hereof, may be substantially to lessen competition between respondent and its competitors; between the customers of respondent in whose favor such discriminations are made and the customers of the competitors of the respondent; tend to create a monopoly in respondent in the line of commerce in which it is engaged; to injure, destroy, or prevent competition with the customers of respondent who receive the benefit of such discriminations; to injure, destroy, or prevent competition with customers of persons, partnerships and corporations that have knowingly received and are now knowingly receiving the benefit of such discriminations.



Such discriminations in price by the respondent between different purchasers of goods 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 Clayton Act described in the preamble hereof.

### COUNT II

PARAGRAPHS 1 to 8, inclusive: As paragraphs 1 to 8, inclusive, of Count II of this complaint, the Commission hereby incorporates paragraphs 1 to 8, inclusive, of count I hereof to precisely the same extent as if each and all of them were set forth in full and repeated verbatim in this count.

PAR. 9. The capacity, tendency, and effect of the respondent's system of bonus contract agreements extended to dental laboratories in the manner fully described in paragraph 5, 6, and 7 hereof, and of the respondent's system of secondary bonuses or discounts extended to its dealers in the manner fully described in paragraph 8 hereof, are and have been:

1. To bring about an unlawful discrimination in the prices at which respondent's artificial teeth are sold to respondent's purchaser customers.

2. To discriminate unlawfully against small dental laboratories who are or have been engaged or desire to engage in the use, consumption, and resale of respondent's artificial teeth.

3. To unreasonably lessen, eliminate, restrain, stifle, hamper, suppress, and injure competition in the sale of artificial teeth by encouraging concentrated buying of respondent's teeth in order to obtain the bonuses under respondent's bonus system and thereby depriving dealers of competing manufacturers of the business which they would enjoy under conditions of normal and unobstructed or free and fair competition in the sale of artificial teeth.

4. To encourage the purchase of excess requirements of respondent's artificial teeth beyond the needs of purchaser customers, thereby restricting, restraining, and impeding the normal flow of commerce in such products.

5. To monopolize or to tend to monopolize in respondent interstate trade and commerce in artificial teeth.

6. To hamper and interfere with the natural flow of trade in commerce of artificial teeth to and through the various States of the United States; and to injure the manufacturer competitors of respondent by unfairly diverting business and trade from them and by depriving them of the business which they would enjoy were it not for the unfair tendency and effect of respondent's bonus system.

7. To prejudice and injure manufacturers who do not conform to respondent's bonus system or sales methods or who do not desire to conform to them but are compelled to adopt similar bonus systems or sales methods by the action of respondent in that particular.

PAR. 10. The acts and practices in this count set forth are all to the prejudice of the public; they have a dangerous tendency to hinder, lessen, restrict, and suppress competition in the interstate sale of artificial teeth throughout the several States, and to create a monopoly thereof in the hands of the respondent and constitute unfair methods of competition in commerce within the meaning of section 5 of the Federal Trade Commission 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 purpose," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act, U. S. C. A., title 15, sec. 13), and pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (the Federal Trade Commission Act), the Federal Trade Commission on February 18, 1943, issued its complaint against the above-named respondent and caused such complaint to be served as required by law. Said complaint charged in count I thereof that said respondent was and had been discriminating in price between different purchasers from it of commodities of like grade and quality in the course of interstate commerce in violation of the provisions of subsection (a) of section 2 of the said Clayton Act, as amended, and in count II thereof that said respondent was and had been engaging in unfair methods of competition in commerce within the meaning of section 5 of the said Federal Trade Commission Act.

Subsequently, a stipulation as to the facts was entered into between W. T. Kelley, chief counsel for the Commission, and Leroy Frantz, vice president and treasurer of respondent corporation, providing that, subject to the approval of the Commission, such stipulation of facts should be taken as constituting the entire record with respect to the practices alleged in count I of the complaint and that the Commission might, with respect to said practices, make its report setting forth its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon, and might enter its order based upon such findings of fact and conclusion.

As a part of such stipulation of facts, respondent waived any further hearing as to the facts with respect to such practices, as well as all other intervening procedure with respect thereto, including the filing of briefs and the presentation of oral argument. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and said stipulation of facts, such stipulation having been approved by the Commission; and the Commission, having duly considered the matter and being now 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, Dentists' Supply Co. of New York, is a corporation, organized and existing by virtue of the laws of the State of New York, with an office and principal place of business located at 220 West 42d Street, New York City, and with factories located at York, Pa., and Philadelphia, Pa.

PAR. 2. Respondent corporation is now and has been since prior to June 19, 1936, engaged in the business of manufacturing artificial teeth, which it sells to wholesale dealers known as dental supply houses, to dental laboratories, and to dentists located in States other than the State of Pennsylvania, causing said artificial teeth, when sold, to be transported from the place of manufacture within said State of Pennsylvania to the purchasers thereof located in States other than the State of Pennsylvania. There is and has been at all times herein mentioned a continuous current of trade in commerce in said product across State lines between respondent's factories and the purchasers of such product. Said product is sold and distributed for use, consumption, and resale within the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now and during the time herein mentioned has been in substantial competition with other corporations engaged in the business of manufacturing and selling artificial teeth in commerce between and among the various States of the United States and the District of Columbia. Said corporate respondent is the largest manufacturer and distributor of artificial teeth in the United States, its sales constituting over 50 percent of the total United States production, and as such occupies a dominant position in the artificial-teeth industry. The annual net sales of respondent in the United States of artificial teeth total approximately \$3,000,000. Respondent's product is sold to over 200 authorized dealers known as dental supply houses which

are wholesalers and which resell to the ultimate purchasers, dental laboratories, and dentists located in the various States of the United States and in the District of Columbia. Dentists by trade custom seldom make their own false-denture requirements but customarily order such work performed by dental laboratories, which laboratories constitute the dominant factor in the use and consumption of artificial teeth. While respondent's dealers sell other dental supplies than teeth, approximately 15 percent of their sales are artificial teeth purchased from respondent.

Respondent is now and has been since prior to June 19, 1936, selling its said dealers on the following uniform discount plan: Respondent grants its dealers a 40 percent discount, plus 9 percent for payment within 30 days, from the unit retail price of the artificial teeth as shown on respondent's price list; and, in addition, where a dealer sells to a dental laboratory or dentist in \$300 quantities, respondent grants the dealer making such purchase an additional 7½ percent discount. Dealers' resale prices, as suggested by respondent, are now and have been during said period on the basis of 10 percent discount from list prices on \$100 purchases, and 20 percent discount from list prices on purchases amounting to \$300 or more.

PAR. 4. In the course and conduct of its business as aforesaid, since June 19, 1936, respondent has been and now is discriminating in price between different purchasers buying such products of like grade and quality sold by the respondent for use, consumption, and resale, by giving and allowing some of its purchasers of such products lower prices 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 or allowed to other of respondent's purchaser customers. The respondent has effectuated the discriminations in price referred to herein by superimposing upon the regular schedule of discounts allowed by respondent to its dealers and by its dealers to the ultimate purchasers a variety of additional rebates and discounts given in the form of free or bonus artificial teeth and more particularly hereinafter described.

PAR. 5. Respondent employs some twenty district sales representatives who visit dental laboratories and dentists for the purpose of promoting the sale of teeth by said prospective purchasers from respondent's dealers. Such sales representatives take orders for teeth, and solicit the execution of bonus contract agreements hereinafter described. Any orders for teeth obtained by respondent's sales representatives aforesaid are transmitted to respondent's New York office, where they are either filled directly by respondent or referred to

a dealer to fill out of such dealer's current stock, or are filled by shipping the order to such dealer for subsequent delivery to the purchaser. Respondent's book entries, however, invariably show the sale as having been made to the dealer, and respondent looks to such dealer for payment of the order and credits the dealer's account accordingly.

As a special inducement to dental laboratories to purchase from respondent's dealer selling agencies in amounts in excess of \$1,000 per annum, since prior to June 19, 1936, respondent, through its sales representatives aforesaid has been and is now soliciting and obtaining the execution of bonus contract agreements from numerous dental laboratories located in the various States of the United States and in the District of Columbia. If a laboratory agrees to purchase \$1,000, \$2,500, \$5,000, or \$10,000 worth of teeth annually from respondent's dealers or any of them, then respondent in turn agrees to give such purchaser 10 percent or \$100 worth of free bonus teeth computed at unit retail prices on a \$1,000 to \$2,499 annual volume purchase, 15 percent or \$375 worth of free bonus teeth similarly computed on a \$2,500 to \$4,999 annual volume purchase, 20 percent or \$1,000 worth of free bonus teeth similarly computed on a \$5,000 to \$9,999 annual volume purchase, and 25 percent or \$2,500 worth of free bonus teeth similarly computed on a \$10,000 or greater annual volume purchase. Said bonus contracts contain among other provisions the following clauses, to-wit:

(1) The CONSUMER covenants and agrees to purchase from the Company's regular selling agencies named herein teeth of the Company's manufacture, namely: "Trubyte," "Solila," "Twentieth Century," "Dentsply," "Famous" and "Trubridge" teeth (Steele's facings excepted) and/or "Trubase" and "Truwax" and/or White's teeth to the total purchase price and amount of ----- dollars during the term of this agreement.

(5) Upon the faithful carrying out by the CONSUMER of the aforesaid covenants, the COMPANY hereby covenants and agrees to give direct to the CONSUMER a Bonus on all such teeth and on "Trubase" or "Truwax" of its manufacture and on White's teeth purchased and paid for by the consumer during the term of this agreement by supplying free of charge to the CONSUMER porcelain teeth of the Company's manufacture (Steele's facings excepted), as specified by the CONSUMER of the value of ----- Dollars. The value of the teeth so delivered as said Bonus to be computed at the Unit Prices of such teeth published in the price list of the Company, current December 31, 194--, or at the date of the termination of this agreement in case of its earlier termination.

(6) It is mutually covenanted and agreed that as evidence of the purchase of such teeth or wax by the CONSUMER, the CONSUMER shall present to the Company on or before January 20, 194--, receipted bills or other evidence, satisfactory to the Company, showing the quantities purchased, from whom purchased and amounts paid for same by the CONSUMER during the term of this agreement; and the amount of such purchases upon which the Bonus shall be computed shall be the amount actually paid by the CONSUMER for said teeth and wax; and within thirty days after the presentation of such evidence by the

CONSUMER, the Company agrees to give to the CONSUMER the quantity of teeth so due as said Bonus.

The amount of dollar purchases of teeth which the dental laboratory entering into such a contract agrees to purchase is either \$1,000, \$2,500, \$5,000, or \$10,000 annually, as heretofore described, one of these amounts being inserted in the space provided in clause (1) of such contract above set forth. The dollar amount of bonus or free teeth agreed to be supplied by respondent to such dental laboratory purchaser in consideration of the agreed annual dollar volume purchase is a sum certain computed in the manner described above, said dollar amount of bonus or free teeth being inserted in the space provided in clause (5) of such contract above set forth. If the amount which a dental laboratory agrees to purchase is not reached, but one of the lower brackets is attained, within the period covered by the contract, then such dental laboratory is paid in accordance with the bracket it does reach; whereas if a higher bracket is reached than agreed upon under the bonus contract, then such dental laboratory is paid at the rate provided for such higher bracket. The bonus provided by such bonus contract agreement is cumulative. For example, a dental laboratory purchasing \$9,500 in teeth is given 20 percent of \$9,500, or \$1,900 in free teeth. If, however, it purchases an additional \$500, it will reach the \$10,000 bracket and be paid a bonus at the rate of 25 percent of its entire purchases, or \$2,500. Approximately 1,400 of such bonus contracts have been executed by respondent and respondent's purchaser customers annually since June 19, 1936, and minimum annual volume purchases provided for under such contracts were completed and bonus or free teeth given in the amount provided as to approximately 65 percent of the total number of bonus contracts executed. Respondent through its sales representatives not only personally solicits such dental laboratories for both regular teeth orders and for bonus contract agreements, but also makes effective its special price policies and schedules as applied to them, which price policies and schedules are reduced to writing and formally executed by both respondent and by such dental laboratories in the form of such bonus contracts aforesaid. Such bonus system results in a lower unit price being paid for teeth by respondent's purchaser customers who are able to take advantage of such bonus system by purchasing in the required volume, and enables such purchaser customers in whose favor such discrimination is made either to undersell their competitors or furnish better facilities and services to their dentist customers, or both.

PAR. 6. For the purpose of granting and allowing the bonus or free-teeth discounts under its bonus system described in paragraph 5 hereof, respondent has permitted the main office of some chain

dental laboratory buyers to pool the orders of the unit laboratories thereof, and has granted and allowed to such chain dental laboratory buyers the bonus applicable to the volume of teeth purchases during the bonus contract period represented by the pooled orders. For example, if the pooled order has totaled over \$10,000 in teeth ordered from respondent during the bonus contract period, each unit laboratory through its main office has received a 25 percent free-teeth bonus on all its purchases even though the individual unit laboratory may not have ordered a sufficient quantity to qualify for any or for more than a 10 percent bonus under respondent's bonus system. The respondent, in granting and allowing such pooling privilege in connection with the granting and allowing of bonus teeth under its bonus system aforesaid, did not make shipment of the teeth purchased from all the unit laboratories during the bonus contract period to the main office or warehouse of such dental laboratory chains. In fact, the teeth purchased by such dental laboratory chains were and are now purchased in small amounts from time to time by each unit laboratory from many of respondent's dealers. The chain dental laboratories receiving such pooling privilege, in the calculation of bonuses under respondent's bonus system aforesaid, were and are now in competition with other dental laboratories competing with such dental laboratory chains in the sale of dentures which contain teeth of respondent's manufacture, but such other laboratories, by virtue of not being a unit laboratory of a chain, do not receive any bonus or as large a bonus from respondent.

PAR. 7. Respondent since prior to June 19, 1936, has and now does operate a dental depot in New York City, where it keeps a complete stock of artificial teeth manufactured in its factories in the State of Pennsylvania and shipped to said dental depot located in New York City, State of New York. In connection with the operation of such dental depot, it sells directly to dental laboratories in competition with its dealers located in New York City. In connection with such direct sales made to its purchaser customers, it solicits and procures the execution of bonus contract agreements identical in form to said bonus contract agreements described in paragraph 5 hereof. Such bonus system employed in connection with sales made from respondent's New York City depot to purchaser customers located in the New York City area results in a lower unit price being paid for teeth by respondent's purchaser customers who are able to take advantage of such bonus system by purchasing in the required volume, and enables such purchaser customers in whose favor such discrimination is made either to undersell their competitors or to furnish better facilities and services to their dentist customers, or both.

## Findings

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PAR. 8. The prices at which respondent sells its teeth products to its dealers are uniform and are as set forth in paragraph 3 hereof, with the following exception: In fulfilling its agreement to furnish a specified amount of bonus or free teeth to its bonus contract holders, respondent since June 19, 1936, has issued and now does issue to such purchaser customers holding and completing bonus contracts, certificates entitling the holder thereof to bonus or free teeth in the dollar amount specified therein upon presentation of such certificates to respondent or to any of respondent's dealers. Prior to January 1, 1939, respondent allowed its dealers a secondary bonus or discount of 8 percent of the dollar value of bonus certificates and in proportion to the dollar amounts of respondent's teeth purchased by the bonus certificate holders from such dealers. To illustrate: Abel Dental Laboratory of Houston, Tex., having a \$1,000 bonus contract, purchased during the period specified therein \$56.48 worth of teeth from A. P. Cary Co. and \$979.17 worth of teeth from Pendleton & Arto, two of respondent's dealers located in Houston, Tex.; respondent issued to said dental laboratory purchaser two bonus certificates, one in the amount of \$97.91 and the other in the amount of \$5.65. Both of such certificates were redeemed by said Pendleton & Arto and its account was credited for the amount of the teeth given in such redemption at dealer's list prices. However, Pendleton & Arto, which handled the redemption of both certificates, was allowed by respondent 8 percent of \$97.91, as \$979.17 of the merchandise had been purchased from such dealer; and A. P. Cary Co. was allowed by respondent 8 percent of \$5.65, as \$56.48 of the merchandise had been purchased from such dealer. Since the dealer redeeming the bonus certificates is credited with the full amount of teeth given in redemption of such certificates at dealers' prices, no profit is made by the dealer on the transaction, as is the case in ordinary dealers' sales. It is only in the event that the dealer has originally sold some of the merchandise to the bonus certificate holder upon which the bonus certificate is issued that the dealer redeeming the certificate obtains any part of the above described secondary bonus or discount. From January 1, 1939, and thereafter, respondent increased such secondary bonus or discount paid to its dealers upon bonus certificates in the manner aforesaid from 8 percent to 12½ percent. The dealer's account is credited by respondent in the amount of such secondary bonus or discount allowed, thereby reducing the cost to the dealer of the teeth purchased by such dealer at regular dealers' prices. The practice aforesaid of respondent's secondary bonus system to dealers results in a lower unit price being paid for teeth by some of respondent's dealers than is paid by other of respondent's dealers. Moreover, said secondary bonus or discount paid by respondent to its dealers and



## Order

predicated upon the bonus certificates issued to dental laboratories under respondent's bonus system described in paragraph 5 hereof, implements and makes effective such bonus system to dental laboratories.

PAR. 9. The effect of the discrimination in price set forth in paragraphs 5 to 8, inclusive, hereof, has been and may be substantially to lessen competition with the respondent in the line of commerce in which it is engaged; to injure, destroy, or prevent competition with the respondent; and to injure, destroy, or prevent competition with the customers of respondent who receive the benefits of such discrimination.

## CONCLUSION

Respondent having offered no evidence and having made no contention that the discriminations in price stipulated by it, and herein set forth, made only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which its products are sold or delivered to various purchasers, or that such discriminations were in good faith to meet an equally low price of a competitor, the Commission concludes that the discriminations were not within any of the corresponding provisos and exceptions of subsections (a) and (b) of section 2 of the Clayton Act, as amended. The Commission also concludes that the methods of pricing which respondent uses and causes its dealers to use, as set forth above, constitute and result in discriminations in price in the course of interstate commerce and are in violation of subsection (a) 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 a stipulation of facts entered into between W. T. Kelley, chief counsel for the Commission, and Leroy Frantz, vice president and treasurer of the respondent, in which stipulation respondent waived hearings, the filing of briefs, oral argument, and all intervening procedure; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936.

*It is ordered*, That the respondent, Dentists' Supply Co. of New York, a corporation, and its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its products in commerce, as "commerce" is defined in the Clayton Act, as

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amended, do forthwith cease and desist from the discriminations in price under the circumstances stipulated by it and found by the Commission, and from any discriminations similar thereto, and more particularly from such discriminations by use of the following methods:

1. Discriminating in price by giving and allowing to certain purchasers adjustments, rebates, or discounts in the form of cash or commodities while withholding same from other purchasers competitively engaged with said favored purchasers.

2. Discriminating in price by giving and allowing adjustments, rebates, or discounts in the form of cash or commodities depending upon the cumulative total of purchases made during a year or other given period of time as distinguished from the amount purchased in one transaction.

3. Discriminating in price by giving and allowing adjustments, rebates, or discounts in the form of cash or commodities to chain dental laboratories depending upon the total of separate purchases by the various units of such chains although separate deliveries are made to the respective units.

4. Requiring, providing, or arranging that respondent's dealers shall give and allow such discriminatory adjustments, rebates, or discounts as are forbidden under the preceding parts of this order.

*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 count II of the complaint herein be, and it hereby is, dismissed.

## Order

## IN THE MATTER OF

## DE FOREST'S TRAINING, INC.

## MODIFIED CEASE AND DESIST ORDER

*Docket 4441. Order, August 30, 1943*

Modified order, pursuant to provisions of Section 5 (i) of the Federal Trade Commission Act and in accordance with decree below referred to, in proceeding in question, in which original order issued on March 23, 1942, 34 F. T. C. 902, and in which Circuit Court of Appeals for the Seventh Circuit, on April 22, 1943, in *De Forest's Training, Inc. v. Federal Trade Commission*, 134 F. (2d) 819, rendered its opinion, and on May 14, 1943, entered its decree, modifying aforesaid order in certain particulars and affirming the same in other particulars—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of any course of study in television, to cease and desist from representing that there are possibilities or opportunities for employment of students of its course in said field until substantial numbers thereof have been and can be employed directly therein; and that there are now or in the near future will be possibilities or opportunities for such employment in said field until the commercial development of television is sufficiently advanced to assure immediate availability of such possibilities or opportunities; or misrepresenting in any manner the possibilities or opportunities for employment of students or graduates of its course in the television field.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on March 23, 1942, the Commission made its findings as to the facts herein and concluded therefrom that the respondent had violated the provisions of section 5 of the Federal Trade Commission Act, and on March 23, 1942, issued and subsequently served upon respondent its order to cease and desist, and it further appearing that on April 22, 1943, the United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion and on May 14, 1943, entered its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this, its modified order to cease and desist, in conformity with said decree.

It is ordered, That respondent, De Forest's Training, 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 any course of study in television 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 there are possibilities or opportunities for employment of students or graduates of respondent's course in the television field until substantial numbers of such students or graduates have been, and can be, employed directly in such field.

2. Representing, directly or by implication, that there are now, or in the near future will be, possibilities or opportunities for the employment of students or graduates of respondent's course in the television field until the commercial development of television is sufficiently advanced to assure immediate availability of such possibilities or opportunities.

3. Misrepresenting in any manner the possibilities or opportunities for employment of students or graduates of respondent's course in the television field.

## Complaint

IN THE MATTER OF  
UTILITIES ENGINEERING INSTITUTECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4532. Complaint, July 8, 1941—Decision, Aug. 31, 1943*

Where a corporation engaged in interstate sale and distribution of correspondence courses in, among other subjects, refrigeration, air-conditioning and welding, including provision for the student's bus fare to and from Chicago and for room and board during 2-weeks' shop training to which, without further charge, upon satisfactory completion of his lessons and at his option, he was entitled; through newspaper and periodical advertisements, printed matter circulated by mail and otherwise, and through canvassers—

(a) Represented that upon completion of its said correspondence courses, a student would be qualified as an expert welder and as an expert in refrigeration and air-conditioning, and be qualified to install, repair or otherwise service such equipment;

The facts being that theoretical instruction alone can not make one an expert welder without broad practical experience; the course concerned did not, in said respect, provide the necessary background of experience; and graduates of its refrigeration and air-conditioning courses similarly were not thereby expert in said subjects, nor, even assuming full training in the theory thereof upon completion of the course, followed by the two weeks' shop training, qualified to undertake upon their own responsibility installation, repair or service of refrigeration and air-conditioning machinery and equipment; and

(b) Represented also that there was a great demand for men qualified as its students would be upon completion of its course, to plan, install, repair and service refrigeration and air-conditioning machinery, with better and more profitable employment certain and success assured;

The facts being that concerns engaged in such work generally do not employ as a service man or workman one who has not had considerable actual experience; graduates of such correspondence school courses are usually employed as helpers or shop employees, subject to supervision and direction until they have acquired sufficient experience and demonstrated ability necessary for the performance of such work without it; and while there was an increase in the number of such installations, both domestic and commercial, and reasonable opportunities for employment for expert maintenance and service men—although on a partly seasonal basis—preceding the abnormal war-induced conditions, such employment was not available to such students or graduates, who were limited initially, as above set out;

With tendency and capacity to mislead prospective purchasers of courses in question into the mistaken belief that such representations were true, thereby inducing purchase thereof:

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

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Before *Mr. James A. Purcell*, trial examiner.  
*Mr. William L. Pencke* for the Commission.  
*Mr. Henry 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 Utilities Engineering Institute, 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, Utilities Engineering Institute, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1314 Belden Avenue in Chicago, State of Illinois.

PAR. 2. Respondent is now, and for more than one year last past has been engaged in the sale and distribution of correspondence courses in air conditioning, electric refrigeration, welding, and automobile body repairs direct to the purchasing public located in the various States of the United States other than the State of Illinois, and in the District of Columbia.

In the course and conduct of its business, and in connection with the sale and distribution of its said correspondence courses, respondent transports or causes to be transported printed copies of its lessons, examination questions, pamphlets and various documents from its place of business in the State of Illinois to the purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a substantial course of trade in said correspondence courses, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 3. Said respondent, in soliciting the sale of and in selling its said courses of study and instruction, in commerce, has made numerous misleading representations by one or more of the following methods, to wit: through its representatives engaged in soliciting the sale of such courses; in advertising and printed matter circulated or caused to be circulated by said respondent by mail and otherwise to prospective students, enrolled students or to members of the public generally in various states of the United States; and in radio broadcasts to mem-

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bers of the general public, including prospective students. Typical of such misleading representations made by or through one or more of the said methods are the following:

There are unlimited opportunities for young men who want to become actively and profitably engaged in this fascinating field.

Men already employed in the industry have found U. E. I. training leads to rapid promotion with increased earnings.

A vast number of ambitious men have benefited immeasurably through U. E. I.

Manufacturers of refrigerators employ trained men in their production departments in addition to the thousands employed in the service departments of their extension dealer organization.

After satisfactorily completing U. E. I. training you will be ready for gainful employment in one of the fastest growing and most promising industries.

Are you awake to the splendid opportunities open to serious minded men in the air conditioning and refrigeration industry? Here's one business that needs men—NOW—for estimating, planning, installing and servicing of equipment. If you are mechanically inclined and willing to devote part of your spare time to study, investigate this opportunity today.

Don't pass up this opportunity for BETTER employment, HIGHER earnings and a BRIGHTER FUTURE.

I'd recommend your training to any ambitious mechanically minded young man. Since completing the course I have had nothing but success from the start.

Men with U. E. I. training have obtained employment with distributors, dealers and service organizations for practically all the leading manufacturers of refrigerating and air conditioning equipment \* \* \*

You read of the shortage in industry of trained men—men capable of taking the bigger pay, greater profits jobs of men trained in modern developments such as air conditioning and refrigeration, in auto body and fender work, including metal work, welding and painting \* \* \* Many manufacturers endorse a training plan that can let you take your place in this pleasant and profitable field and please note—this is spare time training that will not interfere with your present employment. Find out how you may prepare to join the huge army of skilled workers who are so vitally necessary right now.

The Utilities Engineering Institute will furnish you complete information on how you can be trained to become an expert welder. They will teach you at home in your spare time the fundamental and basic things you must know to qualify as an expert. \* \* \* You'll also receive the benefit of a carefully planned placement service. \* \* \* You can learn body and fender craftsmanship in your spare time.

\* \* \* get complete information regarding a training program which has helped other men just like you to get ahead in this chosen field; training that is endorsed by leading manufacturers of refrigerating and air conditioning equipment; training selected by leaders to train their own dealer organizations. \* \* \*

Utilities Engineering Institute is endorsed and recommended by so many great manufacturers in the field. \* \* \* Take the training manufacturers have used in the training of their own employees.

PAR. 4. By means of the foregoing statements the respondent represents that the opportunities in the air conditioning and electrical re-

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frigeration industries are unlimited; that the taking of its said courses of instruction will lead to rapid promotion, higher earnings and greater opportunities; that success is assured from the start after completion of its courses of instruction in air conditioning and electrical refrigeration; that the training provided by respondent's course in welding will qualify one as an expert welder; that leading manufacturers employ large numbers of respondent's graduates, endorse its courses and utilize said courses in training their employees; that the opportunities in the air conditioning, electrical refrigeration, automobile body repair and welding industries are greater and employment more certain than in other industries.

PAR. 5. The aforesaid statements and representations are misleading and grossly exaggerated. The opportunities in the air conditioning and electrical refrigerating industries are not unlimited. Students who complete said training are not assured employment and, generally, jobs are not available for all graduates. Only a limited number of students enrolled complete the course, and of those only a limited number obtain positions in the industry. Success is not assured from the start, or at all, to those who complete respondent's courses of instruction. Rapid promotion, higher earnings and greater opportunities do not ordinarily result from taking said courses of instruction. While there may be some manufacturers and distributors of air conditioning and refrigeration equipment who have endorsed said courses of study and recommended them to their employees, they do not constitute a representative number of leading manufacturers and dealers of such equipment. The air conditioning and refrigeration industry is not, generally speaking, in need of men not available through the usual channels, and there is not a great or unusual demand for men in said industry. Ordinarily, manufacturers train their own men in connection with the manufacturing of said equipment, and dealers and service men require men with substantial practical experience in their respective branches of said industry.

The completion of respondent's courses of instruction in the welding and automobile body repair trades will not qualify a student as an expert in said trades; in addition to the theoretical instruction and training a substantial amount of practical experience is necessary to qualify anyone as an expert. The opportunities for employment and increased earnings in such trades are not greater than in many other trades and industries.

PAR. 6. Respondent, through the use of the words "Engineering Institute" as a part of its corporate name, falsely represents or implies that it is a group or organization of engineers of the air conditioning and electrical refrigeration industries instituted for the purpose of



considering the problems of said industries from a scientific and technical standpoint and to further and promote the interests and welfare of such industries generally.

In truth and in fact, respondent's business is a correspondence school, organized and operated for the purpose of offering and selling correspondence courses in air conditioning, electrical refrigeration, welding and automobile body repairing solely for the financial profit of respondent. While respondent maintains at its place of business a laboratory for the purpose of giving its students a short optional practical training which is taken by some of its students at the conclusion of the correspondence courses and occasionally may perform certain laboratory tests at the request of some members of the industry. it is not in any sense an organization composed of members of the industry who meet regularly for the purpose of discussing and solving scientific or technical problems incident to the air conditioning and electrical refrigeration industries and of furthering the interests of said industries generally.

PAR. 7. The use of the aforesaid misleading and deceptive statements and representations by respondent, in connection with the offering for sale and sale of said courses of study and instruction have had, and now have, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and to induce them to purchase and pursue such courses of study and instruction on account thereof.

PAR. 8. The aforesaid acts and practices of 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 July 8, 1941, issued and subsequently served its complaint in this proceeding upon respondent, Utilities Engineering Institute, a corporation, charging it with the use of 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 thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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 came on for final hearing before the Commission on the

said complaint, answer thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and 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, Utilities Engineering Institute, is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 1314 Belden Avenue, Chicago, Ill.

PAR. 2. For several years last past respondent has been and is now engaged, as a part of its business, in the sale and distribution to members of the public of correspondence courses of instruction in various subjects, including refrigeration, air-conditioning, and welding. In the course and conduct of its said business and in connection with the sale and distribution of its said correspondence courses, respondent transports or causes to be transported printed copies of its lessons, examination questions, pamphlets, and various other documents from its place of business in the 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. Respondent maintains, and has maintained, a substantial course of trade in said correspondence courses of instruction in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In soliciting the sale of its said courses of study and instruction in commerce, respondent has advertised such courses to prospective students and members of the public generally in various States of the United States by means of radio broadcasts and advertisements in newspapers and periodicals which circulate among members of the public, by means of printed matter circulated or caused to be circulated by mail and otherwise to prospective students, and by agents engaged in soliciting the sale of such courses. In the solicitation and sale of, and in order to induce and aid in inducing the sale of, its said courses of instruction, respondent has, by the means aforesaid, made numerous false and misleading representations, of which the following are typical:

The Utilities Engineering Institute will furnish you COMPLETE information on how you can be trained to become an expert welder. They will teach you, at home, in your spare time, the fundamental and basic things you must know to

qualify as an expert; to qualify for the really GOOD jobs that are opening up for expert welders right now. (Com. Ex. 4.)



There's a steady demand for trained men who can service and maintain refrigeration equipment \* \* \* and there's a shortage of trained men who can do that kind of work and do it right. \* \* \* The Utilities Engineering Institute has been training men for industrial work for a good many years. It gives you the training you need to make you a refrigeration and air-conditioning expert. (Com. Ex. 7-A.)



You'll receive complete information absolutely free and without obligation showing how you can learn at home in your spare time to cash in on the profitable, pleasant fields of electric refrigeration. \* \* \* air-conditioning \* \* \*. (Com. Ex. 9-B.)



YOU READ OF THE SHORTAGE IN INDUSTRY OF TRAINED MEN . . . MEN CAPABLE OF TAKING THE BIGGER PAY, GREATER PROFITS JOBS . . . OF MEN TRAINED IN MODERN DEVELOPMENTS SUCH AS AIR-CONDITIONING AND REFRIGERATION \* \* \* AND \* \* \* WELDING. \* \* \* THERE IS A GREATER OPPORTUNITY *THAN EVER BEFORE* FOR THE MAN TRAINED FOR THE HIGHER PAYING JOBS IN THIS PROFITABLE, PLEASANT TRADE. TRAINED MEN ARE NEEDED IN ALL BRANCHES OF INDUSTRY . . . AND YOU MAY BE ONE WHO CAN CASH IN ON TODAY'S DEMAND! (Com. Ex. 10-A and B.)



Now men—here's that important message we have for you—that Chance of a Lifetime for you to be independent and happy . . . free of the cares that go with a small, uncertain income. \* \* \* UTILITIES ENGINEERING INSTITUTE can give you the training necessary for you to realize your dreams of success! (Com. Ex. 11-A and B.)



You men who are on the lookout for a better job in life—listen to this: Are you awake to the splendid opportunities open to serious minded men in the air-conditioning and refrigeration industry? Here's one business that needs men—NOW—for estimating, planning, installing and servicing of equipment. (Com. Ex. 13-A.)



The Air-Conditioning and Refrigeration Industry is growing so fast that one of its greatest needs is trained men. Men are needed to install, repair and service the vast amount of equipment being placed in operation *today*. To meet this need, the nationally known UTILITIES ENGINEERING INSTITUTE is selecting properly qualified men to train for positions in this fast growing business. \* \* \* You should by all means investigate the opportunities that exist in this great industry of the future. (Com. Ex. 17-A.)



I'd recommend your training to any ambitious, mechanically minded young man. Since completing your course I have had nothing but success from the start. (Resp. Ex. 13-C.)

By the use of statements such as those quoted above, and others similar thereto, respondent has represented that upon completion of its correspondence courses in refrigeration, air-conditioning, or welding a student is qualified to install, repair, or otherwise service refrigeration and air-conditioning equipment, and is an expert in such work, or is qualified as an expert welder. Such advertisements have also represented that there was a great demand for men qualified—as its students would be qualified upon completion of said courses—to plan, install, repair, and service refrigeration and air-conditioning machinery, and that better and more profitable employment was certain and success assured for those completing its courses.

PAR. 4. Respondent's correspondence courses in welding, refrigeration, and air-conditioning are intended to be completed within 10 to 12 months, although students may take a considerably longer period for completion of such courses if they wish to do so. The courses consist of instruction given by correspondence lessons in the theory of the particular course selected by the student, and upon satisfactory completion of the correspondence lessons the student may, at his option, receive 2 weeks' shop training at respondent's place of business in Chicago. The payment made for the courses includes provision for the student's bus fare to and from Chicago and for his room and board there during the 2-week period of shop training. Approximately 20 percent of those who enroll as students in respondent's correspondence courses actually complete the course for which they enroll. Respondent's correspondence course in welding, followed by such actual practice in welding as is provided by the 2 weeks' shop training, will not make an expert welder of a student who is without previous practical experience in welding. In order to be qualified as an expert welder, assuming the necessary aptitude, a long period of practical experience which encompasses working with various metals, with different types of welds, and with various techniques to meet differing requirements is necessary under actual working conditions. A person may, by adaptability and practical experience, become an expert welder without theoretical instruction, but theoretical instruction alone cannot make an expert welder in the absence of broad practical experience. Respondent's course does not provide the background of experience necessary to produce an expert welder. Similarly, graduates of respondent's refrigeration and air-conditioning courses are not experts in refrigeration or air-conditioning. Even if it be assumed that upon completion of respondent's courses, including the 2 weeks' shop training, a student is fully trained in the theory of the subjects, he is still not qualified to undertake upon his own respon-

sibility to install, repair, or service refrigeration and air-conditioning machinery and equipment. In order to be so qualified, a very considerable further practical experience under the supervision and direction of experienced men is necessary. Concerns engaged in installing, servicing, and maintaining refrigeration and air-conditioning equipment generally do not employ as a service man a workman who has not had considerable actual experience, and graduates of correspondence school courses such as respondent's, if employed by such concerns, are usually in the status of helpers or shop employees where they are supervised and directed until such time as they have acquired sufficient experience and demonstrated the ability necessary to qualify for the performance of repair and maintenance work without direct supervision.

FAR. 5. Respondent's representations concerning its correspondence courses in refrigeration and air-conditioning are calculated to, and do, lead to the belief on the part of prospective students that employment in the refrigeration and air-conditioning industry at the level indicated by respondent's advertisements is certain, with great opportunities for advancement—that success is assured. These representations are viewed in the light of conditions which existed during the years immediately preceding the issuance of the complaint herein and not under the abnormal conditions which have more recently existed as a result of the national preparedness program and active participation in war.

Refrigeration and air-conditioning maintenance and service is in part seasonal, particularly as to domestic installations. There was an increase in the number of such installations, both domestic and commercial, in the period of time under consideration, and a reasonable opportunity for employment has existed for expert maintenance and service men. Such employment, however, was not available to respondent's students or graduates. The record indicates, and the Commission finds, that there was little or no opportunity for respondent's students or graduates to find positions as service or maintenance men because of lack of qualifications as set out in the preceding paragraph. In general, such employment as respondent's students or graduates might find in the refrigeration and air-conditioning industry was as helpers and shop employees pending such time as, by aptitude, experience, and further training acquired in the course of their employment, they might become qualified for and secure work of the types specified by respondents. "Splendid opportunities," as represented by respondent, signify a high probability of employment at the placement level indicated by respondent with

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reasonable opportunity for substantial advancement. In general, the refrigeration and air-conditioning industry has not afforded this to men whose qualifications were limited to those secured through respondent's courses.

PAR. 6. The statements and representations made by respondent, as aforesaid, in connection with the offering for sale, sale, and distribution of its correspondence courses have had, and have, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and to induce them, because of such erroneous and mistaken belief, to purchase and pursue such courses of study and instruction.

## CONCLUSION

The aforesaid acts and practices of 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, the answer of respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before an examiner of the Commission theretofore duly designated by it, briefs filed herein, and the oral arguments of counsel, 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, Utilities Engineering Institute, 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 correspondence courses of study and instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That individuals completing respondent's correspondence course in welding will thereby be qualified as expert welders.

2. That unusual or extraordinary opportunities for employment are open to individuals completing respondent's correspondence courses in refrigeration and/or air-conditioning, or that such individuals are assured of employment as service or maintenance men in the refrigeration and air-conditioning industry.

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3. That by completion of respondent's correspondence courses in refrigeration and/or air-conditioning individuals are thereby assured of employment, promotion, or success in such industry.

*It is further ordered,* That 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  
MANHATTAN BREWING COMPANY

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

*Docket 4572. Complaint, Aug. 20, 1941—Decision, Sept. 7, 1943*

Where a corporation, engaged at Chicago in the brewing of ale and beer, including its "Canadian Ace Brand Beer" and "Canadian Ace Brand Ale," and for a time its "Old Wisconsin Lager Brand Beer," and in competitive interstate sale and distribution of its products to wholesalers and retailers, restaurants, taverns, and other purchasers—

- (a) Featured the word "Canadian" or the words "Canadian Ace" in extensively advertising said brand of beer and ale in point-of-sale advertising—supplied to retailer for display or distribution to the public, including menu covers and sheets, table display cards, place cards and coasters, paper table napkins, leaflets, booklets; and large show window placards—and also, to a limited extent, in radio advertising and in a trade journal, and featured said words likewise in labels on bottles or other containers in which its said beer was packaged and sold;

The facts being, its said products were not, as thus represented, imported Canadian brewed, preferred by a substantial portion of the purchasing public over such products brewed in the United States, particularly so in those states nearest Canada, but, like its other products, were brewed in Chicago; and inconsistent and contradictory legends "Made in U. S. A.," and in small type "Brewed and Bottled by Manhattan Brewing Co., Chicago, Illinois" later displayed on its labels and in some advertising, were incapable of explaining or qualifying word "Canadian" so as to prevent deception or confusion in the minds of the public; and

- (b) Falsely represented, through use of word "Wisconsin" as a part of one of its aforesaid brand names, that its Chicago-made product was a Wisconsin brewed beer, preferred by a substantial portion of the purchasing public over beers originating in other States; and
- (c) Falsely represented for a time that it was a Royal Warrant holder enjoying the patronage of the British Royal family or some member thereof, and therefore entitled to display the British Royal coat of arms on its products, through use, in connection with sale of its said Canadian Ace Brand Beer and Ale, of a crest simulating said royal coat of arms, and through displaying same also on the labels of the bottles involved;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public in aforesaid respects, and with result of causing it to purchase substantial quantities of products in question as a result of said erroneous belief; whereby trade was diverted unfairly to it from its competitors, many of whom did not use aforesaid practices and methods:

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

Before *Mr. John L. Hornor*, trial examiner.  
*Mr. DeWitt T. Puckett* for the Commission.



## Complaint

*McHale, Arthur, Myers & Patrick*, of Indianapolis, 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 Manhattan Brewing 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, Manhattan Brewing Co., is a corporation, organized under the laws of the State of Illinois, is now and for several years last past has been engaged in the brewing and in the sale and distribution of beer and ale, with its brewery and principal office located at 3901 Emerald Avenue, Chicago, Ill.

In the course and conduct of its business as aforesaid, respondent causes and for several years last past has caused its said product, when sold, to be transported from its said place of business in Chicago, Ill., to the purchasers thereof located 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 said products in commerce between and among the various States of the United States and in the District of Columbia.

The respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations, and with partnerships and individuals engaged in the sale and distribution of beer and ale in commerce between and among the various States of the United States and in the District of Columbia. Among said competitors are many who do not use the acts, practices, and methods hereinafter alleged.

PAR. 2. In the course and conduct of its business as aforesaid, the respondent has represented and now represents in newspaper advertising circulated among prospective purchasers of its said products, located in the various States of the United States, by means of labels attached to the containers in which its products are offered for sale and sold, by means of placards, napkins, menus, and in various other ways, that some of its beer and ale is imported from Canada and that other of its said products are brewed in the State of Wisconsin. Among and typical of the advertising statements and representations used and disseminated as aforesaid are the following:

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In "The News," a newspaper published in Elmira, N. Y., the following advertisement appeared:

ELMIRA  
HAS IT AT LAST!

Your Restaurant Has It!  
Your Club and Cafe Serve It!

Your Hotel Has It!  
Your Package Store Has It!  
Your Home Should Have It!

CANADIAN  
Ace Brand  
ALE  
Extra Pale

(Picture of bottle showing label)

Substantially the same advertisement appeared in the "Boston Daily Record," a newspaper published in the city of Boston, Mass., and substantially the same advertisement concerning respondent's "Canadian Ace Brand Beer" appeared in the "Beer Distributor," a trade publication circulated throughout the United States.

A placard used by respondent in advertising its "Canadian Ace Beer" contains the following:

The Symbol of the Finest Beer

CANADIAN ACE

Beer Brings You

An Outstanding Superiority in Drinking Enjoyment!

All the goodness of choice ingredients plus the skill of expert blending produced Canadian Ace Beer.

Enjoy the uniform, subtle smoothness and delicious flavor of a prime beverage "brewed to your taste"—

Convince yourself by trying a bottle today.

On the reverse side of the placard appears the following:

Get my Companion by Buying

CANADIAN

ACE BEER

The Good Companion for Beer Enjoyment

(Picture of beer bottle which shows in large letters "Canadian Ace Beer" and in small letters the word "Brand".)

On the main or large label affixed to the bottles in which one of respondent's beers is offered for sale and sold is the statement "Old Wisconsin Brand Lager Beer," the word "Brand" being in letters about

half the size of the other words in the statement. The neck label used on said bottle contains only the words "Old Wisconsin."

On the label attached to the bottle in which another of respondent's beers is offered for sale and sold appear the words "Canadian Beer." Diagonally across the bottom of said label appears the word "Imported" followed by the word "Hops" in much smaller and less conspicuous print. The same phraseology appears on the sticker around the neck of said bottle.

Affixed to the bottles in which other of respondent's products are offered for sale and sold appear the expressions "Canadian Ace Brand Ale" or "Canadian Ace Brand Beer." In every instance in which the word "Canadian" appears said word is featured by appearing in bolder type and in the most conspicuous place on the labels or advertising matter.

Table napkins and menus distributed by respondent bear some or all of the above expressions, pictures, and designs.

PAR. 3. Through the use of the aforesaid representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly or by implication, that some of its aforesaid products are imported from the Dominion of Canada and that other of its said products are brewed in the State of Wisconsin. In truth and in fact, respondent's aforesaid products were not and are not imported from the Dominion of Canada or brewed in the State of Wisconsin.

PAR. 4. There is a marked preference on the part of a substantial portion of the purchasing public for beer and ale imported from the Dominion of Canada. There is likewise a marked preference on the part of a substantial portion of the purchasing public for beer and ale brewed in the State of Wisconsin. Such preference is based in part on a belief by said purchasing public that such beer and ale are superior in quality to beer and ale brewed elsewhere.

PAR. 5. A picture of a crest or coat of arms closely resembling the British Royal coat of arms appears in some of respondent's advertising matter used in connection with the sale of its beer and ale as aforesaid.

There is a preference on the part of a portion of the purchasing public for merchandise bearing the British Royal coat of arms. Such preference is based upon a belief that the manufacturer or distributor of such merchandise is a Royal warrant holder and enjoys the patronage of the British Royal family or a member thereof.

PAR. 6. The use by the respondent of the aforesaid words, legends, pictures, and designs, in connection with the sale of its said products, has the capacity and tendency to cause, and has caused, a substantial portion of the purchasing public erroneously to believe that some of

respondent's said products are imported from the Dominion of Canada and that other of its said products are brewed in the State of Wisconsin. Furthermore, the use by respondent of the aforesaid coat of arms, in the manner set forth above, has the capacity and tendency to cause, and has caused, a substantial portion of the purchasing public erroneously to believe that said respondent is a Royal warrant holder and entitled to use the British coat of arms. As a result of the aforesaid acts and practices, a substantial portion of the purchasing public has been misled and deceived and trade has been diverted unfairly to the respondent from its competitors with the result that substantial injury has been done and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. 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 August 20, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Manhattan Brewing Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing of respondent's answer, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, for the purpose of receiving such testimony and other evidence as might be offered in support of the allegations of the complaint or in opposition thereto. At such hearing, held on May 7, 1942, respondent through its attorney asked leave to withdraw its answer theretofore filed and to substitute therefore 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 facts, such proposed substitute answer being dictated into the record. On June 22, 1942, the Commission entered its order granting respondent's request for permission to withdraw its original answer and to file such substitute answer. Thereafter, the proceeding came on for hearing before the Commission on the complaint and substitute answer, and the Commission, having heard and duly considered the matter, on July 6, 1942, issued its findings as to the facts and its order requiring respondent to cease and desist from the practices charged in the complaint.

## Findings

Thereafter, on July 24, 1942, respondent filed a motion setting forth that such substitute answer had been filed under a misapprehension by respondent with respect to the nature and extent of the order to cease and desist which would be issued by the Commission, and requesting that such order be modified by striking certain portions thereof. On August 17, 1942,<sup>1</sup> the Commission, having considered such motion, entered its order vacating and setting aside such findings as to the facts and order to cease and desist, and directing that respondent's substitute answer be stricken from the record, with leave to respondent to file a new answer to the complaint. On September 7, 1942, respondent filed its new answer, and thereafter hearings were held before the trial examiner at which testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission and in opposition thereto by the attorney for the respondent. Thereafter, the matter again came on for hearing before the Commission on the complaint, the new answer of respondent, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and 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, Manhattan Brewing Co., is a corporation, organized under the laws of the State of Illinois, with its principal office and place of business located at 3901 Emerald Avenue, Chicago, Ill. Respondent is now and for a number of years last past has been engaged in the brewing of beer and ale, and in the sale and distribution of such products to wholesale and retail dealers, restaurants, taverns, and other purchasers.

PAR. 2. In the course and conduct of its business respondent causes and has caused its products, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States. Respondent maintains and has maintained a course of trade in its products in commerce among and between various States of the United States.

PAR. 3. Respondent is and at all times mentioned herein has been in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of beer and ale in commerce among and between various States of the United States.

<sup>1</sup> See 35 F. T. C. 828.

PAR. 4. Among the various brands of beer and ale brewed and sold by respondent is a beer designated by respondent as "Canadian Ace Brand Beer" and an ale designated by respondent as "Canadian Ace Brand Ale." The beer was placed on the market in 1939 and the ale in the early part of 1941. Respondent formerly sold another brand of beer designated by it as "Old Wisconsin Lager Brand Beer." This beer was placed on the market in September 1939, but was discontinued in the spring of 1941.

PAR. 5. Respondent advertises its Canadian Ace Brand beer and ale extensively, most of the advertising being what is known as point-of-sale advertising, that is, advertising supplied to the retail seller for display or distribution to the public. The various advertising media used include menu covers and sheets, table display cards, place cards and coasters, paper table napkins, leaflets, booklets, and large show window placards. Radio advertising has also been employed to a limited extent, and at least one advertisement was inserted in a trade journal having general circulation among beer distributors. In all of this advertising the word "Canadian" or the words "Canadian Ace" have been featured. These words are also featured in the labels on the bottles or other containers in which the beer is packaged and sold.

PAR. 6. The Commission finds that the use by respondent of the word "Canadian" as a part of the brand or trade name for these products constitutes a representation that the products are of Canadian origin, that is, that they are brewed in the Dominion of Canada and imported into the United States. Not only does this conclusion necessarily result from a consideration of the word itself, but it is supported also by the testimony of a number of witnesses at the hearings, including both persons in the trade and members of the purchasing public. Neither the beer nor the ale is in fact brewed in Canada, both being brewed by respondent at its place of business in Chicago along with various other products. The evidence further shows, and the Commission finds, that there is a preference on the part of a substantial portion of the purchasing public for beer and ale which is brewed in Canada over that brewed in the United States, this preference being found particularly in those States of the United States which lie nearest the Dominion of Canada.

PAR. 7. Early in 1940 respondent began placing on its labels the words "Made in the U. S. A.," these words appearing at the lower right-hand corner of the label and being imprinted in white on a red background. In the lower left-hand corner of the label there appear in small type the words "Brewed and Bottled by Manhattan Brewing Co., Chicago, Illinois." Also in some of its advertising material re-

respondent has inserted certain expressions such as "Made in the U. S. A.," and "An American beer in the best Canadian tradition." Some of the advertising also carries a picture of the bottle showing the current label.

It is urged by respondent that the use of these words on the labels and in the advertising, particularly the use on the labels of the words "Made in the U. S. A.," is sufficient to correct any erroneous impression which might otherwise be conveyed through the use of the word "Canadian," and that in consequence, there is no deception of the public. The Commission is of the opinion, however, and finds that these legends are inconsistent with and contradictory of the word "Canadian," and that therefore they are incapable of explaining or qualifying the word so as to prevent deception or confusion in the mind of a substantial portion of the public.

PAR. 8. The Commission finds further that the former use by respondent of the word "Wisconsin" as a part of the brand name for one of its products constituted a representation that the beer so designated was brewed in the State of Wisconsin. This beer was not in fact brewed in Wisconsin but was brewed by respondent at its place of business in Chicago. There is a preference on the part of a substantial portion of the purchasing public for beer which is brewed in Wisconsin over that having its origin in other States of the United States.

PAR. 9. In connection with the sale of its Canadian Ace Brand beer and ale, respondent has also made use of a crest simulating the British Royal coat of arms, such crest being displayed both in certain of respondent's advertising material and in the labels of the bottles. The use of this crest constituted a representation that respondent was a Royal warrant holder, enjoying the patronage of the British Royal Family or some member thereof, and was therefore entitled to display the British Royal coat of arms on its products. Respondent has not at any time been a Royal warrant holder and was not authorized to make use of such crest. There is a preference on the part of a substantial portion of the purchasing public for merchandise bearing the British Royal coat of arms. In 1942 respondent made material changes in the crest, with the result that the similarity between the crest and the British Royal coat of arms was eliminated.

PAR. 10. The Commission finds further that the use by respondent of the word "Canadian" and the word "Wisconsin" in designating and describing its products, and the use of the crest simulating the British Royal coat of arms, as herein set forth, has or has had the tendency and capacity to mislead and deceive a substantial portion of the pur-

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chasing public with respect to the origin of such products and with respect to respondent's business identity and status, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been diverted unfairly to the respondent from its competitors, among whom are many who do not use the practices and methods herein described.

## CONCLUSION

The 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, the answer of respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondent, Manhattan Brewing Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's beer and ale in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any brand or trade name containing the word "Canadian," or any simulation thereof, to designate, describe, or refer to any beer or ale which is not brewed in Canada; or otherwise representing, directly or by implication, that beer or ale which is not brewed in Canada is brewed in that country.

2. Using any brand or trade name containing the word "Wisconsin," or any simulation thereof, to designate, describe, or refer to any beer which is not brewed in the State of Wisconsin; or otherwise representing, directly or by implication, that beer which is not brewed in Wisconsin is brewed in that State.

3. Representing, directly or by implication, that beer or ale brewed in the United States is imported from any foreign country.



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4. Using any pictorial representation which simulates in appearance the British Royal coat of arms:

*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 respondent's motion to dismiss this proceeding be, and it hereby is, denied.

## IN THE MATTER OF

## MODERN MARKETING SERVICE, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (c) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY ACT OF JUNE 19, 1936

*Docket 3783. Complaint, May 6, 1939—Decision, Sept. 8, 1943*

Where a purchasing corporation, owned by wholesale grocers in various parts of the United States, and which, following its organization—

- (1) Secured from one of its stockholders exclusive license to the latter's "Red and White" brand and label and to enter into franchise agreements whereby jobber licensees were granted exclusive right to sell "Red and White" goods, were required to purchase annually specified amount thereof, because stockholders of the corporation, and entered into arrangements with said wholesalers' "Red and White" retail grocer customers, who were authorized and obligated to sell and feature the "Red and White" goods; and
- (2) Acted as purchasing agent for its said jobber licensees, keeping them currently advised as to market conditions, etc., and rendering valuable advertising services including advertisements in periodicals of national circulation, the supplying of newspaper matrix service, and point of sale advertising such as handbills, window display bulletins, etc., and also the supplying of its "store development" or "field" service directed to promoting affiliation of retail grocery stores with the jobber licensees and assisting latter with respect to appearance, etc., of the "Red and White" retail stores—
  - (a) Received and accepted from sellers brokerage or commission on orders thus placed through it for its said stockholder buyers and licensees, as well as on their orders independently placed; and transmitted it to them in dividends and services, as aforesaid; and
  - (b) Received and accepted, and transmitted in dividends or otherwise, annual payments of \$30,000 made to it by a corporation subsequently created by certain of its former officers and key employees and by it licensed exclusively to carry on aforesaid purchasing and other activities; and

Where, to avoid inhibitions of the Robinson-Patman Price Discrimination Act, a corporation organized following enactment thereof and officered and owned by four individuals, former officers and key employees of aforesaid buyer-owned corporation, in conjunction with the moving spirit in the original organization thereof, and licensed to carry on exclusively the activities above described (excepting only the "store development" or "field" service, which said buyer-owned corporation continued to carry on—

- (c) Received and accepted from sellers brokerage or commission on orders thereafter placed through it by the stockholder buyers and licensees of aforesaid buyer-owned corporation, as well as on orders placed by them directly with the sellers, and transmitted same to such stockholder-buyers and licensees in the various services above described, and in the aforesaid \$30,000 paid annually to said buyer-owned corporation in consideration of its exclusive license therefrom; and

Where six corporations, wholesale grocers and stockholders in said buyer-owned corporation, along with other wholesale grocer and jobber licensee stockholders therein—

- (d) Received and accepted in the form of dividends and services, as hereinbefore indicated, from said buyer-owned corporation and from its aforesaid successor in most of former's purchasing and servicing activities, brokerage or commission on orders placed by said buyers through said purchasing agencies, and independently brokerage or commission on their purchases from numerous manufacturers and packers throughout the country; and Where some seven corporations, engaged in the sale throughout the country of foodstuffs and allied products, and typical members of a large class of manufacturers and processors similarly engaged—
- (e) Transmitted and paid to said buyer-owned corporation and its said corporate successor, brokerage fees or commission both upon the orders placed as aforesaid through said corporations and upon orders placed directly by said stockholders:

*Held*, That such transmission and payment of brokerage fees or commissions, and receipt and acceptance thereof as hereinabove set forth, constituted violations of Subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

As respects the activities of a corporation organized, following enactment of the Robinson-Patman Act, by four former officers and key employees of a buyer-owned corporation which had theretofore received and transmitted, in the form of dividends and services, brokerage or commission upon orders of its wholesale grocers and jobbers licensee stockholders with numerous manufacturers and sellers throughout the country: the conclusion was inescapable that said second concern was the agent not of the seller-manufacturers and packers but of the former corporation and its buyer-stockholders, where it appeared that later or second concern continued to carry on the purchasing and service activities of the former under a contract licensing it exclusively to carry on such activities under the "Red and White" brand and label theretofore controlled by said buyer corporation, through which contract rights said buyer-owned corporation benefitted by the payment of an annual license fee of \$30,000 and valuable market and advertising services, and termination of which contract rights would deprive the latter or second corporation of its source of income and virtually end its existence as a going business concern; so that contention that latter represented nothing more than a private business venture on the part of the five stockholders and that their activities constituted a legitimate brokerage business representing only the sellers with whom it had brokerage agreements, could not be accepted, its activities being primarily in the interest of said buyer-owned corporation and benefits accruing to the sellers being of an incidental nature.

Before *Mr. John P. Bramhall*, trial examiner.

*Mr. John T. Haslett* and *Mr. John Darsey* for the Commission.

*Mr. T. Hardy Todd*, of Washington, D. C., and *Mr. John W. Ogren* and *Nicholson, Snyder, Chadwell & Fagerburg*, of Chicago, Ill., for Modern Marketing Service, Inc.

*Dudley, Stowe & Sawyer*, of Buffalo, N. Y., for Diamond Match Co.

*Stearns & McBride*, of Chicago, Ill., for Morton Salt Co.

*Mr. William D. McKenzie* and *Mr. James M. Best*, of Chicago, Ill., for Quaker Oats Co.

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*Mr. Lawrence B. Murdock*, of St. Louis, Mo., for Ralston-Purina Co.  
*Rosen, Kammer, Wolff & Farrar*, of New Orleans, La., for Wesson Oil & Snowdrift Sales Co.

*Fulbright, Crooker, Freeman & White*, of Washington, D. C., for Standard Rice Co.

*Dinsmore, Shohl, Sawyer & Dinsmore*, of Cincinnati, Ohio, for The Procter & Gamble Distributing Co.

*Mr. Seward R. Moore*, of Minneapolis, Minn., for Nash-Finch Co.  
*O'Brian, Hellings, Ulsh & Morey*, of Buffalo, N. Y., for S. M. Flickinger Co., Inc., Julliard Cockcroft Corp., Laurans Brothers, Inc., West Coast Grocery Co. and H. O. Wooten Grocery Co., and along with  
*Mr. T. Hardy Todd*, of Washington, D. C., for Red and White Corp.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c), section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Modern Marketing Service, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 222 West North Bank Drive, Chicago, Ill.

PAR. 2. Respondent, Red and White Corporation, 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 located at 222 West North Bank Drive, Chicago, Ill.

PAR. 3. Respondent, Diamond Match Company, is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 30 Church Street, New York, N. Y.

Respondent, Morton Salt Co., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 208 West Washington Street, Chicago, Ill.

Respondent, Quaker Oats Co., is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 141 West Jackson Street, Chicago, Ill.

Respondent, Ralston-Purina Co., is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with

its principal office and place of business located at 835 South Eighth Street, St. Louis, Mo.

Respondent, Wesson Oil and Snowdrift Sales Co., is a wholly owned subsidiary of the Wesson Oil & Snowdrift Co., Inc., a corporation, organized and existing under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 1701 Canal Bank Building, New Orleans, La.

Respondent, Standard Rice Co., is a corporation, organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business located at Butler and Spring Streets, Houston, Tex.

Respondent, Procter & Gamble 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 located at Gwynen Building, Cincinnati, Ohio.

The respondents in this paragraph named are hereinafter designated and referred to as "seller respondents." Said seller respondents and each of them are and since June 19, 1936, have been, engaged in the business of selling commodities, particularly foodstuffs, groceries, and allied products, to numerous buyers, including the buyer respondents hereinafter set out. Said seller respondents are fairly typical and representative members of a large group or class of manufacturers, processors and producers engaged in the common practice of selling a substantial portion of their commodities to buyers who purchase through respondent, Modern Marketing Service, Inc., as intermediary for buyers. Said group or class of sellers is comprised of a large number of such manufacturers, processors and producers, too numerous to be individually named herein as respondents or to be brought before the Commission in this proceeding without manifest inconvenience and delay.

PAR. 4. Respondent, S. M. Flickinger Co., 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 located at Bailey Avenue and Clinton Street, Buffalo, N. Y.

Respondent, Julliard Cockcroft Corporation, 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 170 West Lake Avenue, Watsonville, Calif.

Respondent, Laurans Brothers, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business at 5 Pearl Street, New Bedford, Mass.

Respondent, West Coast Grocery Co., is a corporation, organized and existing under and by virtue of the laws of the State of Washing-

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ton, with its principal office and place of business located at 1732 Pacific Avenue, Tacoma, Wash.

Respondent, H. O. Wooten Grocery Co., is a corporation, organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business located at the corner of First and Walnut Streets, Abilene, Tex.

Respondent, Nash-Finch Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 430 Oak Grove, Minneapolis, Minn.

The respondents in this paragraph named are hereinafter designated and referred to as "buyer respondents." Each of the said buyer respondents is engaged in the wholesale grocery business and is a stockholder of the respondent, Red and White Corporation. Said buyer respondents are named as parties respondent both individually and as representative of a group or class of a large number of wholesale grocery concerns, each of whom is likewise a stockholder in the Red and White Corporation.

PAR. 5. Respondent, Modern Marketing Service, Inc., is now and since the time of its incorporation and organization on or about October 1, 1936, has been engaged in the business of providing purchasing and other services for the buyer respondents named in paragraph 4 hereof.

In the course and conduct of its business, respondent, Modern Marketing Service, Inc., receives orders from the buyer respondents to purchase commodities for the buyer respondents named herein and transmits such orders as agent for said buyer respondents to the seller respondents and other sellers. As a result of the transmission of said orders by said buyers to respondent, Modern Marketing Service, Inc., the execution of same by said respondent, Modern Marketing Service, Inc., for and on behalf of said buyers, and the acceptance of said orders by said seller respondents and other sellers, goods, wares and merchandise, particularly foodstuffs, are by each of the said seller respondents and other sellers shipped from the State in which such merchandise is located at the time of sale into and through the various other States of the United States, directly, to each of said buyer respondents.

In the course of the buying and selling transactions hereinabove referred to resulting in the delivery of products from said seller respondents to the buyer respondents, said seller respondents, since June 19, 1936, have transmitted, paid and delivered, and do transmit, pay and deliver to the respondent, Modern Marketing Service, Inc., so-called brokerage fees or commissions, the same being percentages of the quoted sales prices agreed upon by the said seller respondents and the

respondent, Modern Marketing Service, Inc. Respondent, Modern Marketing Service, Inc., since June 19, 1936, has received and accepted and is receiving and accepting such so-called brokerage fees or commissions upon the purchases of the buyer respondents.

Approximately 98 percent of the gross income of respondent, Modern Marketing Service, Inc., is derived from so-called brokerage fees and commissions paid by the seller respondents and other sellers to the respondent, Modern Marketing Service, Inc., upon the purchases of the buyer respondents and other buyers in the manner and form hereinabove described.

Said respondent, Modern Marketing Service, Inc., was organized and incorporated by former officers of the respondent, Red and White Corporation, who resigned their positions as such officers with the respondent, Red and White Corporation, to form the respondent, Modern Marketing Service, Inc., for the purpose of having Modern Marketing Service, Inc., to act as the purchasing agent for the buyer respondents.

PAR. 6. Respondent, Red and White Corporation, was organized on or about December 27, 1927, and engaged in the business of providing purchasing and other services for the buyer respondents until October 1, 1936. Respondent, Red and White Corporation, in addition to providing the aforesaid services, furnished store front services through the buyer respondents for various customers of such buyer respondents as hereinafter set out.

In the course and conduct of its business, as aforesaid, prior to October 1, 1936, said respondent, Red and White Corporation, received orders to purchase commodities, particularly groceries and foodstuffs, from its various stockholders, consisting of wholesale grocery concerns, as aforesaid, a representative number of which are the buyer respondents, and transmitted such orders as the agent of said buyer respondents to the aforesaid seller respondents. As a result of such transmission of said orders, by such buyer respondents to respondent, Red and White Corporation, the execution of same by said respondent, Red and White Corporation, for and on behalf of said buyer respondents, and the acceptance of said orders by said seller respondents and other sellers, goods, wares and merchandise, particularly foodstuffs, were, by the above-named seller respondents, and other sellers, shipped from the State in which such merchandise was located at the time of sale, into and through the various States of the United States, directly, to said buyer respondents in the States of their respective locations as aforesaid.

The service furnished by the respondent, Red and White Corporation, other than the purchasing service hereinbefore described, are as follows:

The respondent, Red and White Corporation, furnished to the buyer respondents a service which consisted of keeping its stockholders advised, by bulletins and otherwise, of market conditions and prices of commodities offered for sale by the seller respondents and other sellers.

Respondent, Red and White Corporation, furnished to the buyer respondents a service which consisted of the preparation and distribution by the respondent, Red and White Corporation, of window display banners, placards, a matrix service for newspapers, weekly hand-bills under the title of "News Flashes" and also a monthly magazine published under the title of "Hy-Lites."

In addition to the above-described services, said respondent, Red and White Corporation pursued a practice and policy of serving the buyer respondents by attempting to stimulate and increase the sales of said buyer respondents by causing to be organized various local groups of retail grocery stores in approximately 35 States of the United States who became affiliated with and who cooperated with said respondent, Red and White Corporation; by using respondent's name "Red and White" on their stores in connection with the sale and distribution of foodstuffs and other commodities purchased from buyer respondents; by using certain specified services furnished by the respondent, Red and White Corporation and by instructing and assisting the said retailers in the use of said combined services, uniform display posters, suggested store arrangements and various sundry centralized sales plans and various other ways.

The cost of the services, as performed by the respondent, Red and White Corporation prior to October 1, 1936, in the manner hereinabove described, was defrayed from funds derived from so-called brokerage fees paid by the seller respondents and other sellers upon purchases of the buyer respondents.

PAR. 7. On or about October 1, 1936, said respondent, Red and White Corporation entered into a contract with the respondent, Modern Marketing Service, Inc., whereby the brands, trade marks and labels owned or controlled by the respondent, Red and White Corporation were leased to the respondent, Modern Marketing Service, Inc. Pertinent provisions of said contract are as follows:

#### LICENSE AGREEMENT

THIS AGREEMENT made in duplicate October 1, 1936, by and between RED & WHITE CORPORATION, a corporation organized and existing under and by virtue of the laws of the state of New York, and having its principal office in the city of Buffalo, New York, (hereinafter referred to as the Licensor), party of the first part, and MODERN MARKETING SERVICE, INC., a corporation organized and existing under and by virtue of the laws of the state of Illinois



and having its principal office in the city of Chicago, Illinois, (hereinafter referred to as the Licensee) party of the second part.

WITNESSETH, That

WHEREAS, the Licensor owns or controls as Licensee various brands, trade names and trade marks known and used in the grocery business throughout the United States, and the good will associated therewith, which brands, trade names and trade marks, together with specification of the Licensor's ownership, or control thereof, are set forth in Schedule A annexed hereto; and

WHEREAS, said ownership and control of said brands, trade names and trade marks are subject to various existing contracts between the Licensor and its stockholders and/or others; and

WHEREAS, the licensee is engaged in the general grocery brokerage business throughout the United States and desires the right, privilege and authority to use and deal in said brands, trade names and trade marks subject to said existing contract;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sum of One Dollar (\$1.00) by each party to the other in hand paid, receipt whereof is hereby acknowledged, and other good and valuable considerations, the parties hereto hereby mutually covenant and agree as follows:

1. The Licensee for the period of one year from the date hereof shall have the exclusive right, privilege and authority throughout the United States to use and deal in, with jobbers or wholesalers, the brands, trade names and trade marks which are owned or controlled by the Licensor as aforesaid and which are set forth in a certain schedule marked Schedule A, annexed hereto and made a part hereof, and to sublicense manufacturers to pack, ship and sell to jobbers or wholesalers goods and merchandise bearing said brands, trade names and trade marks, subject, however, to any and all existing contracts between the Licensor and its stockholders and/or others relative to said brands, trade names and trade marks.

2. In consideration thereof, the Licensee has paid to the Licensor the sum of Thirty Thousand Dollars (\$30,000.00), receipt whereof is hereby acknowledged.

3. While this agreement shall be in effect, the Licensor shall not license any other person, firm, association or corporation similarly to use or deal in said brands, trade names and trade marks, or similarly to sublicense thereunder; provided, however, that nothing in this agreement shall prohibit the Licensor from selling its capital stock or from acquiring new stockholders, and all benefits, reservations, rights and privileges inuring to the benefit of or belonging to the present stockholders of the Licensor, in or by the terms of this agreement, shall also at all times inure to the benefit of and belong to such new stockholders.

4. At any time, for distribution only in the territories allotted to them severally in their respective existing contracts with Red & White Corporation:

(a) Stockholders of the Licensor may affix said brands, trade names and trade marks to unbranded seasonal canned goods purchased by them from or through sources other than the Licensee, and to goods manufactured by themselves, subject, however, to all terms, conditions and limitations contained in said existing contracts; and

(b) H. A. Marr Grocery Company, one of the stockholders of the Licensor, may also affix said brands, trade names and trade marks to unbranded manufactured goods purchased by it from or through sources other than the Licensee.

5. The Licensee, at all times, shall furnish labels bearing said brands, trade names and trade marks to stockholders of the Licensor upon their request, in

accordance with paragraph 4 hereinabove, and at cost, plus a handling charge of 15%.

6. The Licensee shall require that said brands, trade names or trade marks be used only on products of equal quality to those specified in Schedule A annexed hereto.

7. The license herein granted shall extend for the period of one year from October 1, 1936, and shall be renewed for successive yearly periods upon terms and conditions to be agreed upon mutually, unless either party shall, before September 1 of any year, give written notice to the President of the other party of its intention to terminate the license at the end of such yearly period.

Pursuant to its obligation under the hereinabove described lease the respondent, Modern Marketing Service, Inc., has performed the same services for and on behalf of the buyer respondents which were performed for the buyer respondents by the respondent, Red and White Corporation, prior to October 1, except as follows:

Respondent, Red and White Corporation, since October 1, 1936, has continued to perform the store front services for the buyer respondents which it performed for said buyer respondents prior to October 1, 1936.

The cost of the store front services as performed by the respondent, Red and White Corporation subsequent to October 1, 1936, is defrayed from the \$30,000 income received by the respondent, Red and White Corporation pursuant to the aforesaid leasing agreement which \$30,000 has its origin in the so-called brokerage fees and commissions received by the respondent, Modern Marketing Service, Inc., upon purchases of the buyer respondents.

The cost of the services, as hereinbefore described, as performed by the respondent, Modern Marketing Service, Inc., pursuant to its obligation under the hereinabove described lease, is now and has been paid from funds derived from so-called brokerage fees paid by the seller respondents and other sellers to the respondent, Modern Marketing Service, Inc., upon the purchases of the buyer respondents.

PAR. 8. Upon the execution of the aforesaid contract, said respondent, Modern Marketing Service, Inc., took over the existing lease for the premises occupied by Red and White Corporation and notified all seller respondents who had previously dealt with the respondent, Red and White Corporation that said Modern Marketing Service, Inc., had become the lessee of the brands, trade marks and labels formerly owned and controlled by the respondent, Red and White Corporation and desired to be appointed as broker for such sellers' products. When directed or requested by the respondent, Modern Marketing Service, Inc., such sellers caused products purchased by the buyer respondents through the respondent, Modern Marketing Service, Inc., as inter-

mediary for said buyer respondents, to be labeled with the brands and trade marks of which Modern Marketing Service, Inc., is the lessee.

PAR. 9. In all of the buying and selling transactions hereinabove referred to, the so-called brokerage fees or commissions are paid and transmitted by the seller respondents and other sellers to and accepted and received by the respondent, Modern Marketing Service, Inc., upon the purchases of the buyer respondents, while the said respondent, Modern Marketing Service, Inc., is acting in fact for and on behalf of buyer respondents, for which said so-called brokerage fees or commissions no services whatsoever have been rendered or are now being rendered in connection with such purchases for or to said seller respondents and other sellers by respondent, Modern Marketing Service, Inc.

The so-called brokerage fees and commissions paid by the seller respondents and other sellers to respondent, Modern Marketing Service, Inc., as intermediary, upon the purchases of the buyer respondents are transmitted to and accepted and received by the buyer respondents in the form of services performed by the respondents, Modern Marketing Service, Inc., and Red and White Corporation for and on behalf of said buyer respondents.

PAR. 10. The transmission and payment of said so-called brokerage fees or commissions by the seller respondents and others to the respondent, Modern Marketing Service, Inc., upon the purchases of buyer respondents, and the receipt and acceptance thereof by the respondents, Modern Marketing Service, Inc., Red and White Corporation and the buyer respondents, in the manner and under the circumstances hereinabove set forth, is in violation of the provisions of section 2, subsection (c) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by section 1 of the act of Congress entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on May 6, 1939, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with the violation of the provisions of paragraph (c) of section 2 of the

said act, as amended. After the issuance of the complaint and the filing by respondents of their answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by the attorneys for the Commission and in opposition thereto by the attorneys for certain of the respondents, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answers, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission, having duly considered the matter and being now 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, Modern Marketing Service, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 222 West North Bank Drive, Chicago, Ill.

PAR. 2. Respondent, Red and White Corporation, 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 located at 180 Niagara Frontier Food Terminal, Buffalo, N. Y.

PAR. 3. Respondent, The Diamond Match Co., (referred to in the complaint as Diamond Match Co.), is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 30 Church Street, New York, N. Y.

Respondent, Morton Salt Co., is a corporation, organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 208 West Washington Street, Chicago, Ill.

Respondent, The Quaker Oats Co. (referred to in the complaint as Quaker Oats Co.), is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 141 West Jackson Boulevard, Chicago, Ill.

Respondent, Ralston Purina Co. (referred to in the complaint as Ralston-Purina Co.), is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 835 South Eighth Street, St. Louis, Mo.

Respondent, Wesson Oil & Snowdrift Sales Co. (referred to in the complaint as Wesson Oil and Snowdrift Sales Co.), is a corporation, organized and existing under and by virtue of the laws of the State of New Jersey, and is a wholly owned subsidiary of the Wesson Oil & Snowdrift Co., Inc (referred to in the complaint as Wesson Oil and Snowdrift Co., Inc.), a corporation, organized and existing under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 1701 Canal Bank Building, New Orleans, La.

Respondent, Standard Rice Co., Inc. (referred to in the complaint as Standard Rice Co.), is a corporation, organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business located at Butler and Spring Streets, Houston, Tex.

Respondent, The Procter & Gamble Distributing Co. (referred to in the complaint as Procter & Gamble), 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 located in the Gwynne Building, Cincinnati, Ohio.

The respondents named in this paragraph are hereinafter referred to as the "seller respondents." They are now and since June 19, 1936, have been engaged in the business of selling various commodities, particularly foodstuffs and allied products, to numerous buyers, including the buyer respondents hereinafter designated. Such seller respondents are fairly typical and representative members of a large group or class of manufacturers, processors, and producers engaged in selling a substantial portion of their products to the buyer respondents. Such group or class of sellers comprises a large number of such manufacturers, processors, and producers, too numerous to be individually joined in this proceeding as respondents.

PAR. 4. Respondent, S. M. Flickinger 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 located at Bailey Avenue and Clinton Street, Buffalo, N. Y.

Respondent, Julliard Cockcroft Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business located at 170 West Lake Avenue, Watsonville, Calif.

Respondent, Laurans Brothers, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 5 Pearl Street, New Bedford, Mass.

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Respondent, West Coast Grocery Co., 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 1732 Pacific Avenue, Tacoma, Wash.

Respondent, H. O. Wooten Grocery Co., is a corporation, organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business located at the corner of First and Walnut Streets, Abilene, Tex.

Respondent, Nash-Finch Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 430 Oak Grove Street, Minneapolis, Minn.

The respondents named in this paragraph are hereinafter referred to as the "buyer respondents." Each of these buyer respondents is engaged in the wholesale grocery business and is a stockholder of respondent, Red and White Corporation. Such buyer respondents are fairly typical and representative members of a large group or class of wholesale grocery concerns, each of whom is a stockholder of respondent, Red and White Corporation.

PAR. 5. In the course and conduct of their business the seller respondents cause and since June 19, 1936, have caused their respective products, when sold to the buyer respondents as hereinafter set forth, to be transported from various States of the United States to such purchasers at their respective locations in various States of the United States other than those in which such shipments originate. There is and since June 19, 1936, has been a current of trade between the seller respondents and the buyer respondents in such products in commerce among and between the various States of the United States.

PAR. 6. Respondent, Red and White Corporation, was organized in December 1927, by a group of wholesale grocers. Originally the authorized capital of the Corporation was \$50,000, representing 500 shares of a par value of \$100 each, but subsequently the capital was increased to \$100,000, representing 1,000 shares of the same par value. The entire capital stock of the Corporation has at all times been owned by wholesale grocers exclusively. There are now some 40-odd stockholders, among whom are the buyer respondents named in this proceeding. These wholesale grocery concerns are located at various points throughout the United States.

PAR. 7. The principal incorporator of the Corporation was S. M. Flickinger of Buffalo, N. Y., who had for many years been engaged in the wholesale grocery business in Buffalo and whose business had enjoyed marked success. Mr. Flickinger's business concern was the S. M. Flickinger Company, Inc., one of the buyer respondents, of which

Mr. Flickinger was president. In connection with and as a part of the operation of his business, Mr. Flickinger had originated and developed a private brand of foodstuffs and allied products known as the "Red and White" brand. These commodities were obtained by the Flickinger Company from various manufacturers and packers, but were always packed and marketed under the Red and White label.

To further the sale of Red and White goods, the Flickinger Co. entered into arrangements with retail grocers under which such retailers became Red and White stores. These retail grocery stores were not owned by the Flickinger Company but they were required to meet and maintain certain standards with respect to appearance, service, etc. The retailer was not required to deal in Red and White goods exclusively but he was expected to place a sign on the front of his store indicating that it was a Red and White store, and was also expected to place sales emphasis on Red and White products.

PAR. 8. Upon the organization of the Red and White Corporation in 1927, Mr. Flickinger became its president, in which office he continued until his death in 1939. Immediately upon its organization the Corporation proceeded to obtain from the Flickinger Co. an exclusive license for 99 years to the Red and White brand, and to enter into license or franchise agreements with wholesale grocers or jobbers under which such jobbers were granted the exclusive right to sell Red and White products within designated territories. These jobbers purchased capital stock in the Red and White Corporation, usually in the amount of 15 shares each. One of the conditions of the license agreement was that the jobber was required to purchase annually a specified minimum amount of Red and White goods, such purchases to be made through Red and White Corporation. Upon obtaining such license agreements the respective jobbers proceeded to enter into arrangements with retail grocery stores under the plan described above.

PAR. 9. The primary function of Red and White Corporation was that of a purchasing agent for the jobber licensees. It entered into working agreements with numerous manufacturers and packers throughout the United States, including the seller respondents named herein, under which such manufacturers and packers agreed to pack commodities under Red and White labels and to pay to Red and White Corporation brokerage at specified rates upon all sales to the Red and White jobbers. The Red and White jobbers sent their orders to Red and White Corporation, and the corporation in turn transmitted the orders to the sellers. In numerous instances, orders were sent by the jobbers to Red and White Corporation in which no seller was speci-

fied. In such cases, Red and White Corporation inserted the name of the seller to which it desired the order to go, and sent the order on to such seller. Occasionally, orders were placed with the sellers by the jobbers direct instead of through Red and White Corporation, but the corporation received brokerage from the seller on these orders in the same manner as on purchases made through the Corporation. All shipments were made direct to the jobber, and all billings and settlements therefor were likewise handled between seller and jobber direct. During the early part of 1936, Red and White Corporation had working agreements of this kind with some 400 sellers located in some 31 States of the United States.

PAR. 10. In connection with its purchasing activities, Red and White Corporation provided its jobber licensees with market service, keeping them currently advised as to market conditions, prices, etc. This information was usually supplied through bulletins and market letters. When a seller with whom Red and White Corporation had a working agreement revised its prices, the change was promptly made known by Red and White Corporation to the jobbers.

PAR. 11. Red and White Corporation also rendered valuable advertising services to its jobber licensees. These services included, among others, the insertion of advertisements in periodicals having national circulation; the supplying of a newspaper matrix service to the jobbers; and the preparation and issuance of illustrated publications (tabloids), handbills, window display bulletins and cards, as well as window streamers and banners, and cards for display on the counters of the Red and White retail stores. Some of this advertising material was forwarded by Red and White Corporation to the jobber licensees and some of it was, through arrangement with the jobbers, sent direct to the Red and White retail stores. All of the advertising was for the purpose of publicizing goods bearing the Red and White label and obtaining increased consumer acceptance of such goods.

The advertising was paid for in two ways, first through a charge made by Red and White Corporation against the jobber licensees, this charge being at the rate of \$1 for each Red and White retail store with which the jobber licensee dealt. Some of the jobbers appear to have borne the entire charge themselves while others obtained reimbursement for at least a portion of the amount from their affiliated stores. The second way in which the advertising was paid for was through the allocation by Red and White Corporation of cash allowances to its jobbers to be used for local newspaper advertising.

PAR. 12. By far the major portion of Red and White Corporation's income consisted of brokerage received by it on purchases made by its jobber licensees. For the fiscal year ending November 30, 1935,



the total revenue of the Corporation was \$363,209.81, of which \$327,966.03 was brokerage. The advertising allowance paid over to the jobber licensees during this period was \$253,901.06. For the fiscal year ending November 30, 1936, the Corporation's total revenue was \$443,800.37, of which \$340,092.94 was brokerage. During this period the amount paid over by the corporation to its jobber licensees for advertising purposes was the same as the amount of brokerage received, that is, \$340,092.94. The corporation customarily paid to its stockholders (jobber licensees) an annual dividend of 5 percent.

PAR. 13. A further activity of Red and White Corporation was known as its "store development" or "field" service. This consisted of promoting the affiliation of retail grocery stores with the jobber licensees, and the giving of assistance and advice to jobbers with respect to the appearance, arrangement, equipment, etc., of Red and White retail stores, and with respect to bookkeeping and credit systems for the retail stores. The cost of this service came out of the corporation's general fund.

PAR. 14. Upon the passage of the Robinson-Patman Act, which became effective on June 19, 1936, it became evident to the officers and directors of the Red and White Corporation that the corporation, being buyer owned, could not continue to collect brokerage from sellers on purchases made by the stockholders of the corporation. The secretary-treasurer and general manager of the corporation was Mr. Asa Strause, and a number of discussions or conferences were held between Mr. Strause and Mr. Flickinger, the president of the corporation, in an effort to determine what action might be taken. Mr. Strause had conceived the idea that a new corporation might be organized by himself and certain other individuals connected with Red and White Corporation, and that the new corporation might take over the Red and White brands under a licensing agreement. This proposal met with Mr. Flickinger's approval and, after further conferences between the two and between Mr. Flickinger and the directors of Red and White Corporation, an agreement was consummated.

PAR. 15. Pursuant to this agreement, respondent, Modern Marketing Service, Inc., was organized in September 1936, the stockholders being Mr. Strause, Mr. Leo T. Bushey, Mr. Herbert T. Webb, Mr. H. J. Wright, and Mr. George O. Morea, all of whom were connected with Red and White Corporation. The new corporation was capitalized at \$10,000, representing 100 shares of the par value of \$100 each. Of these 100 shares, Mr. Strause purchased and still owns 51 shares, Mr. Bushey 13 shares, Mr. Webb 12 shares, Mr. Wright 12 shares, and Mr. Morea 12 shares.

PAR. 16. Upon the formation of the new corporation, all of these individuals resigned from their positions with Red and White Cor-

poration. Mr. Strause was elected president of the new company. Mr. Bushey had been connected with Red and White Corporation in the capacity of a "merchandise man," and he became secretary-treasurer of the new company and divisional manager of its central zone or division. Mr. Webb had been serving as advertising manager of Red and White Corporation, and was employed by the new company in the same capacity. He was also elected vice president of the new company. Mr. Wright had been serving as manager of the San Francisco branch of Red and White Corporation, and was designated manager of the same branch of Modern Marketing Service, Inc. Mr. Morea had been manager of the Buffalo branch office of Red and White Corporation, and was made manager of the same branch of Modern Marketing Service, Inc. He was also made vice president of the new corporation.

PAR. 17. Arrangements were worked out whereby Modern Marketing Service, Inc., took over the office space in Chicago which had been occupied by Red and White Corporation, the latter moving to smaller offices in the same building. The new corporation also took over some 20 of the 24 employees of Red and White Corporation in Chicago, and purchased most of the office furniture and equipment. Similar arrangements were made with respect to personnel, office space, and furniture in the Buffalo and San Francisco offices of Red and White Corporation.

PAR. 18. On October 1, 1936, Red and White Corporation and Modern Marketing Service, Inc., entered into a written agreement whereby the brands, trade-marks, and labels owned or controlled by Red and White Corporation were leased to Modern Marketing Service, Inc. In addition to the Red and White brands, a number of other brands owned or controlled by Red and White Corporation were included in the agreement, such as "Blue and White," "Green and White," "Flavor-Jell," "Servus," etc., but for convenience, all of the brands covered by the agreement will be referred to as "Red and White brands." The pertinent provisions of the agreement were as follows:

#### LICENSE AGREEMENT

THIS AGREEMENT made in duplicate October 1, 1936, by and between RED & WHITE CORPORATION, a corporation organized and existing under and by virtue of the laws of the State of New York, and having its principal office in the city of Buffalo, New York, (hereinafter referred to as the Licensor), party of the first part, and MODERN MARKETING SERVICE, INC., a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its principal office in the city of Chicago, Illinois, (hereinafter referred to as the Licensee), party of the second part.

WITNESSETH, That

## Findings

WHEREAS, the Licensor owns or controls as Licensee various brands, trade names and trade marks known and used in the grocery business throughout the United States, and the good will associated therewith, which brands, trade names and trade marks, together with specification of the Licensor's ownership or control thereof, are set forth in Schedule A annexed hereto; and

WHEREAS, said ownership and control of said brands, trade names and trade marks are subject to various existing contracts between the Licensor and its stockholders and/or others; and

WHEREAS, the Licensee is engaged in the general grocery brokerage business throughout the United States and desires the right, privilege and authority to use and deal in said brands, trade names and trade marks subject to said existing contract;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sum of One Dollar (\$1.00) by each party to the other in hand paid, receipt whereof is hereby acknowledged, and other good and valuable considerations, the parties hereto hereby mutually covenant and agree as follows:

1. The Licensee for the period of one year from the date hereof shall have the exclusive right, privilege and authority throughout the United States to use and deal in, with jobbers or wholesalers, the brands, trade names and trade marks which are owned or controlled by the Licensor as aforesaid and which are set forth in a certain schedule marked Schedule A, annexed hereto and made a part hereof, and to sublicense manufacturers to pack, ship and sell to jobbers or wholesalers goods and merchandise bearing said brands, trade names and trade marks, subject, however, to any and all existing contracts between the Licensor and its stockholders and/or others relative to said brands, trade names and trade marks.

2. In consideration thereof, the Licensee has paid to the Licensor the sum of Thirty Thousand Dollars (\$30,000.00) receipt whereof is hereby acknowledged.

3. While this agreement shall be in effect, the Licensor shall not license any other person, firm, association or corporation similarly to use or deal in said brands, trade names and trade marks, or similarly to sublicense thereunder; provided, however, that nothing in this agreement shall prohibit the Licensor from selling its capital stock or from acquiring new stockholders, and all benefits, reservations, rights and privileges inuring to the benefit of or belonging to the present stockholders of the Licensor, in or by the terms of this agreement, shall also at all times inure to the benefit of and belong to such new stockholders.

4. At any time, for distribution only in the territories allotted to them severally in their respective existing contracts with Red & White Corporation:

(a) Stockholders of the Licensor may affix said brands, trade names and trade marks to unbranded seasonal canned goods purchased by them from or through sources other than the Licensee, and to goods manufactured by themselves, subject, however, to all terms, conditions and limitations contained in said existing contracts; and

(b) H. A. Marr Grocery Company, one of the stockholders of the Licensor, may also affix said brands, trade names and trade marks to unbranded manufactured goods purchased by it from or through sources other than the Licensee.

5. The Licensee, at all times, shall furnish labels bearing said brands, trade names and trade marks to stockholders of the Licensor upon their request, in accordance with paragraph 4 hereinabove, and at cost, plus a handling charge of 15%.

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6. The Licensee shall require that said brands, trade names or trade marks be used only on products of equal quality to those specified in Schedule A annexed hereto.

7. The License herein granted shall extend for the period of one year from October 1, 1936, and shall be renewed for successive yearly periods upon terms and conditions to be agreed upon mutually, unless either party shall before September 1 of any year, give written notice to the President of the other party of its intention to terminate the license at the end of such yearly period. (Commission's Exhibit No. 36.)

PAR. 19. On the same date, October 1, 1936, Modern Marketing Service, Inc., also entered into a similar agreement with a corporation known as Kitchen Products, Inc., a wholly owned subsidiary of Red and White Corporation, under which certain brands owned or controlled by Kitchen Products, Inc., were leased to Modern Marketing Service, Inc. The term "Red and White brands," as used herein, includes these brands covered by this agreement as well as those covered by the agreement between Modern Marketing Service, Inc., and Red and White Corporation.

PAR. 20. These license agreements originally covered a period of only 1 year after October 1, 1936. On October 1, 1937, however, they were renewed for a period of three years; and since their expiration on October 1, 1940, have been renewed from year to year and are still in effect. Modern Marketing Service, Inc., has paid to Red and White Corporation each year the consideration of \$30,000 stipulated in the agreement with Red and White Corporation, which consideration covers both agreements.

PAR. 21. Upon the execution of the license agreements, Modern Marketing Service, Inc., advised the manufacturers with whom Red and White Corporation had working agreements that it had acquired the brand names and labels of Red and White Corporation. Working agreements similar to those which had existed between Red and White Corporation and the manufacturers were entered into between Modern Marketing Service, Inc., and the manufacturers, including the seller respondents, under which the manufacturers agreed to pay to Modern Marketing Service, Inc., brokerage at specified rates upon all purchases made by the jobber licensees of Red and White Corporation. Since about October 1, 1936, Modern Marketing Service, Inc., has rendered for the jobber licensees substantially the same purchasing service as was formerly rendered for them by Red and White Corporation. The jobbers, including the buyer respondents, have placed their orders through Modern Marketing Service, Inc., and Modern Marketing Service, Inc., has received brokerage from the sellers on all such orders.

PAR. 22. The market service formerly rendered the Red and White jobbers by Red and White Corporation has been carried on by Modern

Marketing Service, Inc., in substantially the same manner. Likewise, the advertising service formerly rendered the jobbers by Red and White Corporation has been continued by Modern Marketing Service, Inc., in substantially the same manner and through the same advertising manager. In addition to the other advertising services rendered by it to the jobbers, Modern Marketing Service, Inc., has made allocations of funds to the Red and White jobbers for use in local or point-of-sale advertising, including local newspaper advertising. This portion of the advertising program was begun in the spring of 1937 and continued until about May 1939, when it was discontinued. It appears that the reason for discontinuing this part of the program was that Modern Marketing Service, Inc., felt it necessary to conserve its resources for the defense of the present proceeding.

During the period beginning December 1, 1936, and ending November 30, 1937, the amount of these allowances paid out by Modern Marketing Service, Inc., to the jobbers to cover point-of-sale advertising was \$135,712.85. During the next year, from December 1, 1937, to November 30, 1938, the amount of the allowances was \$110,653.94. For the period beginning December 1, 1938, and ending in May, 1939 (at which time the allowances were discontinued), the amount was \$53,175.26.

PAR. 23. Practically the only service rendered by Red and White Corporation to its jobber licensees which has not been assumed by Modern Marketing Service, Inc., is that known as store development or field service, outlined in paragraph 13 hereof. Red and White Corporation has continued to perform this service for the jobber, the cost thereof being borne out of the corporation's general fund, a large part of which is represented by the annual license fee of \$30,000 paid to the corporation by Modern Marketing Service, Inc.

PAR. 24. The cost of the market and advertising services rendered the jobber licensees by Modern Marketing Service, Inc., as well as the annual license fee of \$30,000 paid Red and White Corporation, has been borne out of the corporation's general fund, the major portion of which has represented brokerage received by the corporation from sellers on purchases of the jobber licensees. For the period beginning December 1, 1936, and ending November 30, 1937, Modern Marketing Service, Inc., had a total income of \$432,969.12, of which 74.06 percent or \$320,658.56 was brokerage. For the period beginning December 1, 1937, and ending November 30, 1938, the corporation's gross income was \$426,756.46, of which 70.40 percent or \$299,810.11 represented brokerage. For the period beginning December 1, 1938, and ending November 30, 1939, the gross income of the corporation was \$321,967.76, of which 94 percent or \$302,219.29 represented brokerage.

PAR. 25. It is urged by Modern Marketing Service, Inc., that the corporation is in no way subject to the direction or control of Red and White Corporation or its jobber licensees, that the organization and operation of Modern Marketing Service, Inc., represent nothing more than a private business venture on the part of Mr. Strause and the four other individuals who own the corporation's entire capital stock, that upon the passage of the Robinson-Patman Act these five individuals saw an opportunity to go into business for themselves and capitalize upon their connection with Red and White Corporation and their knowledge of the Red and White plan of merchandising, that the activities of the corporation constitute a legitimate brokerage business, and that the corporation represents only the sellers with whom it has brokerage agreements and not Red and White Corporation or the Red and White jobber licensees. In support of this position Modern Marketing Service, Inc., points out, among other things, a number of instances disclosed by the record in which the corporation rendered certain services to sellers, such as advertising and placing particular sales emphasis on certain commodities at the request of the sellers of such commodities.

The Commission is of the opinion, however, that viewing the record as a whole, the conclusion is inescapable that Modern Marketing Service, Inc., is the agent not of the manufacturers and packers, but of Red and White Corporation and its stockholders, who receive, through the payment of the annual license fee of \$30,000 and through substantial and valuable market and advertising services, a large part of the brokerage fees and commissions paid to Modern Marketing Service, Inc., by the sellers. The circumstances under which Modern Marketing Service, Inc., was organized and entered upon its activities, the close similarity between its plan or method of operation and that of Red and White Corporation, the assumption by it almost in toto of the various functions of Red and White Corporation, and the license agreement between Red and White Corporation and Modern Marketing Service, Inc., all negative the theory that Modern Marketing Service, Inc., is the agent of the sellers and is not subject to the control of Red and White Corporation and its stockholders, the jobber licensees.

While some of the activities of Modern Marketing Service, Inc., have undoubtedly resulted in certain benefits to the sellers, the activities of the corporation, considered in their entirety, are primarily in the interest of Red and White Corporation and the jobber licensees, and any benefits accruing to the sellers are of an incidental nature.

Of paramount importance, in the opinion of the Commission, is the license agreement between Modern Marketing Service, Inc., and Red and White Corporation, under which, as heretofore shown, Modern

Marketing Service, Inc., is given the exclusive right to deal in the Red and White brands and to sublicense manufacturers to pack and sell merchandise under such brands. Modern Marketing Service, Inc., has no customers other than the Red and White jobber licensees, and the license is indispensable to the continuance of its business operations. Through the simple device of canceling or declining to renew the license agreement, Red and White Corporation could deprive Modern Marketing Service, Inc., of its source of income and virtually terminate its existence as a going business concern. This fact alone, in the opinion of the Commission, demonstrates that Modern Marketing Service, Inc., is subject to the control of Red and White Corporation and its stockholders, the jobber licensees.

#### CONCLUSION

The transmission and payment of the aforesaid brokerage fees or commissions by the seller respondents to respondent, Modern Marketing Service, Inc., upon the purchases of the buyer respondents, and the receipt and acceptance thereof by respondents, Modern Marketing Service, Inc., Red and White Corporation, and the buyer respondents, in the manner and under the circumstances herein described, is violative of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (15 U. S. C., Sec. 13).

1. *It is ordered*, That respondents, S. M. Flickinger Co., Inc., Juliard Cockcroft Corporation, Laurans Brothers, Inc., West Coast Grocery Co., H. O. Wooten Grovery Co., and Nash-Finch Co., corporations (hereinafter referred to as buyer respondents), and their officers, agents, representatives, and employees, in connection with the purchase by such respondents of commodities in commerce, as "commerce" is defined in said Clayton Act, as amended, do forthwith cease

and desist from receiving or accepting from the sellers of such commodities, directly or indirectly, any brokerage fee, commission, or other compensation, or any allowance or discount in lieu thereof; and from receiving or accepting from respondent, Red and White Corporation or respondent, Modern Marketing Service, Inc., any brokerage fee, commission, or other compensation, or any allowance or discount in lieu thereof, theretofore 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 or benefits provided or furnished by said last-named respondents through or by means of the use or expenditure of any such brokerage fee, commission, compensation, allowance, or discount.

2. *It is further ordered*, That respondents, The Diamond Match Co., Morton Salt Co., The Quaker Oats Co., Ralston Purina Co., Weson Oil & Snowdrift Sales Co., Standard Rice Co., Inc., and The Procter & Gamble Distributing Co., corporations, and their officers, agents, representatives, and employees, in connection with the sale of commodities in commerce, as "commerce" is defined in said Clayton Act, as amended, to any of the buyer respondents named in paragraph 1 hereof, or to any other stockholder or jobber licensee of respondent, Red and White Corporation, do forthwith cease and desist from paying or granting, directly or indirectly, to any of such purchasers, or to respondent, Modern Marketing Service, Inc., or respondent, Red and White Corporation, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof.

3. *It is further ordered*, That respondent, Modern Marketing Service, Inc., a corporation, and its officers, agents, representatives, and employees, in connection with the purchase of commodities in commerce, as "commerce" is defined in said Clayton Act, as amended, by any of the buyer respondents named in paragraph 1 hereof, or by any other stockholder or jobber licensee of respondent, Red and White Corporation, do forthwith cease and desist from receiving or accepting, directly or indirectly, from the sellers of such commodities, any brokerage fee, commission, or other compensation, or any allowance or discount in lieu thereof; and from paying, transmitting, or delivering any such fee, commission, compensation, allowance or discount to such purchasers or to respondent, Red and White Corporation, either in the form of money or credits, or in the form of services or benefits provided or furnished by respondent, Modern Marketing Service, Inc., to respondent, Red and White Corporation, or to such purchasers through or by means of the use or expenditure of any such brokerage fee, commission, compensation, allowance, or discount.



## Order

4. *It is further ordered*, That respondent, Red and White Corporation, a corporation, and its officers, agents, representatives, and employers, in connection with the purchase of commodities in commerce, as "commerce" is defined in said Clayton Act, as amended, by any of the buyer respondents named in paragraph 1 hereof, or by any other stockholder or jobber licensee of respondent, Red and White Corporation, do forthwith cease and desist from receiving or accepting from the sellers of such commodities, or from respondent, Modern Marketing Service, Inc., any brokerage fee, commission, or other compensation on such purchases, or any allowance or discount in lieu thereof; and from paying, transmitting, or delivering any such fee, commission, compensation, allowance, or discount to such purchasers, either in the form of money or credits, or in the form of services or benefits provided or furnished by respondent, Red and White Corporation, to such purchasers through or by means of the use or expenditure of any such brokerage fee, commission, compensation, allowance, or discount.

*It is further ordered*, That all 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.

IN THE MATTER OF  
**JULIUS FLORSHEIM, TRADING UNDER THE NAME  
COLUMBIA RESEARCH COMPANY**

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

*Docket 4867. Complaint, Nov. 6, 1942—Decision, Sept. 13, 1943*

Where an individual, engaged in interstate sale and distribution of envelopes and printed matter for use by creditors and collection agencies in obtaining information concerning debtors, including notices which, for use in contacting the debtor either direct or through some other person, respectively represented that addressee was a beneficiary of a trust fund and that additional information was required, or that the person concerned was such a beneficiary and that addressee was requested to furnish information as to his identity and, in case of both, requested, in questionnaire attached, name of debtor, residence, names of parents and employer, employer's address, name of bank and personal references;

Making use of a scheme under which (1) said individual assigned purchaser of said printed matter a code number for insertion in the blank provided, whereby the former was enabled to identify his customers; (2) purchaser inserted name of person concerning whom information was sought in notice, and inserted notice in stamped envelope addressed to such person or, as aforesaid, to another, and included within said envelope—bearing upon upper left-hand corner said individual's trade name of Columbia Research Company and Los Angeles address—a stamped return envelope thus addressed, and sent the whole for mailing to said individual; and (3) latter sent replies received or pertinent information therefrom, to the proper customers, and to each of persons concerning whom desired information had been received, one cent, along with advice that such was the entire sum deposited for payment in his trust fund—

Falsely represented thereby, and placed in the hands of his customers means of falsely representing, that persons concerning whom information was sought had an interest in trust funds of more than trivial value held by such Columbia Research Co., and that information sought through said questionnaires was to identify beneficiaries; when in fact there were no such funds, and information was sought solely to assist in locating delinquent debtors and collecting delinquent accounts;

With capacity and tendency to mislead and deceive persons to whom said notices and questionnaires were sent, into the mistaken belief that such representations were true, and, by reason thereof, to induce them to give information which they would not otherwise have supplied;

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. James A. Purcell*, trial examiner.  
*Mr. Randolph W. Branch* 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 Julius Florsheim, an individual, trading under the name Columbia Research 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, Julius Florsheim, is an individual, trading under the name Columbia Research Co., with an office and principal place of business at 715 Subway Terminal Building, 417 South Hill Street, Los Angeles, Calif.

PAR. 2. Respondent is now, and has been for more than 6 months last past, engaged in the business of selling and distributing envelopes and printed matter referred to by bill collectors as lures.

Respondent causes the said envelopes and lures to be transported from his aforesaid place of business, in the State of California, to purchasers thereof 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 articles in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The said envelopes and lures are designed and intended to be used by creditors and collection agencies to obtain information concerning debtors.

The said lures are substantially in the forms exemplified by copies thereof, marked "Exhibit A" and "Exhibit B," attached hereto and by this reference made a part hereof.

The form of lure exemplified by exhibit A is sent in the manner hereinafter set forth to the person concerning whom information is sought. The form of lure exemplified by exhibit B is sent to persons who are believed to have knowledge concerning the person about whom information is sought.

PAR. 4. The purchasers of the said lures insert numbers therein in the spaces opposite "Re: Trust Fund No.". The said numbers are not the numbers of trust funds but are code numbers supplied to them by said respondent for the purpose of identifying his customers to him. Said purchasers also insert in the appropriate spaces in the lures the names of the persons concerning whom information is sought. Said purchasers then insert the lures in envelopes purchased from said respondent, which they cause to be addressed to the persons con-

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cerning whom information is sought or to others from whom information concerning said persons is sought, and affix the necessary postage. Upon these envelopes in the upper left-hand corner appears:

Columbia Research Company,  
417 South Hill Street  
Los Angeles, California

With the said lures are also enclosed envelopes, also purchased from said respondent, to which said purchasers have attached the necessary postage; these envelopes are addressed to:

Columbia Research Company  
417 South Hill Street  
Los Angeles, California

The said large envelopes and enclosures are then caused by said purchaser to be delivered to respondent at his place of business aforesaid, and respondent causes them to be deposited in the United States mails. Such replies as are returned are received by respondent, who identifies the customers by the code numbers hereinbefore mentioned, and sends the replies or the pertinent information therefrom to the proper customers. Respondent also sends to each of the persons concerning whom the desired information has been received, out of his own funds, 1 penny, advising him that this is the entire sum deposited in respondent's trust fund to be paid to such person when he was located, and that no other payments will be made.

PAR. 5. By means of the aforesaid lures and envelopes respondent, Florsheim, has falsely represented, and placed in the hands of his customers means of falsely representing, directly and by implication, to customers' debtors and others from whom information concerning such debtors is sought, that such debtors have interests in trust funds or are beneficiaries of trust funds held by Columbia Research Co.; that the values of such beneficial interests are more than trivial, and that the information sought by means of said lures is for the purpose of identifying the recipients thereof as proper beneficiaries.

The said representations are false and misleading. In truth and in fact there are no trust funds in the hands of respondent, Florsheim, in which the debtors concerning whom information is sought have any interest, substantial or otherwise, and the only sum for which respondent, Florsheim, ever assumed any obligations to any person concerning whom information was sought in the manner herein set out was 1 penny. The information called for by the said lures was not sought for the purpose of identifying those concerning whom information was sought as beneficiaries of trust funds, but was sought solely

for the purpose of assisting respondent's customers in collecting their alleged delinquent accounts.

PAR. 6. The use as hereinabove set forth of the foregoing false and misleading statements and representations has had the capacity and tendency to, and has, misled and deceived many persons to whom the said lures and envelopes were sent, into the erroneous and mistaken belief that such statements and representations were true, and by reason thereof to give information which they would not otherwise have supplied.

PAR. 7. The aforesaid acts 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 in violation of the Federal Trade Commission Act.

EXHIBIT "A"

COLUMBIA RESEARCH COMPANY
417 South Hill Street
LOS ANGELES, CALIFORNIA

TO THE ADDRESSEE
OF THIS NOTICE:

RE: TRUST
FUND NO. -----

THE NAME OF ----- IS AMONG THOSE TO WHOM WE HAVE BEEN ORDERED TO PAY A SUM OF MONEY FROM THE ABOVE TRUST FUND.

FROM INFORMATION RECEIVED WE BELIEVE YOU ARE THIS PERSON, BUT UNDER THE PROVISIONS OF THE TRUST, WE ARE COMPELLED TO OBTAIN POSITIVE IDENTIFICATION BEFORE PAYMENT CAN BE MADE. FOR THIS REASON, WE REQUIRE THE COMPLETE INFORMATION REQUESTED BELOW. UPON RECEIPT AND VERIFICATION THEREOF REMITTANCE WILL BE MADE.

PLEASE GIVE THIS MATTER PROMPT ATTENTION. UNLESS WE RECEIVE THE INFORMATION REQUESTED NOT LATER THAN 15 DAYS FROM THE DATE THIS NOTICE WAS MAILED, WE ARE INSTRUCTED TO MAKE OTHER DISPOSITION OF THE SUM INVOLVED.

COLUMBIA RESEARCH COMPANY.

(Tear off here, retain upper part, mail lower part, completely filled out, in enclosed envelope properly stamped.)

COLUMBIA RESEARCH COMPANY
417 South Hill Street
Los Angeles, California.

RE: TRUST
FUND NO. ----- Date ----- 19-----

For the purpose of establishing my identity with your firm, I submit the following information:

My Full Name Is (Print Plainly) -----
(My residence is -----
Parents -----
(First Name) (Middle Initial) (Last Name)
(No., Street) (City) (State)
(Father's name) (Mother's Maiden name)



## 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, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Julius Florsheim, an individual, trading under the name Columbia Research 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 said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief filed in support of the complaint (no brief having been filed by the respondent or oral argument 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, Julius Florsheim, is an individual, trading under the name Columbia Research Co., with an office and principal place of business at 715 Subway Terminal Building, 417 South Hill Street, Los Angeles, Calif.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling and distributing envelopes and printed matter designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors. Respondent causes said envelopes and printed matter, when sold, to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said articles in commerce between and among the various States of the United States.

PAR. 3. The printed matter sold and distributed by the respondent is in the form of a notice with questionnaire attached. There are two forms of notices, one for use in contacting the debtor direct, and the other in contacting the debtor through some other person, usually a reference. In the first form of notice, it is represented

## Findings

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that the person to whom the notice is addressed is a beneficiary of a trust fund and that additional information is required as set out in the questionnaire attached. In the second form of notice, it is represented that the person named is a beneficiary of a trust fund, and the person to whom the notice is addressed is requested to furnish information as to identity as set out in the questionnaire attached to such notice. The questionnaire in each case requests information as to name of the debtor, residence, names of parents and employer, employer's address, name of bank, and personal reference. When this printed matter is delivered to a purchaser thereof, respondent assigns a certain code number, which is inserted by the purchaser in the blank provided for trust-fund number. By means of this number, the respondent is enabled to identify his customers.

Respondent's purchasers insert upon the notice the name of the person concerning whom information is sought, which notice is then inserted in envelopes purchased from said respondent, which they cause to be addressed to the persons concerning whom information is sought or to others from whom information concerning said persons is sought and affix the necessary postage. Upon these envelopes, in the upper left-hand corner, appears:

Columbia Research Company  
417 South Hill Street  
Los Angeles, California

With said notice and questionnaire attached, are also enclosed return envelopes also purchased from said respondent, to which said purchasers have attached the necessary postage. These envelopes are addressed to:

Columbia Research Company  
417 South Hill Street  
Los Angeles, California

The said large envelopes and enclosures are then caused by said purchasers to be delivered to respondent at his place of business, and respondent causes them to be deposited in the United States mails. Such replies as are returned are received by respondent, who identifies the customers by the code number hereinabove described and sends the replies or pertinent information therefrom to the proper customers. Respondent also sends to each of the persons concerning whom desired information has been received, out of his own funds, one penny, advising him that this is the entire sum deposited in respondent's trust fund to be paid to such person when located and that no other payments will be made.

PAR. 4. By means of the aforesaid printed matter, consisting of notices and questionnaires, respondent has falsely represented, and



placed in the hands of his customers means of falsely representing, directly and by implication, that the persons to whom such notices are addressed or concerning whom information is sought, have an interest in trust funds or are beneficiaries of trust funds held by Columbia Research Co.; that the values of such beneficial interests are more than trivial; and that the information sought by means of said notices and questionnaires is for the purpose of identifying the persons as proper beneficiaries.

The said representations are false and misleading. In truth and in fact, there are no trust funds in the hands of the respondent in which persons concerning whom information is sought have any interest, substantial or otherwise, and the only sum for which respondent ever assumed any obligations to any person concerning whom information was sought in the manner herein set out, was one penny. The information called for by said notices and questionnaires was not sought for the purpose of identification of beneficiaries of trust funds but was sought solely for the purpose of assisting respondent's purchasers in locating delinquent debtors and assisting in collecting their alleged delinquent accounts.

PAR. 5. The use, as hereinabove set forth, of the foregoing false and misleading statements and representations has the capacity and tendency to mislead and deceive persons to whom said notices and questionnaires are sent out, into the erroneous and mistaken belief that such statements and representations are true and, by reason thereof, to give information which they would not otherwise have supplied.

#### 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 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, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, and 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.

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*It is ordered,* That respondent, Julius Florsheim, an individual, trading under the name of Columbia Research Co., 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 envelopes and printed matter consisting of purported notices with questionnaires attached, or any other printed or written material of substantially similar nature, do forthwith cease and desist from:

1. Representing directly or by implication that any funds or other property is being held by respondent for persons concerning whom information is sought through respondent's letters, questionnaires, or other material.

2. Representing directly or by implication that the information sought through respondent's letters, questionnaires, or other material is for the purpose of determining whether the person concerning whom such information is sought is entitled to receive trust funds or any other property.

3. Using, or placing in the hands of others for use, form letters, notices, questionnaires, or other material which represent directly or by implication that respondent's business is other than that of obtaining information for use in the collection of debts or that the information sought through such letters, notices, questionnaires, or other material is for any purpose other than for use in the collection of debts.

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

## Syllabus

## IN THE MATTER OF

## THE MILK AND ICE CREAM CAN INSTITUTE ET AL.

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

*Docket 4551. Complaint, July 31, 1941—Decision, Sept. 18, 1943*

Where eight corporations, engaged in the manufacture and interstate sale and distribution of metal milk cans and also, with one exception, of ice cream cans, making about 95 percent of said products sold and distributed in the United States, and, prior to and but for the agreements, acts and practices below set out, in competition as to price;

Following their organization of The Milk and Ice Cream Can Institute by an individual engaged in promoting, organizing, and managing trade associations, and who was employed by them to operate said Institute as its "Commissioner" and only officer, and their agreement upon a so-called "Publicity Plan" providing for the supplying by each member to said "Commissioner" of daily reports of orders received, contracts entered into and releases made against previously reported contracts, etc., and monthly reports of the number and dollar value of cans shipped, by States and for export and for the daily and monthly consolidation and dissemination among members by said Commissioner of such information;

Acting by and through their said Institute and under the direction of said individual, cooperatively developed and maintained substantial uniformity of action among themselves with respect to fixing and maintaining uniform prices for products involved; and in pursuance thereof—

- (1) Continued a plan of freight equalization theretofore employed by them, under which purchasers sold their product f. o. b. factory, and purchaser, paying the freight, was credited upon the invoice for the difference between it and freight from location of the shipper's nearest competitor, whereby delivered cost of their products was the same regardless of from whom or from which producing point purchase was made, and with the result, in view of more or less uniform f. o. b. factory prices, of maintaining uniformity of delivered prices;
- (2) For the purpose of maintaining such freight equalization plan, adapted and agreed to use a common freight rate reporting service for use in quoting delivered prices and the invoicing of customers;
- (3) Agreed upon and adopted an elaborate reporting system, as above indicated, to assure maintenance of uniform prices by members, and which, through receipt and dissemination of daily reports of orders, as consolidated, permitted said Commissioner to supervise the members' price activities through calling to particular member's attention evidence of price violations as thereby developed;
- (4) In order to maintain uniform prices on the same types and patterns of milk and ice cream cans sold by them under various trade names and to determine whether or not such prices were adhered to, placed similar types or patterns of cans in particular classifications and assigned thereto a symbol letter which was used in making daily reports to said Commissioner, and by him in making consolidated reports to the members, and from which also the Commissioner and the members could immediately determine whether any price differences existed on said daily reports;

- (5) As a further means of eliminating price differences and to eliminate competition in the attractiveness of their products, eliminated models and styles of cans, and otherwise standardized their products independently of and beyond any requirements prescribed by Federal or State authorities, or the requirements of customers; and through the medium of their Institute and said Commissioner reported to one another any new designs or improvements as made;
- (6) In order to maintain uniformity of prices to various classes of customers and to determine and maintain also the applicable rate of discount, adopted a classification prepared by said Commissioner, defining jobbers and dealers and detailing the circumstances under which a customer might come within such classification, and adopted also a list of so-called "five-car" or more buyers and discount to be allowed them, prepared by him;
- (7) In response to suggestions made by said Commissioner and request for additional reports to eliminate "unfair practices"—which were, in fact, interferences with maintenance of uniform prices—adopted a recommendation that a recheck be made by the members of existing contracts and liabilities thereunder on the ground that they were exaggerated and involved the threat of the development of an unfair competitive situation;
- (8) Agreed, in response to a recommendation of said Commissioner for preventing sale of first-quality cans at lower prices by designating them as "seconds," that price differentials between firsts and seconds be large enough to secure a ready market for all second-quality cans, and that a definite minimum discount sufficiently large to discourage the practice of selling firsts as seconds be adopted, and instructed the Commissioner to procure a complete inventory of all seconds and other substandard cans; and agreed that all cans not sold as prime firsts should be sold as seconds and so marked, except for obsolete products, and that intention to dispose of latter should be reported at a meeting held prior to their sale;
- (9) As a further check upon price differentials, agreed to report allowances on claims made by the respective members, and discussed at various meetings compilations of such allowances as made up by the Commissioner; and
- (10) Agreed to accept his recommendation that identification of buyer was necessary in order to protect existing contracts;

With intent and effect of fixing prices for products involved which, except for short periods while adjustments were being made, were, as respects both *f. o. b.* and delivered prices, uniform and identical; and with effect of unduly restraining and suppressing competition in the sale and distribution of said products, and of depriving the public of the full benefit of competition in said commerce:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public; had a dangerous tendency to and did restrain and eliminate price competition in sale and distribution of products in question in commerce; placed in said corporations power to control and enhance prices; unreasonably restrained such commerce in said products; and constituted unfair acts and practices in commerce and unfair methods of competition therein.

Before *Mr. John P. Bramhall*, trial examiner.

*Mr. Lynn C. Paulson* and *Mr. Eugene W. Burr* for the Commission.  
*Covington, Burling, Rublee, Acheson & Shorb*, of Washington,

D. C., for respondents generally, who were also represented, as follows:

*Mr. Guy George Gabrielson*, of New York City, for Atlantic Stamping Co., Keiner Williams Stamping Co. and Superior Metal Products Co.;

*Mr. Alfred W. Craven*, of Chicago, Ill., for The Creamery Package Manufacturing Co.;

*Seibert & Riggs*, of New York City, for Lalance & Grosjean Corp.;

*Mr. William B. Paul*, of Pittsburgh, Pa., for Sheet Metal Specialty Co.; and

*Douglas, Armitage & Holloway*, of New York City, for Solar-Sturges Manufacturing 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 the association, persons, partnerships, and corporations named in the caption hereof, and hereinafter referred to as respondents, have violated the provisions of the Federal Trade Commission act, and it appearing to the Commission that a proceeding by it would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Milk and Ice Cream Can Institute, hereinafter referred to as respondent Institute, is an unincorporated association, with its office located in the Keith Building, Cleveland, Ohio. It now includes or has included at one time or another as its members practically all of the manufacturers of milk and ice cream cans located in the United States, and more particularly all of the corporations named as respondents herein. It was organized in or about April 1930, by persons, partnerships, and corporations engaged in the manufacture and sale of milk and ice cream cans, some of which are its present members. It has since its organization constituted, and does now constitute, a vehicle or implement for the promotion of the mutual interest of its members.

Respondents, D. S. Hunter, W. Bentley Thomas, Frederick W. Donohoe, and Harry A. Sieck, are partners, doing business as D. S. Hunter & Associates. They are engaged in the business of promoting, organizing, and managing trade associations and are employed by respondent Institute and its members to carry on its work and do and perform the acts and things which the member corporations desire to have done and performed. They supervise meetings held by the members under the auspices of the respondent Institute, recommend

activities, collect and disseminate information, serve as chairman of committees to perform special functions and, in general, perform the function of executive secretaries for respondent Institute and its members. They have their office and principal place of business in the Keith Building, Cleveland, Ohio. For convenience, respondents, D. S. Hunter, W. Bentley Thomas, Frederick W. Donohoe and Harry A. Sieck, will hereinafter be referred to as respondent, D. S. Hunter & Associates.

Respondent, Atlantic Stamping Co., is a New York corporation, having its office and principal place of business at 156-180 Ames Street, Rochester, N. Y.

Respondent, Buhl Stamping Co., is a Michigan corporation, having its principal place of business at 2730 Scotten Avenue, Detroit, Mich.

Respondent, The Creamery Package Manufacturing Co., is an Illinois corporation, having its office and principal place of business at 1243 West Washington Boulevard, Chicago, Ill.

Respondent, Geuder, Paeschke & Frey Co., is a Wisconsin corporation, having its office and principal place of business at West St. Paul Avenue and North Fifteenth Street, Milwaukee, Wis.

Respondent, Keiner Williams Stamping Co., is a New York corporation, having its office and principal place of business at 8746 One Hundred and Twenty-third Street, Richmond Hill, L. I., N. Y.

Respondent, Solar-Sturges Manufacturing Co., is an Illinois corporation, having its office and principal place of business at Melrose Park, Ill.

Respondent, Superior Metal Products Co., is a Delaware corporation, having its office and principal place of business at 509 Front Street, St. Paul, Minn.

Respondent, Lalance & Grosjean Corporation, is a New York corporation, having its office and principal place of business at Woodhaven, L. I., N. Y.

Respondent, Sheet Metal Specialty Co., is a West Virginia corporation, having a main office and principal place of business at Third and Liberty Streets, Pittsburgh, Pa.

The aforesaid respondents, Atlantic Stamping Co., Buhl Stamping Co., The Creamery Package Manufacturing Co., Geuder, Paschke & Frey Co., Keiner Williams Stamping Co., Solar-Sturges Manufacturing Co., Superior Metal Products Co., Lalance & Grosjean Corporation, and Sheet Metal Specialty Co., for convenience, will hereinafter be referred to as respondent corporations.

PAR. 2. Respondent corporations are engaged in the manufacture, sale, and distribution of metal containers known as milk and ice cream

cans. These are used primarily for the handling and shipping of milk and ice cream. Farmers, dairies, and dealers in milk and dairy products use milk cans for transporting milk and cream from farms and dairies to creameries and dairy stations, and for various and sundry purposes. Ice cream cans are commonly used to transport and distribute ice cream. Vendors of ice cream make use of ice cream cans in drug stores and soda fountains for storing and keeping ice cream before and during the time it is being scooped out and sold. Respondent corporations sell annually approximately 1,000,000 milk and ice cream cans, the value of which ranges between 3 and 3½ million dollars.

PAR. 3. Respondent corporations in the regular course and conduct of their business sell and ship, or cause to be sold and shipped milk and ice cream cans to members of the purchasing public located in States other than the States in which they, the respondents, are located and have during all of the time referred to herein carried on and engaged in, and do now carry on and engage in "commerce" (as commerce is defined in the Federal Trade Commission Act) among and between the various States of the United States and the District of Columbia in milk and ice cream cans.

Respondent Institute has at all times mentioned herein cooperated with, assisted and served as an implement or vehicle for the promotion of the mutual interests of respondent corporations.

Respondent, D. S. Hunter & Associates, has during much, if not all, of the time referred to herein cooperated with, assisted, and aided, and does now cooperate with, assist, and aid respondent Institute and respondent corporations in the establishment and carrying out of the acts, practices, and methods mentioned and referred to in this complaint.

PAR. 4. For more than 4 years last past, and continuing to the present time, respondents have maintained an unlawful combination among and between themselves to suppress, hinder, lessen, and restrain competition in the manufacture, sale, and distribution of milk and ice cream cans in the course of their aforesaid commerce among and between the various States.

Pursuant to and in furtherance of the aforesaid combination:

1. Respondent corporations have cooperatively made and announced prices, and do cooperatively make and announce prices in such a way that the delivered cost of their products to a purchaser is the same regardless from whom purchase is made or from which producing point the goods purchased are shipped by the employment of what, for convenience, may be referred to as a "freight equalization plan." Under this said "freight equalization plan" each of the re-

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spondent corporations announces its prices on a basis whereby the delivered cost to the customer at any given destination is to be determined by applying the rule or formula—delivered cost equals lowest combination of “basing point” price plus freight. Each respondent recognizes his own point of production and each and every other point at which any one of the respondent corporations produces as a “basing point,” and makes the rule or formula aforesaid apply by inserting in its price announcement the following, or some such terminology:

All prices are for cans with the marking f. o. b. (city of origin)—freight equalized with all rail freight with nearest manufacturing competitor's original point of shipment on shipments of 100 lbs. or more. Equalization Points: Milk Cans—New York, N. Y., Rochester, N. Y., Follansbee, W. Va., Chicago, Ill., Milwaukee Wis., St. Paul, Minn.; Ice Cream Cans—New York, N. Y., Follansbee, W. Va., Chicago, Ill., Milwaukee, Wis., St. Paul, Minn.

2. Respondent corporations have cooperatively promoted adherence and do cooperatively promote adherence to prices announced under the so-called “freight equalization plan,” as aforesaid, make it effective, and further obviate and exclude the exercise of independent will with regard to prices and price policies by

(a) Providing themselves with a schedule of freight rate factors, which they themselves prepare or cause to be prepared for use by each of them in the preparation of bills to customers for goods sold. The compilation of freight rate factors cooperatively compiled by and disseminated to themselves is not intended to serve their needs for freight rates for shipping purposes, but is intended for use as aforesaid and is so used. These freight rate factors are not necessarily actual or official freight rates.

(b) Exchanging the intimate details of each sale directly or indirectly with one another. Each of the corporate respondents files a daily report with respondent Institute setting forth date of any order taken or sale made, customer's name, customer's address, customer's business, quantity involved, type and description of cans sold, including the number of covers, extras involved, deductions made or allowed, unit price of cans, including extras and deductions, discounts, terms, freight rate per cwt. allowed to equalize with any point, name of the point with which freight was equalized, destination and if the sale or order was a release on contract, date of the contract. Each of the corporate respondents also reports to respondent Institute the details of contracts entered into. Through respondent Institute the information filed with it is disseminated to respondent corporations in reports in meetings, by personal contacts made by its officers and employees and otherwise. Under this system



of exchanging information enough information about each sales transaction becomes known to each of the corporate respondents about each other's sales transactions to cause each of them to refrain from departing, in the execution of sales either by way of the equalization allowances or by an allowance of any other kind, from the prices, terms and conditions of sale cooperatively made and announced.

(c) Supervising and maintaining a systematic check upon each other concerning allowances made to purchasers for defective or damaged cans for the purpose of curtailing and eliminating the granting of allowances, and of making their policies regarding allowances uniform between and amongst them. This they do, and have done, by exchanging through respondent Institute details of all claims for allowances received and made and discussing and agreeing upon policies with respect to allowances through respondent Institute and otherwise.

3. Respondent corporations have entered into and carried out and do enter into and carry out agreements and understandings fixing and establishing discounts and other terms and conditions of sale to be offered, made and used by them.

4. Respondent corporations, by mutual agreement and understanding, eliminate models and styles of cans, change the designs of cans and otherwise standardize their products independently of and beyond any requirements for standardization prescribed by the Federal or State Governments, or any commissions or authorities thereof, for the purpose of eliminating competition in the attractiveness of their products to buyers, and furthering their aforesaid common purpose to lessen, suppress, hinder and restrain competition.

5. Respondent corporations, through the respondent Institute and by means of meetings, conferences, and interchanges between themselves, deliver to one another in advance, or during the production of new models and improvements on models and styles of milk and ice cream cans all of the pertinent information concerning the same, and otherwise cooperatively promote uniformity of design and pattern in their products and restrain each other from competitively seeking to excel one another in the development and improvement of their products.

6. Respondent, D. S. Hunter & Associates, has at all times mentioned herein cooperated with respondent corporations and respondent Institute in the activities, practices, and methods aforesaid; has helped to carry out the same; has recommended and devised other ways and means of accomplishing the common purpose of the combination as aforesaid; and has at all times contributed to the establishment and maintenance of the aforesaid combination.

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7. Respondent Institute has served as a vehicle or implement for the carrying out and furtherance of respondent corporations' joint purposes and plans, and has at all times mentioned or referred to herein contributed actively and systematically to accomplishment of the purposes and effect of the aforesaid combination.

8. Respondents have adopted and used in cooperation other methods and means to effectuate their common purpose and design to suppress, hinder and lessen competition between themselves and between them and their competitors, in the production, sale, and distribution of milk and ice cream cans.

PAR. 5. The said combination, and the doing and performing of the acts and things, and the use of the methods set forth in the preceding paragraphs hereof tend to have, have had and now have, the effect of depriving the public of the full benefits of competition in commerce between respondent corporations, and between respondent corporations and their competitors; of enhancing prices for milk and ice cream cans; of causing wasteful cross-shipping of milk and ice cream cans; of depriving purchasers located nearby a producing point of any price benefit from such proximity; of requiring various customers of each of the respondent corporations to pay it different prices for the same type of milk and ice cream cans; of preventing the fullest development of new types, models, and designs of milk and ice cream cans; of causing to be discontinued many models and types of milk and ice cream cans which are in demand by purchasers, prospective purchasers, and users of milk and ice cream cans; and of generally restraining trade in commerce in milk and ice cream cans between the several states of the United States and the District of Columbia.

PAR. 6. The aforesaid acts and practices and methods of respondents as herein alleged are all to the prejudice of the public; they have a substantial and dangerous tendency to hinder, lessen, restrict, and restrain, and actually have unduly, directly and substantially, hindered, restricted, and restrained, competition in interstate commerce in milk and ice cream cans. The said acts and practices and methods constitute unfair acts and practices and 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 31, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, The Milk and Ice Cream Can Institute, an unincorporated associa-

tion; D. S. Hunter, W. Bentley Thomas, Frederick W. Donohoe, and Harry A. Sieck, copartners, doing business as D. S. Hunter & Associates; Atlantic Stamping Co., a corporation; Buhl Stamping Co., a corporation; The Creamery Package Manufacturing Co., a corporation; Gueder, Paeschke & Frey Co., a corporation; Keiner Williams Stamping Co., a corporation; Lalance & Grosjean Corporation, a corporation; Sheet Metal Specialty Co., a corporation; Solar-Sturges Manufacturing Co., a corporation; and Superior Metal Products Co., a corporation, charging them with the use of unfair acts and practices and 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 and in opposition to the allegations of said complaint were introduced before 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, answers thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of and in opposition to the complaint, and oral argument 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, The Milk and Ice Cream Can Institute, hereinafter referred to as respondent Institute, is an unincorporated association, organized in 1930 by persons, partnerships, and corporations, engaged in the manufacture and sale of metal milk and ice cream cans, and has its principal office in the Keith Building, Cleveland, Ohio.

Respondent, D. S. Hunter, is an individual, doing business as D. S. Hunter & Associates. The respondents, W. Bentley Thomas, Frederick W. Donohoe, and Harry A. Sieck are, or have been, employees of the respondent, D. S. Hunter. Said respondent, D. S. Hunter, doing business as D. S. Hunter & Associates, maintains his office and principal place of business in the Keith Building, Cleveland, Ohio. Said respondent is engaged in the business of promoting, organizing, and managing trade associations and was employed by the respondent Institute and its members to carry on its work and to do and perform the acts and things which the member corporations desired to

have done and performed. Said respondent supervised meetings held by the members under auspices of respondent Institute, recommended activities, collected and disseminated information, served as chairman of committees to perform special functions, and in general performed the function of executive secretary for respondent Institute and its members.

Respondent, Atlantic Stamping Co., is a New York corporation, having its office and principal place of business at 156-180 Ames Street, Rochester, N. Y.

Respondent, Buhl Stamping Co., is a Michigan corporation, having its principal place of business at 2730 Scotten Avenue, Detroit, Mich.

Respondent, The Creamery Package Manufacturing Co., is an Illinois corporation, having its office and principal place of business at 1243 West Washington Boulevard, Chicago, Ill.

Respondent, Geuder, Paeschke & Frey Co., is a Wisconsin corporation, having its office and principal place of business at West St. Paul Avenue and North Fifteenth Street, Milwaukee, Wis.

Respondent, Keiner Williams Stamping Co., is a New York corporation, having its office and principal place of business at 8746 One Hundred and Twenty-third Street, Richmond Hill, L. I., N. Y.

Respondent, Solar-Sturges Manufacturing Co., is an Illinois corporation, having its office and principal place of business at Melrose Park, Ill.

Respondent, Superior Metal Products Co., is a Delaware corporation, having its office and principal place of business at 509 Front Street, St. Paul, Minn.

Respondent, Lalance & Grosjean Corporation, is a New York corporation, having its office and principal place of business at Woodhaven, L. I., N. Y. This respondent was a member of said respondent Institute from August 8, 1933, until May 13, 1937. There is no substantial evidence in the record that this respondent participated in the acts and practices hereinafter described.

Respondent, Sheet Metal Specialty Co., is a West Virginia corporation, having its office and principal place of business at Third and Liberty Streets, Pittsburgh, Pa.

The aforesaid corporate respondents, Atlantic Stamping Co., Buhl Stamping Co., The Creamery Package Manufacturing Co., Geuder, Paeschke & Frey Co., Keiner Williams Stamping Co., Solar-Sturges Manufacturing Co., Superior Metal Products Co., and Sheet Metal Specialty Co., are, and have been, members of respondent Institute since its organization in 1930. For convenience, the above-named respondents, except Lalance & Grosjean Corporation, will hereinafter be referred to as respondent members.

PAR. 2. Respondent members are now, and were, engaged in the manufacture, sale, and distribution of metal containers known as milk cans, and, with the exception of respondent, Atlantic Stamping Co., they were also engaged in the manufacture, sale, and distribution of metal containers known as ice cream cans. Said respondent members manufacture approximately 95 percent of the metal milk and ice cream cans sold and distributed in the United States. These cans are used primarily for the handling and shipping of milk and ice cream. Farmers, dairies, and dealers in milk and dairy products use said milk cans for transporting milk and cream from farms and dairies to creameries and dairy stations, and for various and sundry purposes. Ice cream cans are commonly used to transport and distribute ice cream. Said respondent members sell annually approximately one million milk and ice cream cans, the value of which ranges between three million and three million and a half dollars.

PAR. 3. In the course and conduct of their businesses, the respondent members cause said milk and ice cream cans, when sold by them, to be transported from their respective places of business to the various purchasers thereof located in the various States of the United States other than the States in which their respective shipments originate. Said respondent members maintain, and at all times mentioned herein have maintained, a course of trade in said milk and ice cream cans in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. Prior to 1930 said respondent members were in competition as to price with one another in the sale and distribution of milk and ice cream cans in commerce among and between the various States of the United States and in the District of Columbia, and would now be in free and open competition with one another in said commerce but for the agreements, practices, and methods as hereinafter set forth.

PAR. 5. On April 15, 1930, the respondent members held a meeting at Chicago, Ill., at which it was agreed to form an organization to be known as The Milk and Ice Cream Can Institute, with respondent, D. S. Hunter as commissioner, to be operated under a definite declaration of purpose to be prepared by said D. S. Hunter and to be adopted at the next meeting. It was further agreed that a budget be raised by assessing members in accordance with their relative volumes of business. It was further agreed that each member would sign a pledge obligating itself to furnish complete and accurate statistical information and to pay its proportionate share of its cost of the organization and to live up to the code of trade practice for the period of 1 year.

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Subsequent thereto, at a meeting held on May 13, 1930, the respondent members adopted a formal declaration of purpose and bylaws and agreed upon a so-called "Publicity Plan," to be operated through and by means of said The Milk and Ice Cream Can Institute under the supervision and direction of the respondent, D. S. Hunter, as commissioner, and as the only officer of the respondent Institute. At this meeting it was agreed that meetings of the members of the Institute be held once a month thereafter; and that all the members report to the commissioner all contracts then in force and which may be entered into from time to time thereafter, and report to the commissioner at the close of each business day all orders received that day, all contracts entered into that day, and all releases made that day against contracts previously reported; and, in addition to said daily reports, to forward each month a monthly report showing the total number of milk and ice cream cans shipped into each State and for export during the month, together with figures showing the value in dollars of such shipments of milk and ice cream cans. It was further agreed that the commissioner furnish members a consolidated report, in unidentified form, of all open or current orders and of releases against contracts previously reported and, in addition thereto, a consolidated monthly report embodying in compiled form, but without identification, all information received on monthly reports from members. At said meeting, forms of daily and monthly reports by members and consolidated reports by the commissioner were approved, and thereafter said respondent members reported daily and monthly to respondent D. S. Hunter as commissioner of said respondent Institute. The daily reports for metal milk cans forwarded to the commissioner show the date of order; customer's name, address, and business; quantity; capacity in quarts; description; covers; extras; deductions; unit price, including extras and deductions; discounts; terms; "freight rate per hundredweight added to deliver"; "freight rate per hundredweight allowed to equalize with (give point)"; and destination. The daily reports for ice cream cans were similar to the daily report for milk cans except that "construction" appears instead of "description" and "cartons" instead of "covers."

Respondent, D. S. Hunter, as commissioner of said respondent Institute, during all the times mentioned herein has sent to the respondent members a consolidated daily report on milk cans and ice cream cans, prepared from the information given in the daily reports of said respondent members. The information sent to the respondent members on the consolidated daily report, is the same as the information received by the Institute in said daily reports, except that the names of the members reporting and the customers' names and addresses are

not given in the consolidated daily report, and the destination is given by territory.

The monthly reports forwarded by the respondent members to the respondent Institute show the quantity, capacity, and description of the cans shipped during the month, the unfilled orders as of the last date of shipment for which the report is made, shipments of milk cans by States and for export, and the respondent member's volume of business for the month in dollars, average daily productive capacity, and percentage of capacity during the month. Based on these monthly reports, the Institute prepared and sent to the respondent members monthly reports on shipments, consolidating the information given in the monthly reports without revealing names. In addition to the above consolidated reports, the respondent, D. S. Hunter, as commissioner, has sent to respondent members, at irregular intervals, reports showing sales of milk and ice cream cans in units and dollars monthly over a period of several years. These reports contain the total sales of the membership as a whole and do not identify any of the members. There is also an annual report showing distribution of milk and ice cream cans by States and the total number of each size and style of milk and ice cream cans sold.

PAR. 6. The respondent members, acting by and through the respondent, The Milk and Ice Cream Can Institute, and under the direction of respondent, D. S. Hunter, have by mutual understandings and agreements, cooperatively developed and maintained substantial uniformity of action among themselves with respect to maintaining and fixing uniform prices for metal milk and ice cream cans. Each of the various practices adopted by the respondent members through the respondent Institute and under the direction of respondent, D. S. Hunter, which are hereinafter more fully described, constitutes a part and parcel of a combination and conspiracy entered into by said respondent members to fix and maintain uniform prices for milk and ice cream cans.

PAR. 7. For several years prior to the organization of the respondent Institute, the respondent members followed a plan of freight equalization on shipments of one hundred pounds or more, under which milk and ice cream cans were sold f. o. b. factory with freight equalized with the nearest manufacturing competitor's point of shipment. Under this plan it was the customary procedure for the purchaser to pay the freight and the shipper would then credit the purchaser upon invoice for the difference in freight between the shipper's point of location and the location of the competitor of such shipper located nearest to such purchaser.

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The respondent members, acting by and through the respondent Institute and under the direction of respondent, D. S. Hunter, have, by mutual understandings and agreements, continued and maintained the plan of equalization of freight hereinabove described. By this means the delivered cost of their products to a purchaser was the same, regardless from whom purchase was made or from which producing point the goods purchased were shipped.

The freight-equalization plan adopted and continued by the respondent members was not used by them on a competitive basis when reaching into a competitor's territory, since its use was solely to match competitor's prices. The f. o. b.-factory price remained more or less uniform among the respondent members and the use of the freight-equalization plan served only to maintain uniformity of delivered prices.

PAR. 8. For the purpose of arriving at and maintaining a uniform basis of equalization, with resulting uniformity in delivered prices, the respondent members adopted and agreed to use a common freight-rate reporting service for use in quoting delivered prices and invoicing customers.

The respondent, D. S. Hunter, at various times suggested and discussed with the respondent members the use of a freight reporting service, to be purchased by the members or by the respondent Institute for the use of the members. At a meeting held on January 12, 1932, the respondent members were informed that a table of rates prepared from information furnished by the traffic departments of the various members indicated that either some special rates were in effect from certain points to certain points or that one or more of the traffic men furnishing the information had made errors, and at the following meeting, held on February 9, 1932, the respondent, D. S. Hunter, discussed with the members the freight-rate service supplied by the Climax Traffic Bureau.

As a result of this discussion and in an apparent effort to arrive at some common basis for equalization of freight, the Traffic Committee entered into negotiations with the Climax Traffic Bureau, with the result that a contract was entered into with the Climax Traffic Bureau to deliver an initial number of 350 freight-rate books to the Institute for distribution to its members. The freight rates contained in such freight-rate books were to cover the rates from the separate shipping points of the respondent members to various designated points supplied by the respondent, D. S. Hunter. The purpose of purchasing 350 of such freight-rate books was stated to be so that salesmen and representatives of the various respondent members could carry such books to permit them to quote delivered prices to



customers upon request. Such books were likewise used for invoicing purposes in crediting the freight charges over and above the freight rate from the nearest manufacturing competitor.

The freight-rate books furnished by the Climax Traffic Bureau contained nothing more than the rates above specified and did not give any information as to routing, but presumably were the lowest rates between two given points. In making shipments and determining routing of shipments it was necessary for the traffic departments of the various respondent members to refer to and use other traffic information or route books, leaving the use of the Climax freight-rate books, in most cases, solely to quotation of delivered prices and crediting freight equalization on invoicing customers.

PAR. 9. The respondent members agreed upon and adopted an elaborate reporting system, as hereinbefore described, to assure the maintenance of uniform prices by the various respondent members. This system included the daily reporting of all orders received to the respondent Institute, which information was immediately distributed to all the respondent members through a consolidated daily report prepared and distributed by respondent, D. S. Hunter, as commissioner of said Institute. This reporting system was adopted at the instance of said respondent, D. S. Hunter, and was designed to and did permit said respondent, D. S. Hunter, to supervise the price activities of the respondent members; and he would from time to time, upon evidence or suspicion of variation in price as developed from various reports, call such deviation or possible deviation to the attention of the members as a whole, and from time to time requested said members to review their data to determine if the discrepancies were due to errors in compilation.

PAR. 10. In order to maintain uniform prices on the same types and patterns of milk and ice cream cans sold by the respondent members under various trade names, and for the purpose of determining whether or not such prices were maintained or adhered to, similar types or patterns of cans were placed in particular classifications and given a symbol letter which was subsequently used in making daily reports to the commissioner and by the commissioner in making consolidated daily reports to the respondent members. By means of the symbol letters, the respondent, D. S. Hunter, as commissioner, could immediately determine any price differences which might appear on the daily reports sent in by any of the respondent members, and the respondent members, by examination of the consolidated daily report issued by the commissioner, could immediately determine whether any price differences existed.

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PAR. 11. As a further means of establishing a basis upon which price differences might be eliminated, and for the purpose of eliminating competition in the attractiveness of their products to buyers, the respondent members since the organization of the respondent Institute have, by mutual agreement and understanding, eliminated models and styles of cans, changed the design of cans, and have otherwise standardized their products independently of and beyond any requirements for standardization prescribed by Federal or State Governments or any commissions or authorities thereof, or the requirements of customers.

An example of such standardization, over and above requirements, was the activity of respondent members in standardizing the gage and weight of their milk and ice cream cans. Through the efforts of the committee on standards, a standard for the maximum gages of the various types and sizes of cans was submitted and adopted by the respondent members. At a meeting held June 14, 1932, the respondent, D. S. Hunter, as commissioner, called attention to the desirability, in the work of standardization, of eliminating if possible some styles and sizes of milk and ice cream cans, especially those for which there was a small demand, and also that consideration should be given to standardizing the weight, as well as the gages, of the various styles and sizes of cans. The commissioner was instructed to communicate with members to determine what lines of cans could be eliminated. Subsequent thereto, at a meeting held on July 12, 1932, the committee on standards submitted a table of standardization of various styles and sizes of cans by weight, and on motion made, seconded, and carried, this recommendation by the committee on standards was adopted by the respondent members. Subsequent to that time, the committee on standards had made various recommendations with reference to gages and weights of milk and ice cream cans which were adopted by the respondent members.

As new designs or improvements were made on cans, these were reported to all the respondent members direct or to the commissioner, who in turn reported to all the respondent members. At a meeting held on January 23, 1940, respondent, D. S. Hunter, as commissioner, pointed out that all members, when they make improvements or develop some new construction in their equipment, should either furnish a sketch of the item or a sample to the other respondent members.

PAR. 12. In order to maintain uniformity of prices to various classes of customers, and for the purpose of determining and maintaining the applicable rate of discount, the respondent, D. S. Hunter,

as commissioner, at a meeting on September 11, 1931, submitted definitions of jobbers and dealers, detailing the circumstances under which a customer might come within that classification. Such classification was accepted and adopted by the respondent members.

In addition, the respondent members agreed upon a list of so-called five-car or more buyers and discounts to be allowed such buyers. The respondent, D. S. Hunter, prepared a list of such five-car buyers from the reports submitted to him, which list was agreed upon and adopted by the respondent members, and from time to time said respondent members made additions thereto and deletions therefrom. This so-called list of five-car buyers was continued until about 1932.

PAR. 13. From time to time the respondent, D. S. Hunter, made suggestions to the respondent members and requested additional reports from them for the purpose of eliminating so-called unfair practices which were in fact interferences with the maintenance of uniform prices.

At the time the Institute was organized, it was provided that all the respondent members file with the commissioner a report of outstanding contracts and the extent to which such members were obligated to make deliveries on such contracts. In making his report, after examination of the reports of members with reference to existing contracts, the commissioner informed the members that he considered the figures given him on estimated obligations to be exaggerated and that if such amounts were delivered under the old contracts an unfair competitive situation would develop, and recommended that a recheck be made of existing contracts and liabilities thereunder by the members, which recommendation was adopted.

At a meeting of the Institute on January 13, 1931, the respondent, D. S. Hunter, as commissioner, called the attention of the respondent members to the sale of "seconds" and recommended that action be taken to set up a plan of handling seconds which would eliminate their being used to create unfair competition—in other words, to prevent the sale of first-quality cans at lower prices by designating them as seconds. The commissioner was instructed to tabulate a record of the sale of seconds during the previous 6 months. Subsequent thereto, at a meeting on July 13, 1931, said respondent, D. S. Hunter, as commissioner, called attention to some variations which he had noticed in the discounts being allowed by different members in making sales of seconds and that the differentiation was so small in some cases as to suggest that firsts were being sold as seconds, and recommended that a definite minimum discount be adopted sufficiently large to discourage this practice. It was agreed by respondent mem-

bers at this meeting that price differentials between firsts and seconds be large enough to secure a ready market for all second-quality cans.

The commissioner was instructed to procure a complete inventory of all seconds, obsolete patterns, and misbranded and other substandard cans at factories, in branches, or in warehouses. Upon consideration of this compilation at a meeting held on April 10, 1932, it was agreed by respondent members that all cans not sold as prime firsts, with the exception of obsolete cans, should be sold as seconds and marked as such, and that in the disposal of obsolete cans the intention to dispose of them should be reported at a meeting held prior to their sale.

As a further check upon possible price differentials, it was agreed by respondent members to report allowances on claims made by the respective respondent members, setting out claims made and disposition by the respondent members. Compilations of these allowances were made from time to time by the respondent, D. S. Hunter, as commissioner, and discussed at various meetings.

At a meeting held on August 12, 1931, the commissioner called attention to the necessity of not interfering with existing contracts and that, in order to secure such protection, identification of the buyer was necessary, and recommended that the contract reporting form be so changed as to include the buyer's name and address in the future. The respondent members agreed to accept this recommendation.

PAR. 14. The Commission further finds that the agreements and understandings entered into by the respondent members by and through the respondent Institute and respondent, D. S. Hunter, as commissioner, have had the purpose and effect of fixing prices for milk cans and ice cream cans. In fact, with the exception of short periods of time while adjustments in prices were being made, the prices charged by the respective respondent members, both f. o. b. and delivered, have been uniform and identical.

PAR. 15. The aforesaid understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove found, have had, and do have, the effect of unduly lessening, restricting, restraining, and suppressing competition in the sale and distribution of milk and ice cream cans in commerce among and between the several States of the United States and of depriving the public of the full benefit of competition in said commerce between and among the respondent members and between them and their competitors.

## CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public; have a dangerous tendency to and have actually hindered, suppressed, lessened, restrained, and eliminated price competition in the sale and distribution of metal milk and ice cream cans in commerce as "commerce" is defined in the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in milk and ice cream cans; and constitute unfair acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning 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, answers of the respondents, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of 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, The Milk and Ice Cream Can Institute, an unincorporated association; Atlantic Stamping Co., a corporation; Buhl Stamping Co., a corporation; The Creamery Package Manufacturing Co., a corporation; Geuder, Paeschke & Frey Co., a corporation; Keiner Williams Stamping Co., a corporation; Sheet Metal Specialty Co., a corporation; Solar-Sturges Manufacturing Co., a corporation; and Superior Metal Products Co., a corporation, and their respective officers, agents, representatives, and employees, and respondent, D. S. Hunter, individually, and trading as D. S. Hunter & Associates, and his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of metal milk and ice cream cans in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and

others not parties hereto, to do or perform any of the following acts or practices:

1. Establishing, fixing, or maintaining prices for metal milk or ice cream cans, or adhering to or promising to adhere to the prices so fixed.

2. Exchanging, distributing, or relaying among respondent members, or any of them, or through respondent, The Milk and Ice Cream Can Institute, or respondent, D. S. Hunter, or through any other medium or central agency, information as to current prices, for the purpose or with the effect of fixing or maintaining prices for metal milk or ice cream cans.

3. Quoting or selling metal milk or ice cream cans pursuant to or in accordance with any plan or system involving equalization of freight with competitors which results in the establishment and maintenance among respondent members or any two or more of them of uniform delivered prices to any given destination or which prevents purchasers from finding any advantage in price in dealing with one or more of the respondent members against any of the other respondent members; or quoting or selling metal milk or ice cream cans pursuant to or in accordance with any other plan or system which has the aforesaid results.

4. Using in common any freight-rate reporting service as a factor in fixing or maintaining the prices of metal milk or ice cream cans through any freight-equalization plan or any similar plan or system.

5. Formulating, establishing, putting into operation, continuing, or using in any way any price reporting plan which has the purpose or effect of depriving the public of any benefit of competition in price between and among the respondent members or between any of them and any other manufacturer or seller of metal milk or ice cream cans.

6. Determining or attempting to determine by any means, either directly or indirectly, which purchasers shall be recognized as jobbers, wholesalers, dealers, or consumers and thus entitled to certain price differentials in the purchase of metal milk and ice cream cans for the purpose or with the effect of fixing or maintaining uniform prices for various classifications of customers.

7. Formulating or putting into operation any other practice or plan which has the purpose or effect of fixing or maintaining prices for metal milk or ice cream cans; or employing or utilizing any of the acts or practices specifically prohibited herein as a means or instrumentality of otherwise restricting, restraining, or eliminating competition in the sale and distribution of metal milk or ice cream cans.

8. Employing or utilizing respondent, D. S. Hunter, or respondent, The Milk and Ice Cream Can Institute, or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts or practices prohibited by this order.

*It is further ordered,* That the complaint herein be, and it hereby is, dismissed as to W. Bentley Thomas, Frederick W. Donohoe, Harry A. Sieck, and Lalance & Grosjean Corporation, a corporation.

*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

## GLADYS H. PEISER

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

*Docket 5012. Complaint, July 20, 1943—Decision, Sept. 21, 1943*

Where an individual, engaged in interstate sale and distribution of form letters and envelopes for use of creditors and collection agencies in obtaining information concerning debtors, and which, calling for such information as the address and employer of the person concerning whom information was desired, and employer's address, set forth under name "Globe Inheritance Bureau" such matter as "Searchers for Title Companies," "Unknown and Missing Heirs Located," "Estate Counsellors," "Representatives in Principal Cities," and such statements as "We have been requested to contact the above party and our files indicate that you may be able to assist us"; "Can you supply us with any information, or refer us to some relative or friend who can assist us?"; "The matter about which we are inquiring is of utmost importance to this party and your early reply will be appreciated"; "Please fill in the questions below and return same to us in the enclosed envelope";

Making use of a scheme under which purchaser-customers inserted in said form letters names and last known addresses of persons concerning whom information was sought, placed them in stamped envelopes addressed to persons believed to have desired information, together with reply envelopes addressed to said "Globe Inheritance Bureau," at 401 Land Title Building, Philadelphia, Pa., and deposited them in the mails or returned them to said individual, who received and sent to customers, identified by means of code numbers, such form letters as were filled out and returned by recipients—

- (a) Falsely represented, and placed in the hands of her customers means of falsely representing, directly and by implication, to those from whom information was sought, that "Globe Inheritance Bureau" had representatives in principal cities, acted as counsellor to those in charge of estates, was engaged in the business of locating heirs to estates or to interests therein, and of acting as an examiner or searcher for title insurance companies, and that the persons concerning whom information was sought had or might have interests in estates or lands which would be of financial benefit to them; and
- (b) Falsely represented, through use of name "Globe Inheritance Bureau," that her said business bore some relation to estates and to the rights and interests of heirs thereto; when in fact said name was merely a disguise for the true nature of said business, and the sole purpose of the letters and envelopes was to facilitate collection of alleged delinquent accounts by her customers;

With effect of misleading and deceiving many persons to whom said letters were sent into the mistaken belief that said statements were true, thereby inducing them to give information which they would not otherwise have supplied, and in many instances to incur expense for postage in connection therewith:



## Complaint

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

*Mr. Randolph W. Branch* for the Commission.

*Mr. LeRoy Comanor*, 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 Gladys H. Peiser, an individual, 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, Gladys H. Peiser, is an individual, trading under the name Globe Inheritance Bureau, with an office and principal place of business at Room 401, Land Title Building, Broad and Chestnut Streets, Philadelphia, Pa.

PAR. 2. Respondent is now, and has been for more than 2 years last past, engaged in the business of selling form letters and envelopes designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent causes the said envelopes and letters to be transported from her aforesaid place of business in the State of Pennsylvania to purchasers thereof in various States of the United States. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in said articles in commerce between and among the various States of the United States.

PAR. 3. The said letters sold and distributed by respondent are in the form exemplified by a copy thereof, marked "Exhibit A," attached hereto, and by this reference incorporated herein and made a part hereof.<sup>1</sup>

PAR. 4. Each customer of respondent is given a code number which identifies the customer of her.

Said customers insert in the space opposite the word "Subject" in the said form letters the names and last known addresses of the persons concerning whom information is sought, and address them to persons who are believed to have the desired information. The letters are then placed in stamped envelopes, purchased from respondent,

<sup>1</sup> Exhibit published in the findings at p 446.

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together with reply envelopes, also purchased from respondent, addressed to:

Globe Inheritance Bureau  
401 Land Title Building  
Philadelphia, Pa.

File No.

The customer's code number is placed both upon the reply envelopes and upon the form letters.

Said customers thereafter either place the filled envelopes, which are addressed to the persons of whom the inquiry is made, in the United States mails, or return them to respondent who mails them.

Such of the form letters as are filled out and mailed by the recipients thereof are received by respondent, the customers identified by means of the code numbers, and the form letters sent to the customers so identified.

PAR. 5. By means of the aforesaid letters and envelopes, respondent has falsely represented and placed in the hands of her customers means of falsely representing, directly and by implication, to those from whom information is sought, that Globe Inheritance Bureau has representatives in principal cities, acts as counsellor to those in charge of estates, is engaged in the business of locating heirs to estates, or to interests therein, and of acting as an examiner or searcher for title insurance companies, and that the persons concerning whom information is sought have or may have interests in estates or lands which will be of financial benefit to them.

The said representations are false and misleading. In truth and in fact respondent in conducting the business called Globe Inheritance Bureau does not have representatives in cities other than Philadelphia, Pa. She does not act as counsellor to those in charge of estates and is not engaged in the business of locating heirs to estates or to interests therein. She does not make examinations or searches for title insurance companies. She has no knowledge of any interests in estates or land to which the persons concerning whom information is sought may be entitled.

PAR. 6. Through the use of the name "Globe Inheritance Bureau" respondent has represented, directly and by implication, that her said business bears some relation to estates and to the rights and interests of heirs thereto.

Said representation is false and misleading. In truth and in fact respondent's said business has nothing whatever to do with estates or the rights or interests of persons therein, and the said name is merely a disguise for the true nature of the business.

PAR. 7. The sole purpose of the said letters and envelopes is to secure information in order to facilitate the collection of alleged delinquent accounts by respondent's customers.

PAR. 8. The use as hereinabove set forth of the foregoing false and misleading statements, representations and designation has had the capacity to mislead, and has misled, many persons to whom said letters were sent into the erroneous and mistaken belief that said statements, representations and designation were true, and by reason thereof to give information which they would not otherwise have supplied, and in many instances to incur expense for postage in connection therewith.

PAR. 9. 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 July 20, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Gladys H. Peiser, an individual, charging her with the use of 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 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 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

PARAGRAPHS 1. Respondent, Gladys H. Peiser, is an individual, who traded under the name Globe Inheritance Bureau, with an office and principal place of business at Room 401, Land Title Building, Broad and Chestnut Streets, Philadelphia, Pa.

PAR. 2. Respondent was for more than 2 years prior to August 1943 engaged in the business of selling form letters and envelopes

designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent caused the said envelopes and letters to be transported from her aforesaid place of business in the State of Pennsylvania to purchasers thereof in various States of the United States. Said respondent maintained a course of trade in said articles in commerce between and among the various States of the United States.

PAR. 3. The said letters sold and distributed by respondent were in the form exemplified by a copy thereof, marked "Exhibit A," attached hereto, and by this reference incorporated herein and made a part hereof.

PAR. 4. Each customer of respondent was given a code number which identified the customers to her.

Said customers inserted in the space opposite the word "Subject" in the said form letters the names and last known addresses of the persons concerning whom information was sought and addressed them to persons who were believed to have the desired information. The letters were then placed in stamped envelopes, purchased from respondent, together with reply envelopes, also purchased from respondent, addressed to:

Globe Inheritance Bureau  
401 Land Title Building  
Philadelphia, Pa.

File No.

The customer's code number was placed both upon the reply envelopes and upon the form letters.

Said customers thereafter either placed the filled envelopes, which were addressed to the persons of whom the inquiry was made, in the United States mails or returned them to respondent, who mailed them.

Such of the form letters as were filled out and mailed by the recipients thereof were received by respondent, the customers identified by means of the code numbers and the form letters sent to the customers so identified.

PAR. 5. By means of the aforesaid letters and envelopes, respondent falsely represented and placed in the hands of her customers means of falsely representing, directly and by implication, to those from whom information was sought that Globe Inheritance Bureau had representatives in principal cities, acted as counsellor to those in charge of estates, was engaged in the business of locating heirs to estates, or to interests therein, and of acting as an examiner or searcher for title insurance companies, and that the persons concerning whom information was sought had or might have interests in estates or lands which would be of financial benefit to them.

## Conclusion

The said representations were false and misleading. In truth and in fact respondent in conducting the business called Globe Inheritance Bureau did not have representatives in cities other than Philadelphia, Pa. She did not act as counsellor to those in charge of estates and was not engaged in the business of locating heirs to estates or to interests therein. She did not make examinations or searches for title insurance companies. She had no knowledge of any interests in estates or land to which the persons concerning whom information was sought might be entitled.

PAR. 6. Through the use of the name "Globe Inheritance Bureau" respondent represented, directly and by implication, that her said business bore some relation to estates and to the rights and interests of heirs thereto.

Said representation was false and misleading. In truth and in fact respondent's said business had nothing whatever to do with estates or the rights or interests of persons therein, and the said name was merely a disguise for the true nature of the business.

PAR. 7. The sole purpose of the said letters and envelopes was to secure information in order to facilitate the collection of alleged delinquent accounts by respondent's customers.

PAR. 8. The use as hereinabove set forth of the foregoing false and misleading statements, representations and designation had the capacity to mislead, and misled, many persons to whom said letters were sent into the erroneous and mistaken belief that said statements, representations and designation were true, and by reason thereof to give information which they would not otherwise have supplied, and in many instances to incur expense for postage in connection therewith.

## CONCLUSION

The acts and practices of respondent, as herein found, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Order

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## EXHIBIT A

Searches for  
Title CompaniesUnknown & Missing  
Heirs Located

Estate Counsellors

GLOBE INHERITANCE BUREAU  
Land Title Building, Philadelphia  
Representatives in Principal Cities

File No.

TO: SUBJECT:

We have been requested to contact the above party and our files indicate that you may be able to assist us.

Can you supply us with any information, or refer us to some relative or friend who can assist us?

The matter about which we are inquiring is of utmost importance to this party and your early reply will be appreciated.

Please fill in the question below and return same to use in the enclosed envelope.

Yours very truly,

GLOBE INHERITANCE BUREAU.  
By:

## FULL NAME OF SUBJECT

Age  
Height  
Present Address  
One Former Address  
Name of Employer  
Address of EmployerDate of Birth  
Occupation

KINDLY FILL IN AS MANY ANSWERS AS POSSIBLE

## 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 she waives all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Gladys H. Peiser, individually, and trading as Globe Inheritance Bureau, or trading under any other name, and her agents, representatives, and employees, directly or through any corporate or other device, in connection with the

## Order

offering for sale, sale and distribution of respondent's form letters and envelopes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Globe Inheritance Bureau," or any other word or words of similar import, to designate, describe or refer to respondent's business; or otherwise representing, directly or by implication, that respondent's business bears any relation to estates, or to the rights or interests of heirs therein.

2. Representing, directly or by implication, that respondent has representatives in principal cities.

3. Representing, directly or by implication, that respondent acts as counsellor to those in charge of estates, or that respondent is engaged in the business of locating heirs to estates or interests therein.

4. Representing, directly or by implication, that respondent acts as examiner or searcher for title insurance companies.

5. Representing, directly or by implication, that persons concerning whom information is sought through respondent's form letters have or may have any interest in estates or any other property.

6. Selling or distributing form letters or envelopes which represent, directly or by implication, that respondent's business is other than that of obtaining information to be used in the collection of debts; or which represent, directly or by implication, that the information sought through such letters is for any purpose other than for use in the collection of debts.

*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  
**BEATRICE KORNSTEIN, TRADING AS NATURE SEED  
 COMPANY**

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

*Docket 4926. Complaint, Mar. 9, 1943—Decision, Sept. 27, 1943*

Where an individual, engaged in interstate sale and distribution of her "Nature Seed" medicinal preparation; through such statements in advertisements thereof in newspapers, circulars and other advertising media, as "Women! A Doctor's Period Medicine—The good old Reliable Remedy. DOUBLE STRENGTH"; "Warning: These pills should not be taken in cases of pregnancy. \* \* \* nausea, \* \* \* or other possible signs of appendicitis. \* \* \*"; and "Nature Seed: 'Natures Best Remedy' Period Pills—The action of these pills is such that they tend to increase menstruation when there is delay due to cold feet, nutritional lack of iron or functional inactivity \* \* \*";

(a) Represented, directly and indirectly, that her said preparation was a doctor's prescription for delayed, unnatural, or suppressed menstruation and that it constituted a competent and adequate treatment for such conditions, regardless of their cause; and that it was of double strength and was safe and harmless in use;

(b) Represented thereby and through use of trade name "Nature Seed Company" that it was composed wholly of ingredients derived from nature;

The facts being it was not such a treatment or doctor's prescription; ingredients were not entirely derived from nature or in their natural state; lacking an established standard for comparison, it could not be said to be double strength; and it was not safe and harmless, in that prescribed use thereof might cause serious and irreparable injury to health; and

(c) Failed to reveal facts material in the light of said representations, or with respect to consequences which might result from use of preparation under prescribed or customary conditions, in that directions for use thereof provided for the administration of a laxative, potentially dangerous when taken by persons suffering from symptoms of appendicitis, and use thereof might result in gastrointestinal disturbances, leading to uterine hemorrhage, and, where used to interfere with pregnancy, might cause uterine infection, and septicemia;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said statements were true, thereby causing such public to purchase substantial quantities of product in question:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair and deceptive acts and practices.

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

*Mr. William L. Taggart* for the Commission.

*Mr. George Landesman*, of New York City, 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 Beatrice Kornstein, trading as Nature Seed 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, Beatrice Kornstein, is an individual, trading under the name of Nature Seed Co., with her place of business located at 175 East Broadway, New York City, N. Y.

PAR. 2. Respondent is now, and for the year last past, has been engaged in the sale and distribution of a medicinal preparation advertised and sold as "Nature Seed" which is a drug as that term is defined in the Federal Trade Commission Act.

Respondent causes her said preparation when sold to be transported from her place of business in the State of New York to 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 preparation 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 aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning her said preparation by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as commerce is defined by the Federal Trade Commission Act. Among and typical of the false and misleading statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements in newspapers and by circulars and other advertising media are the following:

## WOMEN !

## A

Doctor's  
Period  
Medicine

## Complaint

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The good old Reliable Remedy. Now only \$2. DOUBLE STRENGTH. Write now! Send no money! Pay Postman only \$2 plus few cents postage when he delivers your tablets or send \$2 cash or money order and we pay postage. Nature Seed Co., Dept. M3 175 East Broadway, New York City.

## For Adults Use Only

Dose: One pill three times a day with a large glass of water. With the last dose during the day take two tablespoonfuls of Epsom Salts in a large glass of warm water.

Warning: These pills should not be taken in cases of pregnancy. Also, they should not be taken in cases of nausea, vomiting, abdominal pain or other possible signs of appendicitis. If stress persists, consult your doctor. Sold Only By Mail—In this way you get a freshly made product, at a saving in price, and mailed direct to you. Tell your friends so that they too may know.

## NATURE SEED

## "Natures Best Remedy"

## Period Pills

The action of these pills is such that they tend to increase menstruation when there is delay due to cold feet, nutritional lack of iron or functional inactivity.

Contains Iron Sulfate Dried, Aloe Purified, Extract Cotton Root Bark, Ergotin (Bonjean), and Oil Savin.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondent represents, directly and by implication, that her said preparation is a doctor's prescription for delayed, unnatural or suppressed menstruation and that it constitutes a competent and adequate treatment for such conditions, regardless of the cause thereof; that said preparation is composed of ingredients derived from nature; that it is of double strength and is safe and harmless in use.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, said preparation is not a doctor's prescription or such as would be prescribed by a doctor for the conditions set out in respondent's advertisements. Said preparation is not a competent, effective or adequate treatment for delayed, unnatural or suppressed menstruation regardless of the cause thereof. It is not composed entirely of ingredients derived from nature; and such ingredients are not natural products, nor are they in their natural state. It cannot be stated that said preparation is double strength since there is no established standard which may be taken as a basis for comparison. Said preparation is not safe or harmless; but on the contrary, its use may cause serious and irreparable injury to health when used under the conditions prescribed in said advertisements or under such conditions as are customary or

usual. Such use of said preparation may result in gastrointestinal disturbances, such as catharsis, nausea and vomiting with pelvic congestion, inflammation and congestion of the uterus, leading to uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures, causing septicemia or blood poisoning.

The use by respondent of the trade name "Nature Seed Company" is, in itself, misleading and deceptive in that such use serves as a representation that said preparation is composed wholly of ingredients derived from nature, which is not the fact.

PAR. 6. Respondent's advertisements, disseminated as aforesaid, constitute false advertising for the further reason that they fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact, the directions for the use of said preparation provide for the administration of a laxative, which is potentially dangerous when taken by persons suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting or other symptoms of appendicitis. Moreover, the use of said preparation may result in gastrointestinal disturbances, such as catharsis, nausea and vomiting with pelvic congestion, inflammation and congestion of the uterus, leading to uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures, causing septicemia or blood poisoning.

PAR. 7. The use by the respondent of the foregoing false, misleading, and deceptive statements and representations 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, and as a result of such erroneous and mistaken belief to purchase substantial quantities of respondent's preparation.

PAR. 8. The aforesaid acts and practices of the respondent as hereinabove alleged are all to the prejudice of the public and constitute 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 9th day of March, A. D., 1943, issued and on the 10th day of March, A. D., 1943, served its complaint in this proceeding upon the respondent, Beatrice Kornstein, trading as Nature Seed Company, charging her with the use of 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, on May 24, 1943, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer 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 said substitute answer was duly filed in the office of the Commission on May 24, 1943. 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, Beatrice Kornstein, is an individual, trading under the name of Nature Seed Co., with her place of business located at 175 East Broadway, New York City, N. Y.

PAR. 2. Respondent is now and for the year last past has been engaged in the sale and distribution of a medicinal preparation advertised and sold as "Nature Seed," which is a drug as that term is defined in the Federal Trade Commission Act.

Respondent causes her said preparation when sold to be transported from her place of business in the State of New York to 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 preparation 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 aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning her said preparation by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission

Act, and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce, as commerce is defined by the Federal Trade Commission Act. Among and typical of the false and misleading statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements in newspapers, and by circulars and other advertising media are the following:

W O M E N !

A

Doctor's  
Period  
Medicine

The good old Reliable Remedy.

Now only \$2      **DOUBLE STRENGTH.**

Write now! Send no money! Pay Postman only \$2 plus few cents postage when he delivers your tablets or send \$2 cash or money order and we pay postage. Nature Seed Co., Dept. M3, 175 East Broadway, New York City.

For Adults Use Only

Dose: One pill three times a day with a large glass of water. With the last dose during the day take two tablespoonfuls of Epsom Salts in a large glass of warm water.

Warning: These pills should not be taken in cases of pregnancy. Also, they should not be taken in cases of nausea, vomiting, abdominal pain or other possible signs of appendicitis. If distress persists, consult your Doctor. Sold Only By Mail—In this way you get a freshly made product, at a saving in price, and mailed direct to you. Tell your friends so that they too may know.

NATURE SEED  
"Natures Best Remedy"  
Period Pills

The action of these Pills is such that they tend to increase menstruation when there is delay due to cold feet, nutritional lack of iron or functional inactivity. Contains Iron Sulfate Dried, Aloe Purified, Extract Cotton Root Bark, Ergotin (Bonjean), and Oil Savin.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondent represents, directly and by implication, that her said preparation is a doctor's prescription for delayed, unnatural or suppressed menstruation and that it constitutes a competent and adequate treatment for such conditions, regardless of the cause thereof; that said preparation is composed of ingredients derived from nature; that it is of double strength and is safe and harmless in use.

## Findings

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PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said preparation is not a doctor's prescription or such as would be prescribed by a doctor for the conditions set out in respondent's advertisements. Said preparation is not a competent, effective or adequate treatment for delayed, unnatural or suppressed menstruation regardless of the cause thereof. It is not composed entirely of ingredients derived from nature; and such ingredients are not natural products, nor are they in their natural state. It cannot be stated that said preparation is double strength since there is no established standard which may be taken as a basis for comparison. Said preparation is not safe or harmless; but on the contrary, its use may cause serious and irreparable injury to health when used under the conditions prescribed in said advertisements or under such conditions as are customary or usual. Such use of said preparation may result in gastrointestinal disturbances, such as catharsis, nausea and vomiting with pelvic congestion, inflammation and congestion of the uterus, leading to uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures, causing septicemia or blood poisoning.

The use by respondent of the trade name "Nature Seed Company" is, in itself, misleading and deceptive in that such use serves as a representation that said preparation is composed wholly of ingredients derived from nature, which is not the fact.

PAR. 6. Respondent's advertisements, disseminated as aforesaid, constitute false advertising for the further reason that they fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements or under such conditions as are customary or usual. In truth and in fact, the directions for the use of said preparation provide for the administration of a laxative, which is potentially dangerous when taken by persons suffering from abdominal pains, stomach ache, cramps, colic, nausea, vomiting or other symptoms of appendicitis. Moreover, the use of said preparation may result in gastrointestinal disturbances, such as catharsis, nausea and vomiting with pelvic congestion, inflammation and congestion of the uterus, leading to uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures, causing septicemia or blood poisoning.

PAR. 7. The use by the respondent of the foregoing false, misleading and deceptive statements and representations 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, and as a result of such erroneous and mistaken belief causes them to purchase substantial quantities of respondent's preparation.

#### CONCLUSION

The aforesaid acts and practices of the respondent as hereinabove found are all to the prejudice of the public and constitute unfair and deceptive acts and practices 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 the 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Beatrice Kornstein, her representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the medicinal preparation now known as "Nature Seed," or any other medicinal preparation of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement, directly or by implication—

(a) Represents that said preparation is a doctor's prescription or such as would be prescribed by a doctor for delayed, unnatural or suppressed menstruation.

(b) Represents that said preparation is a competent, effective or adequate treatment for delayed, unnatural or suppressed menstruation.

(c) Represents that said preparation is double strength and is safe and harmless for use.

(d) Contains or makes use of the words "Nature Seed" as a part of the name for said product, or as a part of the name of the company under which respondent trades, or represents in any manner that said preparation is composed entirely of ingredients derived from nature, are natural products or are in their natural state.

2. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to reveal that the use of said preparation may cause gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in case of pregnancy may cause uterine infection and blood poisoning.

3. 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 respondent's preparation which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions thereof or which fails to reveal that the use of said preparation may cause gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in case of pregnancy may cause uterine infection and blood poisoning.

*It is further ordered,* That respondent shall, within 10 days after service upon her of this order, file with the Commission an interim report in writing, stating whether she intends to comply with this order, and if so, the manner and form in which she intends to comply; and that within 60 days after the service upon her of this order, said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which she has complied with this order.



## Syllabus

IN THE MATTER OF  
MONTGOMERY WARD & 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 4638. Complaint, Nov. 19, 1941—Decision, Sept. 28, 1943*

• In order to prevent deception of the public, the designation of a fabric made to resemble the peltry of a fur-bearing animal should be such as to clearly disclose that such fabric is not made of fur but merely resembles the peltry of a fur-bearing animal, as, for example, "fur-like fabric" or "a fabric made to simulate fur."

Where names of fur-bearing animals are used in connection with coats made of fabric closely resembling the peltries of the animals referred to, such names should be immediately accompanied by another word or words disclosing that the fabric is merely an imitation of the peltry of the animal named, as, for example, "Imitation Persian Lamb," "Imitation Seal," etc.

Where a corporation, engaged in the interstate sale and distribution by mail order, among other merchandise, of women's coats made of fabrics so manufactured as to resemble closely the peltries of fur-bearing animals; in advertising in widely distributed catalogues—

Represented, through use of term "Fur Fabric" to designate said coats generally, and through such terms as "Persian Lamb Fabric," "Seal Fabric," "Hudson Seal Fabric," "Broadtail Fabric," and "Ombre Krimmer Fabric"—accompanied by depictions of women wearing coats which appeared to have been made of the peltries of such animals—that the coats were made of the peltries of the various animals referred to, or of the fur or hair thereof;

When in fact such coats were made entirely of textile fabrics composed of various combinations of rayon, cotton, silk and ordinary wool fiber;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the composition of such coats, thereby causing purchase thereof as result of such mistaken belief:

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

As respects the use of the word "fabric" in such terms as "Fur Fabric," "Persian Lamb Fabric," etc., to designate and describe women's coats made of fabrics so manufactured as to simulate and closely resemble the peltries of the animals referred to, though in fact made entirely of textile fabrics composed of various combinations of rayon, cotton, silk and ordinary wool fiber: A contention that use of said word along with other descriptive words, as above indicated, was sufficient to apprise prospective purchasers of the fact that the coats were fabric or cloth rather than fur coats, and that any possibility of deception was removed through use of other statements in seller's advertisements including, in most cases, statement of the materials of which the coats were made, was not tenable as it does not preclude the belief or impression that the fabrics in question are made of the fur or hair of fur-bearing animals, and other statements

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referred to do not usually appear in immediate connection with the descriptive terms and would frequently escape the attention of the prospective purchaser.

Before *Mr. Edward E. Reardon*, trial examiner.

*Mr. L. E. Creel, Jr.* for the Commission.

*Mr. F. P. Keiper*, 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 Montgomery Ward & Co., 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, Montgomery Ward & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 619 West Chicago Avenue, Chicago, Ill.

PAR. 2. Respondent is, and for more than two years last past, has been engaged in the operation of a mail order business. Among the articles sold by respondent are ladies fabric coats and other garments, which have been and are sold and distributed in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business, respondent causes and has caused said products when sold to be shipped from its place of business in the State of Illinois to purchasers 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 fabric garments in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid in connection with the offering for sale and sale of certain of its fabric garments, respondent has advertised and now advertises said garments by means of catalogs and other written or printed advertising which have been and are now disseminated to customers and prospective customers located in the various States of the United States. Among and typical of the descriptive names given to various garments described in said advertisements are: Ombre Kerami Fabric, Krim-

mer Fabric, Broadtail Fabric, Nu-Seal Fabric, Persian Fabric, Imported Persian Lamb Fabric, Finest Imported Black Persian Lamb Fabric, Hudson Seal Fabric, and Persian Lamb Fabric.

PAR. 4. The descriptive phrases employed by respondent as aforesaid are composed of the names of animals or words resembling names of animals which are well known to the purchasing public as being used extensively in the manufacture of fur garments, combined with the word "Fabric." The fabrics used in making the garments hereinabove described are made to simulate, and have the appearance of being made from, the peltries of the various designated animals or from the hair or wool of such animals.

Respondent further employs, in connection with its advertising in its catalogs, pictorial representations of women wearing garments which have the appearance of furs which serve further to emphasize the resemblance of said fabric garments to fur garments.

PAR. 5. In the manner and by the means aforesaid, the respondent has represented and now represents that said fabric garments sold and distributed by it as aforesaid are made from the peltries of said various animals or from the hair or wool taken from said animals.

In truth and in fact, said fabric garments are not made from the fur or peltries of animals nor are they made from fabrics composed of the hair or wool of the various animals used in describing the various garments. Said garments are on the contrary made of fabrics composed of various combinations of rayon, cotton, silk and ordinary wool fibers.

PAR. 6. The use by respondent of the names of the various fur-bearing animals or of words resembling such names in describing its said garments, although accompanied by the word "Fabric," has the tendency and capacity to and does confuse, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that its said garments are made from animal peltries or from the hair or wool taken from the animals described, and because of such erroneous and mistaken belief so engendered, has caused and induced and now causes and induces the purchase by the purchasing public of substantial quantities of respondent's said garments.

PAR. 7. 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 November 19, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Montgomery Ward & Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the attorney for the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, 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, Montgomery Ward & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 619 West Chicago Avenue, Chicago, Ill. Respondent is now and for many years last past has been engaged in the operation of a mail order business. Among the made articles of merchandise sold and distributed by respondent are women's fabric coats.

PAR. 2. Respondent causes and has caused its merchandise, including such fabric coats, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its coats, respondent advertises such coats by means of catalogs which are widely distributed among prospective purchasers throughout the United States. Among the coats so advertised and sold by respondent are certain coats designated by respondent generally as "fur fabric" coats, such coats being made of

fabrics manufactured in such manner as to resemble the peltries of certain fur-bearing animals. In addition to the general designation of "fur fabric," respondent uses other terms to describe such coats, including the terms "Persian Lamb Fabric," "Seal Fabric," "Hudson Seal Fabric," "Broadtail Fabric," and "Ombre Krimmer Fabric." The fabrics used in making these coats are made in such manner as to simulate the peltries of the various animals referred to and the fabrics do in fact closely resemble the peltries of such animals. Included in the advertisements in the catalogs are pictorial representations of women wearing coats which appear to have been made of the peltries of the various animals.

PAR. 4. The Commission finds that the term "fur fabric" and the various animal names as used by respondent constitute representations by respondent that such coats are made of the peltries of the various animals referred to or of the fur or hair of such animals.

PAR. 5. None of the coats so designated and described by respondent is made of the peltry of any animal, nor do any of such coats contain any fur or hair of the animals referred to. The coats are in fact made entirely of textile fabrics composed of various combinations of rayon, cotton, silk, and ordinary wool fibers. The Commission therefore finds that the term "fur fabric" and the various animal names as used by respondent to designate and describe its coats are misleading and deceptive.

PAR. 6. It is insisted by respondent that the use of the word "fabric" along with the other descriptive words is sufficient to apprise prospective purchasers of the fact that the coats in question are fabric or cloth coats rather than fur coats, and it is further insisted that any possibility of deception is removed through the use of various other statements in respondent's advertisements, including, in most cases, a statement of the materials of which the coats are made. The Commission is of the opinion, however, and finds, that the word "fabric" is insufficient to prevent deception or confusion as to the nature of such coats, as the word does not preclude the belief or impression that the fabrics in question are made of the fur or hair of fur-bearing animals. As to the other statements referred to by respondent, these statements do not usually appear in immediate connection with the descriptive terms and names and would frequently escape the attention of the prospective purchaser.

The Commission is of the opinion that in order to prevent deception of the public the designation of a fabric made in such manner as to resemble the peltry of a fur-bearing animal should be such as to clearly disclose that such fabric is not made of fur but merely re-

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sembles the peltry of a fur-bearing animal, as, for example, "fur-like fabric" or "a fabric made to simulate fur." The Commission is of the further opinion that when names of fur-bearing animals are used in connection with respondent's coats, such names should be immediately accompanied by another word or words disclosing that the fabric referred to is merely an imitation of the peltry of the animal named, as, for example, "Imitation Persian Lamb," "Imitation Seal," etc.

PAR. 7. The Commission finds further that the use by respondent of the term "fur fabric" and of the aforesaid animal names, as set forth herein, to designate and describe respondent's coats has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the composition of such coats, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such coats as a result of the erroneous and mistaken belief so engendered.

#### CONCLUSION

The 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 respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Montgomery Ward & Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of women's coats and other garments in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "fur fabric," or any other term of similar import, to designate or describe any fabric which is not in fact made from

the fur or hair of a fur-bearing animal; provided, however, that in designating a textile fabric which is made in such manner as to resemble the peltry of a fur-bearing animal there may be used such terms as "fur-like fabric," "fabric made to simulate fur," or other similar terms which clearly disclose that such fabric is not made of fur but merely resembles the peltry of a fur-bearing animal.

2. Using the words "Persian Lamb," "Seal," "Hudson Seal," "Broadtail," or "Krimmer," or any other word which is indicative of a fur-bearing animal, to designate or describe any coat or other garment which is not in fact made from the peltry of the animal named; provided, however, that when used to designate a coat or other garment made of a textile fabric which is manufactured in such manner as to resemble the peltry of the animal named, such words may be used if immediately accompanied by another word or words disclosing that the fabric of which such coat or other garment is made is merely an imitation of the peltry of the animal named, as, for example, "Imitation Persian Lamb," "Imitation Seal," etc.

3. Representing in any manner or by any means that coats or other garments made from textile fabrics are made from the peltries of fur-bearing animals or from the fur or hair of such animals.

*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 no provision of this order shall be construed as relieving respondent in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the authorized rules and regulations thereunder.

## IN THE MATTER OF

## ANDREW J. LYTLE AND RICHARD CARL LYTLE, TRADING AS VOCATIONAL PLACEMENT BUREAU, DEBTORS FINANCE BUREAU AND BUREAU OF RECORDS OF EMPLOYMENT, AND WILLIAM EDGAR SPICER

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

*Docket 4829. Complaint, Aug. 31, 1942—Decision, Sept. 28, 1943*

Where two individuals, engaged in operation of a collection agency under trade names "Vocational Placement Bureau" and "Bureau of Records of Employment," and, in connection therewith, in interstate sale and distribution of printed mailing post cards or folders for use in locating delinquent debtors which, (1) were composed of two units, i. e., an address card with space for inserting address of person from whom information was sought, to be returned to "Bureau of Records of Employment" at the Washington, D. C., address of their associate; and a return information card; (2) advised addressee, over signature as purported "Registrar," that the information was required by the "Bureau" to classify persons with respect to qualifications for employment at the most favorable wage, that his care in supplying the details would facilitate its work, and that "this department is not affiliated with any local or field offices"; (3) set forth on one side of information card its aforesaid trade names and Washington, D. C., address, and on the other, on a detachable stub, under caption "Employment Voucher," the words "Registration Number" followed by number, "Regional Agent For Eastern Area," and instruction to "Keep this stub," and under said stub blanks for the debtor's name, address, phone number, bank, wage or salary, home ownership, employer, marriage status, description, work, and experience; and (4) set forth opposite caption "Registrants," requests as to kind of work desired, physical defects and number of dependents; and, at the end, such matter as "Form V-T-B-100M-1-42," followed by same number given under employment voucher;

Making use of a plan under which the particular purchaser stamped and addressed the address card to the debtor at his last known address or to someone likely to have information concerning him, and forwarded the units to aforesaid individual in Washington, D. C., who mailed them and returned the information received to aforesaid two individuals at their place of business in Akron, for forwarding to the particular purchaser-customer identified by a code number stamped thereon—

- (a) Falsely represented, through use of said mailing cards, and placed in the hands of their customers a means of falsely representing, to debtors and others, that the request came from an agency or branch of the United States Government, including the Selective Service Administration which had from time to time theretofore issued questionnaires, forms for occupational deferment and classification notices designating persons involved as the "Registrant," and forms involving employment information, qualifications and preferences; and through use of such designation, and other designations such as trade name employed, words "Registrant," "Regional Area,"



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etc., along with nature of information requested, led recipients to believe that the information was sought in connection with the draft registration, employment in essential industry, or other activities of the Government; and

- (b) Failed to remove such implication of Government connection through its subsequent advice to addressee on address card that the information called for was for employment classification, as before set forth, but was not required by the Government or any of its branches, but by the Bureau of Records of Employment for the reasons stated, and that care in supplying details would "facilitate our work in tabulating your qualifications," followed by another signature as "Registrar"; and

Where an individual, engaged in Washington, D. C., in furnishing telephone secretarial service, desk space, and mail address service to various individuals and firms; under arrangements with the two aforesaid individuals, for the use of his address as that of the "Vocational Placement Bureau" and of the "Bureau of Records of Employment"—

- (c) Made the same false representations through mailing the cards to the debtor addressees or other persons from whom information was requested, and, by returning to the two individuals herein concerned the information obtained, assisted in the fruition of the purpose for which the original misrepresentation was made;

With capacity and tendency to engender in the minds of a substantial number of persons the mistaken belief that aforesaid mailing cards emanated from the United States Government or some agency thereof, thereby causing such persons to give information which otherwise they might not supply:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Andrew B. Duvall* and *Mr. J. Earl Cox*, trial examiners.  
*Mr. Randolph W. Branch* for the Commission.

*Mr. Jesiah Lyman* and *Mr. Robert H. Hunter*, of Washington, D. C., and *Mr. Dudley M. Sifling*, of Akron, Ohio, for Andrew J. Lytle and Richard Carl Lytle.

*Mr. John Lewis Smith*, of Washington, D. C., for William Edgar Spicer.

## 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 Andrew J. Lytle and Richard Carl Lytle, individually, and trading as Vocational Placement Bureau, Debtors Finance Bureau, and Bureau of Records of Employment, and William Edgar Spicer, an individual, hereinafter 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 stating its charges in that respect as follows:

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PARAGRAPH 1. The respondents, Andrew J. Lytle and Richard Carl Lytle, are individuals who, in the commission of the acts hereinafter alleged, use the names Vocational Placement Bureau, Debtors Finance Bureau, and Bureau of Records of Employment, and who have their office and principal place of business at 221 Everett Building in the city of Akron, State of Ohio. The respondent, William Edgar Spicer, is an individual, whose office and principal place of business is located at 302 Bond Building in the city of Washington, D. C.

PAR. 2. The respondents, Andrew J. Lytle and Richard Carl Lytle, are now and for more than 6 months last past, have been engaged in the business of selling printed mailing cards. Said respondents cause said cards when sold to be transported from their place of business in the State of Ohio to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia. Said respondents, Andrew J. Lytle and Richard Carl Lytle, maintain, and at all times herein mentioned have maintained, a course of trade in their said products in commerce among and between the various States of the United States and in the District of Columbia.

The said mailing cards sold and transported by the respondents, Andrew J. Lytle and Richard Carl Lytle, as heretofore alleged, are designed and intended to be used by collection agencies, merchants, and others to whom they are sold in obtaining information concerning the purchasers' debtors. Said mailing cards are made up of units composed of two cards separated by perforated lines, designed to enable the addressee of one of the two cards hereinafter referred to as the addressee card, to detach the other card hereinafter referred to as the information card, which is self-addressed, and thereon give certain information requested on the card addressed to him. The addressee card is addressed to the debtor at his last known address or to someone likely to have information concerning him, by the creditor or collection agency or other purchaser of the cards. The unit composed of two cards is then forwarded to the respondent, William Edgar Spicer, at his said place of business in the city of Washington, D. C., and is mailed by him from the city of Washington, D. C., to the person and to the address placed on the addressee card by the purchaser. When the debtor or other informant responds to the request for information contained on the addressee card, he detaches the information card and mails it with the information requested. Said information card has already been previously addressed to "Bureau of Records of Employment, Suite 302, Bond Building, Washington, D. C.," Said information card so addressed is delivered by the Post Office Department to respondent, Spicer. Said Spicer then forwards the information card

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with the information thereon supplied from Washington, D. C., to respondent, Andrew J. Lytle and Richard Carl Lytle, in Akron, Ohio. Respondents, Andrew J. Lytle and Richard Carl Lytle, then return the information card and the information so forwarded to the original purchaser of the cards.

PAR. 3. The respondents, Andrew J. Lytle and Richard Carl Lytle, in the course of their said business and for the purpose of inducing the sale of their said products cause the said mailing cards transported by them as heretofore alleged to be printed and prepared in the manner hereinafter set forth. In the upper lefthand corner of the addressed side of the addressee card the following return address is printed:

Return to  
BUREAU OF RECORDS OF EMPLOYMENT,  
Bond Building,  
Washington, D. C.  
Return and Forwarding Postage Guaranteed

The reverse side of said addressee card contains the words:

Washington, D. C.

To Addressee:

The information requested is required by the Bureau to use its best efforts in classifying the largest number of people possible, judging their fitness for positions in which they are most likely to succeed, at the highest wage, commensurate with their qualifications, attainments and ambitions. Your care in supplying all details will facilitate our work in tabulating your qualifications. This Department is not affiliated with any local or field offices.

M. O. MORGANSON,  
*Registrar.*

Across said words is printed a large blue letter V.

The words M. O. Morganson, are a facsimile signature. M. O. Morganson is a fictitious name, and is not the signature or name of anyone employed by or associated with any of the respondents. Said facsimile signature has been so prepared as to resemble and have the general appearance of the signature of Henry Morgenthau, the Secretary of the Treasury of the United States.

The information card is addressed as follows:

Bureau of Records of Employment,  
Suite 302, Bond Building,  
Washington, D. C.

On the same side of the information card and at right angles to said address on a stub detachable from said card by a perforated line are the words:

Detach this stub and mail card  
No postage necessary



to whom said cards are addressed by said customers that the request for information comes from an agency or branch of the Government of the United States. The respondent, Spicer, by mailing the said cards to the debtor-addressees or other persons from whom information is requested makes the same representation and by returning to the respondents, Andrew J. Lytle and Richard Carl Lytle, the information obtained from the debtors or other informants assists in the fruition of the purpose for which the original misrepresentation was made by the respondents Andrew J. Lytle and Richard Carl Lytle, and their customers and in so doing is guilty of an unfair and deceptive act and practice in commerce among and between the various States of the United States.

The said representation is false and misleading. In truth and in fact neither the request for information nor the said mailing cards come from the Government of the United States or any branch or agency thereof, but are the device of private persons and agencies used for the purpose of obtaining information for their own usage.

Many persons who receive the aforesaid mailing cards which request information believe said mailing cards come from the Government of the United States or from some branch or agency thereof and by reason of such belief give information which they would not otherwise supply. Many agencies of the Government of the United States distribute and for some time past have distributed vocational questionnaires similar to those used by respondents. Such questionnaires are and have been distributed by the Selective Service System among others. Among the persons receiving such mailing cards and requests for information are many subject to the provisions of the Selective Service and Training Act of 1940 as amended, who believe that, or are doubtful as to whether, said mailing cards and requests for information have been sent to them under the provisions of said act. As a result of such beliefs and such doubts, many inquiries both in person and by mail are addressed to the local boards and other divisions of said Selective Service System and correspondence and other effort on the part of the various divisions of the Selective Service System, the Army of the United States and other governmental divisions and agencies are made necessary.

PAR. 4. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and of the United States Government 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 August 31, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Andrew J. Lytle and Richard Carl Lytle, as individuals, and trading as Vocational Placement Bureau, Debtors Finance Bureau, and Bureau of Records of Employment, and upon respondent, William Edgar Spicer, an individual, 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 said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, answers thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument 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. Respondents, Andrew J. Lytle and Richard Carl Lytle, are individuals, who are associated in the operation of a collection agency known as Debtors Finance Bureau and are also engaged in the business of selling and distributing printed forms for use in locating delinquent debtors, in connection with which business they use the trade names Vocational Placement Bureau and Bureau of Records of Employment. Said respondents have their principal place of business at 221 Everett Building, Akron, Ohio.

Respondent, William Edgar Spicer, is an individual, engaged in the furnishing of telephone secretarial service, desk-space service, and mail-address service to various individuals and firms who have occasion to use such services. Said respondent has his office and principal place of business at 302 Bond Building, Washington, D. C.

Said respondents have acted in conjunction and cooperation with each other in doing and performing the acts and practices herein-after described.

PAR. 2. Respondents, Andrew J. Lytle and Richard Carl Lytle, since June 18, 1942, have been engaged in the sale and distribution of printed mailing cards or folders designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors. Said respondents cause said printed mailing cards or folders, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said printed mailing cards or folders in commerce between and among the various States of the United States.

PAR. 3. In the early part of the year 1942 respondent, Andrew J. Lytle, originated and designed a mailing card or folder for use in obtaining information concerning delinquent debtors. The mailing card or folder so developed by said respondent was turned over by him to his son, respondent, Richard Carl Lytle, for the purpose of selling and distributing said mailing card or folder to creditors and collection agencies. Said respondent, Andrew J. Lytle, received as compensation a commission of 15 percent on the sale of such mailing cards or folders. For the purpose of selling such mailing cards or folders to creditors and collection agencies, the respondents adopted the trade names "Vocational Placement Bureau" and "Bureau of Records of Employment" and established a mailing address in the city of Washington, D. C. Respondent, Andrew J. Lytle, contributed to the expense of organizing said business and personally arranged for the participation of respondent, William Edgar Spicer, in the operation of said business.

PAR. 4. Under the plan of conducting this business as developed by respondents, Andrew J. Lytle and Richard Carl Lytle, arrangements were made with respondent, William Edgar Spicer, to use the address of said William Edgar Spicer as the Washington address and place of business of the Vocational Placement Bureau and as the purported address and place of business of the Bureau of Records of Employment.

PAR. 5. For the purpose of inducing the purchase of their mailing cards or folders by creditors and collection agencies, the respondents, Andrew J. Lytle and Richard Carl Lytle, prepared certain advertising carrying the address of the Vocational Placement Bureau as Suite 302, Bond Building, Washington, D. C., the address of said respondent, William Edgar Spicer. Such advertising was sealed in an envelope by said respondents addressed to various collection agencies and creditors and forwarded to the respondent, William Edgar Spicer, who in turn deposited said envelopes and advertising contained therein in the United States mails at Washington, D. C.

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PAR. 6. The mailing cards or folders so advertised or sold by the respondents, Andrew J. Lytle and Richard Carl Lytle, were made up of units composed of two cards, an address card with space for inserting address of the debtor or other person from whom information is sought and an information card in the form of a return post card so designed that they could be folded and mailed as a folder. When a creditor or collection agency purchased a supply of said mailing cards or folders, the respondents printed an identification number on the information cards and forwarded said mailing cards or folders to the purchaser. The address card of respondents' unit was then addressed to the debtor at his last known address or to someone likely to have information concerning him, by the creditor, collection agency, or other purchaser, who also attached necessary prepaid postage. The units composed of the two cards were then forwarded by the purchaser to the respondent, William Edgar Spicer, at his place of business in the city of Washington, D. C., and were mailed by him from the city of Washington to the persons and to the addresses placed upon the address cards by the purchaser. The cards were uniformly sent through regular United States mails with postage stamps attached, and at no time has any government frank or any marking simulating such a frank been used.

When the recipient responded to the request for information contained on the address card, he filled in the blank spaces on the information card, detached such card from the address card and mailed it to the address given thereon, to wit, Bureau of Records of Employment, Suite 302, Bond Building, Washington, D. C., such address having previously been printed thereon by the respondents, Andrew J. Lytle and Richard Carl Lytle. In due course the information card was delivered by the Post Office Department to respondent, William Edgar Spicer, who then forwarded the card from Washington, D. C., to respondents, Andrew J. Lytle and Richard Carl Lytle, at their address at Akron, Ohio, and were in turn forwarded by them to the purchaser identified by the identification number appearing on said cards.

PAR. 7. The respondents, Andrew J. Lytle and Richard Carl Lytle, cause said mailing cards to be prepared and printed in the manner and form hereinafter described.

The address card of respondents' unit has space for the name and address of the addressee and the following return address printed thereon:

Return to  
BUREAU OF RECORDS  
OF EMPLOYMENT  
Bond Building  
WASHINGTON, D. C.



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On the reverse side of the address cards sold and distributed by the respondents prior to July 30, 1942, was printed the following statement:

Washington, D. C.

To Addressee:

The information requested is required by the Bureau to use its best efforts in classifying the largest number of people possible; judging their fitness for positions in which they are most likely to succeed, at the highest wage, commensurate with their qualifications, attainments and ambitions. Your care in supplying all details will facilitate our work in tabulating your qualifications. This Department is not affiliated with any local or field offices.

M. O. MORGANRAW,  
Registrar.

The words "M. O. Morganraw" are a facsimile signature. It is a fictitious name adopted by respondent, Andrew J. Lytle, and is not the signature or name of anyone employed by or associated with any of the respondents.

The information card was in the form of a post card, with a detachable stub attached, upon one side of which was printed the following address:

Bureau of Records of Employment,  
Suite 302,  
Bond Building,  
Washington, D. C.

On the reverse side of this card was printed the following, including the registration number and area designation filled in as it appears on Commission Exhibit 2:

EMPLOYMENT VOUCHER

Registration Number 91112  
Regional Agent for EASTERN AREA  
Keep This Stub

-----  
Name -----  
Address -----  
Town -----  
State -----  
Phone Number -----  
Or—Nearest Phone -----  
-----  
Your Bank  
Monthly Earnings ----- Salary or Wage Desired -----  
Age ----- Weight ----- Height -----  
Own Home? ----- Rent? ----- Own Auto? -----  
Employed by -----  
Address -----  
-----  
If Married, Mate's Name -----  
-----  
Mate's Employment, If Any -----

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Registrant:

-----  
General Description of Yourself  
----------  
Nature of Present Work  
----------  
Most Familiar Line of Work  
----------  
Kind of Work Desired  
----------  
Any Physical Defects  
----------  
Number of Dependents  
-----

(Form V-T-B-100M-1-42) 91112

DO NOT FOLD

PAR. 8. By the use of these mailing cards, prepared and printed as above set forth, respondents, Andrew J. Lytle and Richard Carl Lytle, represent, and place in the hands of their customers a means of representing, to debtors and others that the request for information comes from an agency or branch of the Government of the United States.

The Selective Service Administration has, from time to time since the passage of Selective Service and Training Act of 1940, issued questionnaires, forms for occupational deferment, and notices of classification, all of which refer to and designate the person involved as the "Registrant." Among the various forms issued by the Selective Service Administration and other agencies of the Federal Government were those involving the furnishing of information concerning employment, qualifications for employment, and preferences for employment.

The use of the designation "Employment voucher" and the detachable stub, to be retained by the debtor, showing registration number and area designation, causes the recipient of such mailing card to believe that the information requested is for the purpose of obtaining employment information in connection with the requirements of the United States Government and not for the purpose of obtaining information in connection with the collection of a debt. The use of the designation "Bureau of Records of Employment, Washington, D. C.," the designation of the recipient as "Registrant," the use of a so-called "Registration number," the use of the designations "Regional agent" and "Eastern area" or other area designations, and the nature of the information requested are all designed to, and do, convey the impression to recipients of such mailing cards that such cards are forwarded by some agency or branch of the United States Government in connection with the draft registration, the employment of indi-

viduals in essential industry, or other activities of the Federal Government.

In fact, a number of persons have forwarded the information requested to the respondents as Bureau of Records of Employment at Washington, D. C., under the belief that such information was requested and required by the United States Government. Furthermore, a number of persons have forwarded the information card above-described to their local draft boards or state directors, which cards have in turn been forwarded to the National Headquarters, Selective Service Administration, Washington, D. C., indicating that such recipients of respondents' mailing cards believed that the information requested was in some way connected with the operation of the Selective Service system.

PAR. 9. That it was the design and intention of the respondents, Andrew J. Lytle and Richard Carl Lytle, to engender in the minds of recipients of their folders that the information requested was in some way connected with the activities of the United States Government is clearly indicated by the following statements appearing in said respondents' advertising:

#### HOW IT OPERATES:

Cards emanate from the BUREAU OF RECORDS OF EMPLOYMENT, Washington, D. C. (thus getting a Washington post-mark). They do not promise the debtor nor his references anything, but the very nature of the wording, the make up, and general tone compel them to reply for their own best interest.

\* \* \* \* \*

#### WASHINGTON, D. C. ADDRESS:

Is a decided advantage, and the psychological timing of such a tracer is in line with general newspaper publicity.

We think the value of the Washington post mark off-sets the delay occasioned for having them thus mailed rather than dropping them in your local post office.

Here is an entirely new idea;—psychologically timed to attract attention and get replies.

PAR. 10. During the times that the above described mailing card or folder was sold and distributed by the respondents, viz, from June 18, 1942, to July 30, 1942, the respondents sold and delivered to customers throughout the various States of the United States 64,623 of such cards. On or about July 30, 1942, after investigation by the Federal Trade Commission and immediately prior to the filing of the complaint herein, the respondents changed the wording on the reverse side of the address card to read as follows:

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Washington, D. C.

To Addressee:

The information requested is required by the Bureau to use its best efforts in allocating the largest number of people possible; judging their fitness for positions in which they are most likely to succeed, at the highest wage, commensurate with their qualifications, attainments and ambitions. This information is not required by the Government or any of its Branches, but by the Bureau of Records of Employment for the reasons stated above. Your care in supplying all details will facilitate our work in tabulating your qualifications.

FRED H. LAHRMER,  
*Registrar.*

As the respondents have maintained that the change in said folder as hereinabove described has removed the possibilities of deception and constitutes a defense to the complaint in this case, the Commission has given consideration to the form of folder used by the respondents subsequent to the issuance of the complaint, and finds that the nature of the changes made is not such as would remove the implications that the purpose of the information card is to obtain employment information and that the information requested is in some way connected with the requirements of the Federal Government.

PAR. 11. The information requested by the respondents in their information cards was not requested by the Government of the United States or by any branch or agency thereof or for the purpose of allocating the recipients or judging their fitness for positions but was requested for the sole purpose of obtaining information from the recipients of such mailing cards for use in connection with the collection of delinquent accounts due from, or allegedly due from, said recipients.

PAR. 12. Respondent, William Edgar Spicer, by mailing the cards to the debtor-addressees or other persons from whom information was requested, made the same representation; and, by returning to respondents, Andrew J. Lytle and Richard Carl Lytle, the information obtained from debtors or other informants, assisted in the fruition of the purpose for which the original misrepresentation was made by respondents, Andrew J. Lytle and Richard Carl Lytle, and their customers. Respondent, William Edgar Spicer, thus participated actively in the acts and practices herein described.

PAR. 13. The use, as hereinabove set forth, of the foregoing acts and practices has the capacity and tendency to engender in the minds of a substantial number of persons the erroneous and mistaken belief that the aforesaid mailing cards emanate from the Government of the United States or from some branch or agency thereof and has the tendency and capacity to cause such persons, by reason thereof, to give information which otherwise they might not supply.

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## CONCLUSION

The 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, answers of the respondents, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondents, Andrew J. Lytle and Richard Carl Lytle, individually, and trading as Vocational Placement Bureau or Bureau of Records of Employment, or trading under any other name or names, and respondent, William Edgar Spicer, an individual, 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 in commerce as "commerce" is defined in the Federal Trade Commission Act, of mailing cards or folders or any other printed or written material for use in obtaining information concerning debtors or other persons, do forthwith cease and desist from:

1. Using the words "Bureau of Records of Employment" or any other words to designate or describe the business of the respondents, or any of them, which represent or imply that respondents are connected with any branch or agency of the United States Government or that the respondents, or any of them, are authorized to secure information for any branch or agency of the United States Government.
2. Representing directly or by implication that the business of the respondents, or of any of them, has any connection with the United States Government or that any information sought by the respondents, or any of them, or their customers is for the use of the United States Government or any branch or agency thereof.
3. Using the words "Registration number" or "Regional agent" or area designations, such as "Eastern area," or any other words or area designations of similar import or meaning, on any information cards, questionnaires, or other material, which represent or imply that the information sought thereby is required by, or is for the use of, the

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Selective Service Administration or any other agency or branch of the United States Government.

4. Using, or placing in the hands of others for use, mailing cards, questionnaires, or other printed material so worded and designed as to represent or imply that such mailing cards, questionnaires, or other material have been forwarded by some agency or branch of the United States Government or that the information sought to be obtained by such mailing cards, questionnaires, or other material is for the use of any agency or branch of the United States Government.

*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  
 SUPERIOR HUMUS & PEAT MOSS CORPORATION

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

*Docket 4654. Complaint, Dec. 5, 1941—Decision, Oct. 5, 1943*

Where a corporation, engaged in mining commercial peat and in the interstate sale and distribution thereof to dealers and also direct to nurserymen, florists, farmers, and poultrymen—

Represented that its said product was "moss peat" through use of words "Peat Moss" in its corporate name and in advertising circulars and on the boxes in which its peat was packed and sold;

When in fact its said peat was not the preferred "moss peat"—derived from Sphagnum moss with high absorptive capacity and acidity, very low ash content and germicidal properties, and availability for uses for which the other type could not be employed—but was a mixture of sedge and Hypnum peat, with relatively low absorptive capacity and acidity and higher ash content, lacking germicidal properties, and with tendency, under certain conditions, to harbor insects and micro-organisms;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the character and properties of product in question, thereby causing purchase of said product as a result of such mistaken belief:

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

Before *Mr. Andrew B. Duvall*, trial examiner.

*Mr. James I. Rooney* and *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 Superior Humus & Peat Moss 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:

PARAGRAPH 1. Respondent, Superior Humus & Peat Moss Corporation, 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 located at 137-165 Queens Boulevard, Jamaica, L. I., N. Y.

PAR. 2. Said respondent is now and for more than one year last past has been engaged in the mining and in the sale and distribution of commercial peat to wholesalers and retailers for resale, and directly to those engaged in the agricultural industry, such as nurserymen, florists, farmers and poultrymen. Respondent causes said product, when sold, to be shipped from its places of business either at Jamaica, L. I., N. Y., or from Poughkeepsie, N. Y., to the purchasers thereof, who are located at points 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 commercial peat 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 aforesaid business and for the purpose of inducing the purchase of its product, respondent has falsely represented, by the use of the words "Peat Moss" in connection with and as part of its corporate name and by various other means, such as pamphlets, newspapers and trade publications circulated generally among the purchasing public, and by means of labels on boxes in which its said product is shipped to the purchasing public, that the commercial peat sold and distributed by it is "Peat Moss."

PAR. 4. There are many forms and varieties of peat. Their characteristics, physical properties and chemical compositions greatly differ. Peat Moss, more correctly described as Moss Peat, signifies and is commonly understood by those engaged in the agricultural and kindred industries, to be a well defined variety of peat formed predominately by the small stems and leaves of various species of Sphagnum mosses. Such variety of peat is used extensively as bedding for dairy cattle and horses; as poultry litter; as a source of humus-forming organic matter for the purpose of improving soils and as a packing material for shipping or storing perishable articles such as fruits, vegetables, tubers, bulbs, and seedlings. It possesses certain distinct properties and characteristics not found in other varieties of peat. Among such peculiar properties and characteristics are its high water absorbing capacity, its strong acid reaction, its uniformly low mineral and nitrogen content, its capacity to prevent infection from disease organisms in plant life, and its ease in handling. Because of these characteristics and qualities Moss Peat is preferred by the purchasing public over other varieties of peat and commands a higher price.

PAR. 5. Respondent's product designated, described, and advertised as "Peat Moss" is a peat composed mainly of moderately decomposed rootlets and rhizomes derived from various sedges and the stems from species of Hypnum and is properly identified as "Sedge Peat." It has a relatively low water absorbing capacity, varies in reaction



from acid to alkaline, and may contain injurious soluble salts. When cultivated for crops it undergoes decomposition and is apt to harbor disease organisms. Such variety of peat becomes brittle and powdery when dry and cannot be successfully employed for many of the uses for which Moss Peat is accepted.

PAR. 6. Respondent by using the words "Peat Moss" in describing and identifying his product falsely represents, directly and by implication, that said product is "Moss Peat" and that it possesses all the beneficial qualities and characteristics of Moss Peat as heretofore set forth and described.

PAR. 7. The use by the respondent of the false, deceptive, and misleading designation and description of its product, designated as aforesaid, has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's product is Moss Peat and that said product possesses all of the qualities and characteristics of Moss Peat and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

PAR. 8. 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 December 5, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Superior Humus & Peat Moss Corporation, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by the respondent), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the

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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, Superior Humus & Peat Moss Corporation, 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 located at 137-165 Queens Boulevard, Jamaica, L. I., N. Y.

Respondent is now and for some 5 years last past has been engaged in the mining of commercial peat, and in the sale and distribution thereof to wholesale and retail dealers for resale, and also directly to persons engaged in the agricultural industry, such as nurserymen, florists, farmers, and poultrymen. The mine or pit from which respondent obtains its peat is located near Poughkeepsie, Dutchess County, N. Y.

PAR. 2. Respondent causes and has caused its peat, when sold, to be shipped from its place of business at Jamaica, L. I., N. Y., or from Poughkeepsie, N. Y., to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and for some 5 years last past has maintained a course of trade in its product in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business respondent has represented, through the use of the words "Peat Moss" in its corporate name and in advertising circulars distributed among prospective customers, and on the boxes in which its peat is packed and sold, that its product is moss peat.

PAR. 4. There are two general classes of peat: (1) moss peat, and (2) reed, sedge, and Hypnum peats. Moss peat is derived from Sphagnum moss and is found in cool, northern regions where the rainfall is relatively high and where fogs of long duration occur. Reed, sedge, and Hypnum peats are found principally in the more southerly, moderate temperature regions. There are pronounced differences between the two types of peat. Moss peat possesses a high capacity for absorbing water, a higher degree of acidity, and a very low ash content. It also possesses germicidal properties. Reed, sedge, and Hypnum peats, on the other hand, have a relatively low capacity for water absorption, a lower degree of acidity, and a higher ash content. They are lacking in germicidal properties, and

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in fact have a tendency under certain conditions to harbor insects and microorganisms.

There is a marked difference, also, in the uses which can be made of the two types of peat. Moss peat is the only type of peat which can be used satisfactorily for stable bedding and as a litter for poultry. Likewise, it is the only type which can be used for surgical dressings, this being due to its high degree of acidity and its germicidal properties. In the shipping or storing of such articles as vegetables, fruits, bulbs, and seedlings, moss peat is preferable because of its germicidal characteristics. Moss peat is also preferable as a mulch and as a soil conditioner because of its high absorptive capacity and high acidity.

PAR. 5. The evidence discloses that respondent's product is not moss peat but is a mixture of sedge and Hypnum peats. It further appears from the evidence that there is a marked preference on the part of users of peat for moss peat over sedge or Hypnum peat, and that such users understand the term "peat moss" as indicating that the product so designated is moss peat derived from Sphagnum moss. The Commission therefore finds that the term "Peat Moss," as used by respondent in its corporate name and otherwise to designate and describe its product, is erroneous and misleading.

PAR. 6. The Commission finds further that the use by respondent of this erroneous and misleading term as set forth herein has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character and properties of respondent's product, and the tendency and capacity to cause such members of the public to purchase respondent's product as a result of the erroneous and mistaken belief so engendered.

## CONCLUSION

The 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 respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint

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(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 the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Superior Humus & Peat Moss Corporation, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's peat in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Peat Moss" or "Moss Peat," or any other words of similar import, to designate or describe any peat not derived from Sphagnum moss; or otherwise representing, directly or by implication, that any peat is moss peat when such peat is not derived from Sphagnum moss.

2. Using the words "Peat Moss" or "Moss Peat," or any other words of similar import, as a part of or in connection with respondent's corporate or trade name; provided, however, that this order shall not be construed as prohibiting the use in such name of the word "Peat" when accompanied by the word "Moss."

*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  
HENRY P. KINNEKE, TRADING AS MILWAUKEE  
IMPORTING COMPANY

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

*Docket 4980. Complaint, June 18, 1943—Decision, Oct. 5, 1943*

Where an individual, who was engaged in the packaging and interstate sale and distribution of "Malt Cereal" coffee substitute purchased by him from malsters, and who had taken over an extensive mail order business developed by his father, numerous customers of which had become accustomed, over a period of many years, due to the reputation of the product, and that of the firm for satisfactory service, to prepay orders sent through the mails—

Solicited orders by means of advertising urging potential customers to place their requirements "now" for the next 6 months since, when raw materials were depleted, he could not guarantee delivery "because of inability to manufacture until the law so provides" and setting forth that in view of past service of the particular customer he "would again appreciate the pleasure of serving you"; and in all instances in which those replying placed orders and made prepayment therefor, retained the payments but frequently failed to ship the merchandise ordered; and, to forestall complaints due to non-delivery, adopted practice of sending to customers postal cards giving various false and fraudulent reasons, including asserted shortages of material, offer that "if you wish to cancel the order \* \* \* your money or invoice will be cancelled, though we dislike to have this information, as, many customers have purchased for the past 30 to 40 years," and assertion that the firm, having secured a number of carloads of choice material was malting and roasting 24 hours a day to fulfill delinquent orders;

The facts being he did no malting or roasting but, as aforesaid, merely purchased and repacked the finished product for shipment to customers; the real reason for his failure to fulfill orders was that he had spent the money received in payment thereof and was unable to buy either the product or sacks in which to package it for resale; and his sources of supply were at all times ready, willing and able to supply the product and necessary sacks or bags, provided payment was forthcoming;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into purchase of and prepayment for substantial quantities of product in question as a result of such erroneous beliefs:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. J. E. Cox*, trial examiner.

*Mr. Merle P. Lyon* 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 Henry P. Kinneke, an individual, trading as Milwaukee Importing Co., hereinafter referred to as the 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, Henry P. Kinneke, is an individual, trading as Milwaukee Importing Co., with his office and place of business located at 2039 North Thirty-fourth Street, Milwaukee, Wis.

Said respondent is engaged in the sale and distribution of Malt Cereal, a coffee substitute. Respondent causes, and has caused, his said Malt Cereal, when sold, to be shipped or transported from his place of business in the State of Wisconsin 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 product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent's Malt Cereal is purchased by respondent from various maltsters in Milwaukee and elsewhere, and packaged and sold by respondent to individual customers throughout various States of the United States. Said Malt Cereal is used as a substitute for coffee by numerous individuals who wish to avoid the use of a caffeine beverage. Prior to the year 1933 an extensive mail order business in this product was developed by respondent's father, and numerous individuals became accustomed over a period of many years, due to the reputation of the product and the reputation of the firm for prompt and satisfactory service, to prepay orders sent through the mails for said product. In 1933 the business was taken over by respondent and he has operated it as his individual enterprise since that time.

PAR. 3. During recent years, and particularly since 1939, the respondent has solicited orders for his product from prospective customers by means of advertising material sent through the United States mails. Contained in such advertising material are statements such as the following:

\* \* \* I would suggest placing your order NOW for your requirements for the next six months; when raw materials are depleted [all fresh stock] I cannot guarantee delivery of Malt Cereal because of the inability to manufacture until the Law so provides.

Our records indicate we have served you in the past and therefore would again appreciate the pleasure of serving you.

In response to such solicitation many persons have ordered the said product from respondent, and a large number have paid respondent for the merchandise at the time their orders were placed. In all such instances respondent has retained the payments, but in many instances has not shipped the merchandise ordered.

In order to forestall complaints from customers, due to non-delivery of the merchandise, respondent has adopted the practice of sending postal cards to his customers giving various false and fraudulent reasons and excuses for failure to fill the orders received. Among and typical of the various subterfuges and excuses offered by respondent for his failure to fill prepaid orders are the following:

Your order for       pounds of Malt Cereal has been duly received and entered for shipment as rapidly as possible. Due to the shortage of Malt Cereal and the inability to obtain Burlap which is an import of India and also jute we cannot guarantee immediate delivery, we are endeavoring to solve this problem at the present time. Paper cartons cannot be available; we are attempting to work some solution with cotton; it is questionable as to whether they may be strong enough. It is very distasteful to inform you of the prevailing conditions, however we are at mercy.

Your order for       pounds of Malt Cereal has been duly received and entered for shipment as rapidly as possible; Due to shortage of Malt Cereal, in fairness to all concerned all orders are filled in rotation. We are doing our best to fulfill orders as rapidly as possible; however we will not sacrifice speed in preference to quality. If you wish to cancel the order, please notify us and your money or Invoice will be cancelled, though we dislike to have this information, as many customers have purchased for the past 30 to 40 years.

We have been very fortunate in securing several car-loads of choice Chevallier Barley and are now Malting and Roasting 24 hours per day to fulfill the delinquent orders. Our product will be of standard quality as heretofore, as we do not wish to furnish an inferior Malt Cereal because of speed. Therefore your shipment of       pounds will go forward on or about       1941.

PAR. 4. In truth and in fact, there is not and never has been any shortage of malt cereal or bags in which to ship the same. Respondent does no malting or roasting, but merely buys the finished product from his sources of supply, and repacks same for shipment to individual customers. The real reason for the failure of respondent to fill orders was that he had spent the money received in payment thereof and was unable to buy either the malt cereal or bags or sacks in which to package it for resale. His sources of supply have been at all times ready, willing, and able to supply the product and necessary sacks or bags provided payment therefor was forthcoming from respondent.

PAR. 5. The representations hereinbefore set out in the solicitation by respondent of orders for his malt cereal have had, and now have, the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such

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representations are true, and into the belief that respondent is ready, willing, and able to fill orders in a reasonably near future, and into the purchase of, and prepayment for, substantial quantities of respondent's product as a result of such erroneous beliefs.

PAR. 6. 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 June 18, 1943, issued and thereafter served its complaint in this proceeding upon said respondent, Henry P. Kinneke, an individual, trading as Milwaukee Importing Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 9, 1943, the respondent filed his answer in this proceeding. Thereafter, at a hearing duly scheduled and held on August 20, 1943, it was agreed by the respondent and counsel for the Commission that, subject to the approval of the Commission, a statement of facts read into the record in this proceeding may be taken as the facts in lieu of testimony in support of the charges 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 conclusion based thereon, and enter its order disposing of the proceeding without the filing of a trial examiner's report, the presentation of argument, or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation (said stipulation having been approved and accepted); and the Commission, having duly considered the 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, Henry P. Kinneke, is an individual, trading as Milwaukee Importing Co., with his office and place of business located at 2039 North Thirty-fourth Street, Milwaukee, Wis.

Said respondent is engaged in the sale and distribution of malt cereal, a coffee substitute. Respondent causes and has caused his said malt cereal, when sold, to be shipped or transported from his place of business in the State of Wisconsin 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 product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent's malt cereal is purchased by respondent from various maltsters in Milwaukee and elsewhere, and packaged and sold by respondent to individual customers throughout various States of the United States. Said malt cereal is used as a substitute for coffee by numerous individuals who wish to avoid the use of a caffeine beverage. Prior to the year 1933 an extensive mail order business in this product was developed by respondent's father and numerous individuals became accustomed over a period of many years, due to the reputation of the product and the reputation of the firm for prompt and satisfactory service, to prepaying orders sent through the mails for said product. In 1933 the business was taken over by respondent, and he has operated it at his individual enterprise since that time.

PAR. 3. During recent years, and particularly since 1939, the respondent has solicited orders for his product from prospective customers by means of advertising material sent through the United States mail. Contained in such advertising material are statements such as the following:

\* \* \* I would suggest placing your order NOW for your requirements for the next six months; when raw materials are depleted [all fresh stock] I cannot guarantee delivery of Malt Cereal because of the inability to manufacture until the Law so provides.

Our records indicate we have served you in the past and therefore would again appreciate the pleasure of serving you.

In response to such solicitation many persons have ordered the said product from respondent, and a large number have paid respondent for the merchandise at the time their orders were placed. In all such instances respondent has retained the payments, but in many instances has not shipped the merchandise ordered.

In order to forestall complaints from customers due to nondelivery of the merchandise, respondent has adopted the practice of sending postal cards to his customers giving various false and fraudulent reasons and excuses for failure to fill the orders received. Among and typical of the various subterfuges and excuses offered by respondent for his failure to fill prepaid orders are the following:

Your order for       pounds of Malt Cereal has been duly received and entered for shipment as rapidly as possible. Due to the shortage of Malt Cereal and the inability to obtain Burlap which is an import of India and also jute we cannot guarantee immediate delivery, we are endeavoring to solve this problem at the

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present time. Paper cartons cannot be available; we are attempting to work some solution with cotton; it is questionable as to whether they may be strong enough. It is very distasteful to inform you of the prevailing conditions, however, we are at mercy.

Your order for        pounds of Malt Cereal has been duly received and entered for shipment as rapidly as possible; due to shortage of Malt Cereal, in fairness to all concerned all orders are filled in rotation. We are doing our best to fulfill orders as rapidly as possible; however we will not sacrifice speed in preference to quality. If you wish to cancel the order, please notify us and your money or Invoice will be cancelled, though we dislike to have this information, as many customers have purchased for the past 30 to 40 years.

We have been very fortunate in securing several car-loads of choice Chevalier Barley and are now Malting and Roasting 24 hours per day to fulfill the delinquent orders. Our product will be of standard quality as heretofore, as we do not wish to furnish an inferior Malt Cereal because of speed. Therefore your shipment of        pounds will go forward on or about        1941.

PAR. 4. In truth and in fact, there is not and never has been any shortage of malt cereal or bags in which to ship the same. Respondent does no malting or roasting, but merely buys the finished product from his sources of supply and repacks same for shipment to individual customers. The real reason for the failure of respondent to fill orders was that he had spent the money received in payment thereof and was unable to buy either the malt cereal or bags or sacks in which to package it for resale. His sources of supply have been at all times ready, willing, and able to supply the product and necessary sacks or bags, provided payment therefor was forthcoming from respondent.

PAR. 5. The representations hereinbefore set out in the solicitation by respondent of orders for his malt cereal have had and now have the capacity and tendency to and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and into the belief that respondent is ready, willing, and able to fill orders in a reasonably near future, and into the purchase of and prepayment for substantial quantities of respondent's product as a result of such erroneous beliefs.

#### 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, the answer of the respond-

ent, and a stipulation as to the facts entered into between the respondent herein and counsel for the Commission which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Henry P. Kinneke, individually, and trading under the name Milwaukee Importing Co., or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's malt cereal or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Accepting and retaining money sent in prepayment of merchandise ordered when for any reason the merchandise is not shipped pursuant to order.

2. Making false and fraudulent excuses and pretexts for failure to fill prepaid orders for merchandise.

3. Representing to customers that failure to fill orders or ship merchandise is due to war conditions, shortages of labor or raw materials, or to any other cause which does not in fact exist.

4. Representing that the malt cereal sold by respondent is malted or roasted in respondent's plant.

*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  
J. E. TODD, 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 4549. Complaint, July 29, 1941—Decision, Oct. 12, 1943<sup>1</sup>*

Where a corporation engaged in interstate sale and distribution of its "Todd's Capsules," ingredients of which, according to labels on the containers, were represented as including magnesium oxide, olibanum, sodium bicarbonate, and calcium bicarbonate; by statements in newspapers, periodicals, and reprints of testimonial letters, folders, and other advertising material, directly and by implication—

Represented falsely that its said preparation had curative properties in the treatment of rheumatism, arthritis, neuritis, and similar diseases, and would relieve the symptoms of pain associated therewith; the facts being that the therapeutic value of said preparation, if used in adequate amounts, was limited to neutralizing the acids of the stomach contents and the action of a mild laxative;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, because of which mistaken belief it purchased substantial quantities of its said preparation:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce.

As respects the only testimony offered by the seller of a preparation, which it recommended and advertised as an effective therapeutic agent and analgesic in the treatment of rheumatism, arthritis, and neuritis and similar diseases, ingredients of which, labeled as including magnesium oxide, olibanum, sodium bicarbonate, and calcium bicarbonate, as found by the Commission on the basis of the testimony of well-qualified physicians, had no therapeutic or analgesic value in the treatment of said ailments: such testimony, which indicated a limited knowledge of pharmacology, came from two osteopathic physicians who testified without knowledge as to the causative factors of arthritis and on the theory, long disproved by modern medicine and not now accepted by the consensus of opinion of the medical profession, that they are due to toxic conditions of the gastro-intestinal tract, and who mistakenly attributed the preparation's alleged therapeutic value to the element olibanum.

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

*Mr. R. P. Bellinger* for the Commission.

*Nash & Donnelly*, of Washington, D. C., for respondent.

<sup>1</sup>Original findings not published. The original order, which was not modified and is published herewith, was made as of July 27.

## 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 J. E. Todd, 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, J. E. Todd, 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 3167 Delaware Avenue, Kenmore, N. Y.

PAR. 2. Respondent is now and for several years last past has been engaged in the offering for sale, sale and distribution, in commerce between and among the various States of the United States and in the District of Columbia, of a medical preparation designated as "Todd's Capsules" containing a compound of the following drugs: Olibanum, Magnesium Oxide, Calcium Carbonate, and Sodium Bicarbonate.

Respondent causes said preparation, when sold, to be transported from its place of business in the State of New York to 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 medicinal preparation 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 aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said preparation by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements dis-

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seminated and caused to be disseminated by respondent, as aforesaid, are the following:

FREE  
INFORMATION TO ALL SUFFERERS FROM  
ARTHRITIS and RHEUMATISM

These painful diseases can be relieved.

Our Old English prescription has been kept a secret for more than 30 years. It has proven its merit in many difficult cases. Why suffer?

The capsules are designed and used for the purpose of alleviating the pain occurring in such maladies as rheumatism, arthritis, neuritis, and the like. No immediate relief is given by their use. Favorable results are not expected until they have been used for 100 days, and in stubborn and exaggerated cases longer use is necessary.

We will be very pleased to furnish you with names of people who have taken our capsules, so that you can write them and learn what wonderful results they have obtained.

For many years, while in another business, Mr. Todd was continually meeting people afflicted with the aforementioned diseases; and knowing what these capsules had done for his friends in England, he engaged a pharmacist to make some up for him. He was able in this way to help hundreds of people who had heretofore been unable to get any relief.

\* \* \* for the efficacy of Todd's Capsules for arthritis.

\* \* \* manifested in a curative medicine \* \* \*

\* \* \* what the capsules do for arthritis sufferers may be termed a modern miracle.

Todd's Capsules are being used by all age groups from three years to ninety-six years with amazing results in the treatment of rheumatism and arthritis.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent has represented and does now represent, directly and by implication, that its medicinal preparation designated as "Todd's Capsules" is an effective treatment for rheumatism, arthritis, neuritis, and kindred diseases or maladies, including the symptoms thereof and that it possesses curative properties in the treatment thereof.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false and misleading. In truth and in fact said preparation is not an effective treatment for rheumatism, arthritis, and neuritis, and kindred diseases or maladies or the symptoms thereof and it does not possess curative properties in the treatment thereof.

PAR. 6. The use by respondent of the foregoing false, deceptive, misleading and exaggerated statements and representations with respect to respondent's preparation, and the manufacturing or compounding of same, 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 said statements and representations are true, and into the purchase of substantial quantities of respondent's said preparation because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices 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, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 29, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, J. E. Todd, 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. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, supplemental report of the trial examiner, and briefs and supplemental briefs filed in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission, having duly considered the matter, on July 27, 1943, issued and subsequently served upon said respondent its findings as to the facts and conclusion based thereon and its order requiring the respondent to cease and desist from the practices charged in the complaint. Subsequent thereto, this cause again came on for hearing before the Commission upon the petition of counsel for the respondent to reconsider and set aside the findings as to the facts and the order to cease and desist heretofore issued; and the Commission, having duly considered said petition and the record herein and having issued its order modifying the findings as to the facts heretofore issued, makes this its findings as to the facts and its conclusion drawn therefrom.

## MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. E. Todd, 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 3167 Delaware Avenue, Kenmore, N. Y.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the offering for sale, sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of a medicinal preparation designated as "Todd's Capsules," which is recommended by the respondent for use in the treatment of rheumatism, arthritis, neuritis, and other similar diseases and conditions. Respondent causes said preparation, when sold, to be transported from its place of business in the State of New York to 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 medicinal preparation 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 aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and the respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements in newspapers, magazines, and other periodicals having a general circulation, and also in circulars containing reprints of testimonial letters, folders, and other advertising material, are the following:

FREE  
INFORMATION TO SUFFERERS FROM  
ARTHRITIS AND RHEUMATISM

These painful diseases can be relieved. Our old English prescription has been kept a secret for more than 30 years. It has proven its merit in many difficult cases.

The capsules are designed and used for the purpose of alleviating the pain occurring in such maladies as Rheumatism, Arthritis, Neuritis and the like. No



Immediate relief is given by their use. Favorable results are not expected until they have been used for one hundred days; and in stubborn and exaggerated cases longer use is necessary.

This Folder May Prove

#### A MESSAGE OF JOY

to those with rheumatic, arthritis or neuritis distress who may possibly find blessed relief at last with Todd's Capsules!

I got your second box on August 1940 and when I got through with it I had no more rheumatic pain so I thought I would not need any more. Today I can say I have not had any rheumatic pain for more than a year.

Several years ago I had neuritis in my right side. For months could not use my arm, at times the pain was so very severe that it seemed I would lose my mind.

After trying Todd's Capsules could see that I certainly was getting relief, so continued using them until I was quite O. K.

Four years ago I was a helpless cripple from arthritis, now I am walking without either wheel chair or crutches and only use a cane on the street and can do quite a lot of work.

Thanks to the Almighty God and Todd's Capsules, I cannot praise Todd's Capsules too highly and wish every sufferer from arthritis could give Todd's Capsules a fair trial and get well.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent has represented directly and by implication that its medicinal preparation designated as "Todd's Capsules" is an effective treatment for rheumatism, arthritis, neuritis, and similar diseases and conditions; that it will relieve the symptoms of pain associated with such diseases and conditions; and that it has curative properties in the treatment thereof.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false, and misleading. In truth and in fact, said preparation is not an effective treatment for rheumatism, arthritis, and neuritis and similar diseases or conditions and will not relieve the symptoms of pain associated with such diseases and conditions, and said preparation does not possess curative properties in the treatment of any such diseases and conditions.

PAR. 6. Arthritis is an inflammatory condition of the joints of the human body; neuritis is an inflammation of the nerves; and rheumatism is an inflammatory condition of the muscles and joints. All three of these conditions are attended with a considerable amount of pain. Arthritis is caused by many conditions of the human system, many of which are unknown or cannot be determined. If the cause of this condition can be ascertained, treatment to remove the cause may have some beneficial effect. In the absence of an ascertained cause, the

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usual treatment is directed to alleviating the symptoms of pain attendant upon such condition. Arthritis is noted for its characteristic of spontaneous remissions, during which time the manifestations of this condition, and particularly the symptoms of pain, disappear.

PAR. 7. On the label of its preparation respondent represents that its capsules contain magnesium oxide, olibanum, sodium bicarbonate, and calcium carbonate. Magnesium oxide is an alkalizer which counteracts acidity in the stomach and acts as a mild laxative; calcium carbonate is mildly alkalinizing; and sodium bicarbonate is a rapid alkalizer which counteracts acidity in the stomach and has a mild laxative action. Olibanum is a gummy resin, the chief sources of which are Arabia and East Africa. It is commonly known as "frankincense," which has aromatic properties but little or no use in modern medicine.

An analysis of respondent's preparation was made by a chemist employed by the Food and Drug Administration. This chemist testified that olibanum contains about 20 percent of gum, which is an alcohol-soluble constituent, and that after making an ether-alcohol extract of respondent's preparation he found not more than traces of gum in the residual material. He further testified that tests made for the presence of rosin gave indications of resinous material which is not found in olibanum. This analysis indicates either that respondent's preparation contains no olibanum or that only an insignificant amount of olibanum is present.

PAR. 8. Based upon the testimony of well-qualified physicians versed in the knowledge of pharmacy and the use and effect of drugs, some of whom have specialized for years in the study and treatment of arthritis and kindred ailments, the Commission finds that the ingredients of respondent's preparation, including the ingredient olibanum, used either singly or in combination, have no beneficial or therapeutic value in the treatment of arthritis, neuritis, or rheumatism and will not relieve the symptoms of pain associated with such ailments and conditions. The therapeutic value of this preparation, if used in adequate amounts, is limited to neutralizing the acids of the stomach contents and the action of a mild laxative. The preparation possesses no antiseptic or germicidal properties which provide effective action in the gastro-intestinal tract or increase the white corpuscles of the blood to the extent of having any beneficial effect upon any toxic or infectious condition of the body. There is no ingredient in respondent's preparation which has analgesic properties, and, consequently, this preparation has no value in relieving or alleviating the symptoms of pain associated with arthritis, neuritis, or rheumatism.

The only testimony offered by respondent came from two osteopathic physicians. Their testimony indicated a limited knowledge of

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pharmacology. These witnesses testified about the use of respondent's preparation in the treatment of arthritis without knowledge as to the causative factors thereof and on the theoretical basis that toxic conditions of the gastro-intestinal tract are generally the causative factors of arthritis, a theory which has long been disproved by modern medicine and is not now accepted by the consensus of opinion of the medical profession. Furthermore, these witnesses used this preparation without knowledge of its actual or true composition and without knowledge of its therapeutic properties. These witnesses further attributed the alleged therapeutic value of this preparation to the element olibanum, which position is decisively refuted by the unqualified testimony of the medical experts, who clearly established the scientific fact that respondent's preparation, either containing or not containing olibanum, possesses no therapeutic value whatever in the treatment of arthritis and the kindred ailments for which respondent has recommended it.

PAR. 9. The use by the respondent of the foregoing, false, deceptive, and misleading statements and representations with respect to the therapeutic value of its preparation has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that respondent's preparation has therapeutic value in the treatment of arthritis, neuritis, and rheumatism, and, because of such erroneous and mistaken belief, such members of the purchasing public have purchased substantial quantities of respondent's said preparation.

## 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<sup>1</sup>

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, supplemental report of the trial examiner, and briefs and supplemental briefs filed

<sup>1</sup> Order published herewith was made as of July 27.

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in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That the respondent, J. E. Todd, Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of its medicinal preparation designated "Todd's Capsules," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that respondent's preparation has any therapeutic value in the treatment of arthritis, neuritis, or rheumatism or similar diseases or conditions; or that said preparation will relieve or alleviate the symptoms of pain associated with such diseases or conditions; or that said preparation possesses curative properties in the treatment of any of such diseases or conditions.

2. 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 respondent's medicinal preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

*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

MICHAEL E. LEE, MYRON E. LEE AND KENNETH L. LEE,  
TRADING AS LEE-SONS AND AS MERLEKCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 4868. Complaint, Nov. 6, 1942—Decision, Oct. 19, 1943*

Where three individuals engaged in interstate sale and distribution of their "Merlek" mineral water consisting of filtered sea water to which at one time was added potassium iodide; through statements in pamphlets, circulars, and other advertising media, including testimonial letters—

(a) Represented directly and by implication that a deficiency of minerals is responsible for 90 percent of all diseases or ailments; that mineral balance is the controlling factor in keeping one in health; and that the use of their product would correct mineral imbalance in the system;

The facts being that only a very small fraction of all diseases or ailments are attributable to mineral deficiency; and while mineral balance is necessary to good health, occurrence of mineral imbalance is rare, and product in question could not either correct it or correct conditions arising therefrom;

(b) Represented that plant foods are produced from impoverished soils and do not contain the mineral elements essential to nourishment and good health; and that their product was the natural source of minerals and provided the body with adequate amounts in proper balance;

The facts being that the great bulk of food crops is produced on soil which contains most of the mineral elements required by man; the normal diet contains adequate minerals and it is difficult to provide a diet which does not contain sufficient quantities, with the exception of calcium, iron and iodine; as respects the latter, its said product did not contain sufficient calcium and iron to be effective in cases of their deficiency; and while in areas lacking iodine in the soil, it might have been useful in the prevention of simple goiter while potassium iodide was being added, this would not apply in nongoiter areas nor even in goiter areas where iodized salt or other sources of iodine are used; and product in question was not natural source of minerals—which is to be found in the plant and animal food consumed in the ordinary diet—and would not provide the body with adequate amounts of minerals in proper balance;

(c) Represented that the efficiency of each mineral is enhanced by proper amounts of the others, and that their product furnished the proper amount of each to provide the greatest efficiency of all;

The facts being that proper balance of minerals in the body is maintained by the body processes and not by the intake of the minerals themselves; and no fixed percentage of minerals can be represented as a proper balance, since a lack of minerals, when it exists, varies with different persons; and

(d) Falsely represented, through dissemination of printed excerpts from court testimony involving their product, that said preparation was a cure and effective treatment for a large number of diseases and ailments, including eczema, Bright's disease, high blood pressure, diabetes, arthritis, rheumatism, enlargement of the heart, nervousness, etc.;

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With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and to cause it to purchase substantial quantities of such product as a result of the erroneous belief so engendered:

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

Before *Mr. James A. Purcell*, trial examiner.

*Mr. B. G. Wilson* for the Commission.

*O'Connor, Neubarth & Moran*, of San Francisco, Calif., 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 Michael E. Lee, Myron E. Lee, and Kenneth L. Lee, individually, and as copartners, trading as Lee-Sons and as Merlek, 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, Michael E. Lee, Myron E. Lee, and Kenneth L. Lee are copartners, trading as Lee-Sons and as Merlek, having their office and principal place of business located at 1926 Grand Street, Alameda, Calif. All of said individuals have acted in conjunction and cooperation in carrying out the acts and practices hereinafter alleged.

Respondents are now, and for several years last past have been, engaged in the business of offering for sale, sale and distribution of a mineral water designated "Merlek," in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause their said product when sold to be shipped from their said place of business in the State of California to dealers located in various other States of the United States and in the District of Columbia. Said dealers in turn sell said product to the general public.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said product 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 said business and for the purpose of inducing the purchase of their said product, the respondents have disseminated and are now causing the dissemination of, false advertisements concerning their said product by United States

mails and by other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now causing the dissemination of false advertisements concerning their said product by various other means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, deceptive and misleading statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, and by means of pamphlets and circulars and other advertising material, including testimonial letters, are the following:

Some of our leading authorities claim that 90% of all ills are traceable to mineral deficiency.

Biochemistry teaches us that our health is no better than our mineral balance and as we correct our mineral balance our health improves.

Mineral elements must be available to the human body not only in adequate amounts, but in proper balance one to another, in their natural form.

Merlek is the natural source of minerals.

The efficiency of each mineral element is enhanced by the proper amounts of the other.

You use Merlek, the positive source of mineral elements, and prove to yourself that biochemistry is right.

PAR. 3. Through the use of the foregoing statements and representations and others of similar import and meaning not specifically set out herein, respondents represent and have represented, directly and by implication, that a deficiency of minerals in the system is responsible for 90 percent of all diseases or ailments of the human body; that mineral balance is the controlling factor in keeping one in health and that the use of respondent's product will correct mineral imbalance in the system; that our plant foods are produced from impoverished soils and do not contain the mineral elements essential to nourishment and good health; that respondents' product is the natural source of minerals and provides the body with adequate amounts of minerals in proper balance; that the efficiency of each mineral is enhanced by the proper amounts of the other, and that respondents' product furnishes the proper amount of each mineral to provide the greatest efficiency of all minerals.

PAR. 4. Respondents in the course and conduct of their aforesaid business have also disseminated printed excerpts from certain court testimony in which their said product was involved in which statements are made with respect to the therapeutic properties and values of said product. Respondents have caused such printed excerpts to be transported from their principal place of business in the State of

California and from the place of business of the firm printing such excerpts in the State of California to their dealers and distributors in States other than the State of California with the intent and purpose that such literature should be used by such dealers or distributors as an advertisement of their product, and such distributors and dealers have circulated such printed excerpts among customers and prospective customers for the purpose of inducing the sale of respondents' product. By means of the statements and representations contained in said printed excerpts respondents have represented, directly and by implication, that their said product is a cure or remedy of and constitutes a competent and effective treatment for prostatitis, weakness, psoriasis, eczema, rickets, headache, Bright's disease, high blood pressure, stomach trouble, indigestion, heart trouble, dizziness, pink-eye, sinusitis, diabetes, boils, hay fever, bronchitis, arthritis, rheumatism, pains in side, arms, shoulders, and neck, numbness in hands and arms, hemorrhoids, loss of weight, enlargement of the heart, nervousness, poor eyesight, paralysis, bow legs, colitis, sour stomach, run-down condition, osteomyelitis, overweight, shingles, stomach ulcers, gall bladder trouble, cancer, asthma, nausea, swollen tongue, low blood pressure, anemia, sores, goiter, tetany, bladder trouble, cataracts, bursitis, constipation, throat infection, kidney stones, and varicose veins.

PAR. 5. The foregoing statements and representations used and disseminated by the respondents in the manner aforesaid are false, misleading, and deceptive. In truth and in fact the number of diseases or ailments attributable to mineral deficiencies are few in number and are but a very small fraction of 90 percent of all diseases or ailments. While mineral balance is necessary to good health and the correction of mineral imbalance improves health, the occurrence of mineral imbalance is rare; and the respondents' product cannot be relied upon either to correct mineral imbalance or to correct conditions arising by reason of mineral imbalance. The great bulk of food crops is not produced on impoverished soil but on the contrary is produced on soil which contains most of the mineral elements required by man. The normal diet contains adequate minerals, and with the exception of calcium, iron and iodine, it is difficult to provide a diet which does not contain sufficient quantities of minerals. Respondents' product does not contain sufficient quantities of calcium and iron to be effective as a source of such minerals in cases of mineral deficiency. In certain localized areas where there is a lack of iodine in the soil, respondents' preparation may be useful in the prevention of simple goiter due to a deficiency of iodine in the food produced and consumed in such areas. In nongoiter areas or even in goiter areas, where iodized salt or other



sources of iodine are used in appropriate amounts, which is usually the case, respondents' preparation would have no therapeutic value in the treatment or prevention of goiter. As a matter of fact, respondents' product as presently constituted would have no value whatsoever as a source of iodine since potassium iodide is no longer added. Said preparation is not the natural source of minerals. The natural source of minerals is the plant and animal food consumed in the ordinary diet. Said product does not provide the body with adequate amounts of minerals in proper balance. The efficiency of minerals is dependent upon the body processes and not primarily by any combination of such minerals in a diet. While the efficiency of some minerals, as they exist in the body, is enhanced by the proper amounts of other minerals, this is not true as to all minerals. Respondents' product does not contain a proper balance of minerals so that, after being taken into the body, the efficiency of any one will be enhanced. Proper balance of minerals in the body is maintained by the body processes and not by the intake of the minerals themselves. Any fixed percentage of minerals in a product cannot be represented as a proper balance since the lack of various minerals in the body, where such lack exists, varies with different persons. Respondents' product is, in fact, nothing but filtered sea water to which was added, at one time, a quantity of potassium iodide. For some time this additive has not been used. The consensus of reliable medical authority is to the effect that filtered sea water has no therapeutic value in the treatment of any diseased condition or ailment of the human body.

Respondents' said product is not a cure or remedy of nor does it have any therapeutic value in the treatment of the various diseases, disorders, conditions and ailments enumerated in paragraph 4.

PAR. 6. The use of respondents of the foregoing false, deceptive and misleading statements, representations and advertisements disseminated as aforesaid with respect to their said product "Merlek" 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 said statements, representations and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief to purchase substantial quantities of respondents' said product.

PAR. 7. The aforesaid acts and practices of the respondents 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 November 6, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Michael E. Lee, Myron E. Lee, and Kenneth L. Lee, individually, and as copartners, trading as Lee-Sons, and as Merlek, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On December 3, 1942, the respondents filed their answer to the complaint. Thereafter, at a hearing held before a trial examiner of the Commission theretofore duly designated by it, and after certain testimony and other evidence had been introduced in support of the allegations of the complaint, the respondents stated upon the record that they admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to such facts. Subsequently, the matter came on for final hearing before the Commission on the complaint, respondents' answer thereto, the admission made by respondents at the hearing, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents 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, Michael E. Lee, Myron E. Lee, and Kenneth L. Lee, were, prior to June 15, 1942, copartners, trading as Lee-Sons, and as Merlek, with their office and principal place of business located at 1926 Grand Street, Alameda, Calif. For a year or more immediately preceding such date, respondents were engaged in the sale and distribution of a mineral water designated by them as "Merlek" and intended for use in the treatment of certain diseases and conditions of the human body. The record indicates that the business was discontinued by respondents in June 1942. Prior to the formation of the partnership, respondent Michael E. Lee had conducted the business for some 4 or 5 years as an individual.

PAR. 2. During the period of their business operations, respondents caused their product, when sold, to be shipped from their place of business in the State of California to dealers located in various other States of the United States and in the District of Columbia, who resold the product to the general public. Respondents maintained a course

of trade in their product 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 and for the purpose of inducing the purchase of their product, the respondents disseminated various advertisements concerning their product by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents also disseminated advertisements concerning their product by various other means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their product in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in certain of the advertisements disseminated as hereinabove set forth, by United States mails and by means of pamphlets, circulars, and other advertising media, including testimonial letters, were the following:

Some of our leading authorities claim that 90% of all ills are traceable to mineral deficiency.

Biochemistry teaches us that our health is no better than our mineral balance and as we correct our mineral balance our health improves.

Mineral elements must be available to the human body not only in adequate amounts, but in proper balance one to another, in their natural form.

Merlek is the natural source of minerals.

The efficiency of each mineral element is enhanced by the proper amounts of the other.

You use Merlek, the positive source of mineral elements, and prove to yourself that biochemistry is right.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import, respondents represented, directly or by implication, that a deficiency of minerals in the system is responsible for 90 percent of all diseases or ailments of the human body; that mineral balance is the controlling factor in keeping one in health, and that the use of respondents' product would correct mineral imbalance in the system, that plant foods are produced from impoverished soils and do not contain the mineral elements essential to nourishment and good health; that respondents' product was the natural source of minerals and provided the body with adequate amounts of minerals in proper balance; that the efficiency of each mineral is enhanced by the proper amounts of the others, and that respondents' product furnished the proper amount of each mineral to provide the greatest efficiency of all minerals.

PAR. 5. Respondents, in the course and conduct of their business, also disseminated printed excerpts from certain court testimony in which their product was involved, in which excerpts statements were made with respect to the therapeutic properties and values of such

## Findings

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product. Respondents caused such printed excerpts to be transported from their principal place of business in the State of California and from the place of business of the firm printing such excerpts in the State of California to their dealers in States other than the State of California, with the intent and purpose that such literature should be used by such dealers as advertisements of their product; and such dealers did in fact circulate such printed excerpts among customers and prospective customers for the purpose of inducing the sale of respondents' product. By means of the statements and representations contained in these printed excerpts respondents represented, directly or by implication, that their product was a cure or remedy and constituted a competent and effective treatment for prostatitis, weakness, psoriasis, eczema, rickets, headache, Bright's disease, high blood pressure, stomach trouble, indigestion, heart trouble, dizziness, pink-eye, sinusitis, diabetes, boils, hay fever, bronchitis, arthritis, rheumatism, pains in side, arms, shoulders, and neck, numbness in hands and arms, hemorrhoids, loss of weight, enlargement of the heart, nervousness, poor eyesight, paralysis, bowlegs, colitis, sour stomach, run-down conditions, osteomyelitis, overweight, shingles, stomach ulcers, gall bladder trouble, cancer, asthma, nausea, swollen tongue, low blood pressure, anemia, sores, goiter, tetany, bladder trouble, cataracts, bursitis, constipation, throat infection, kidney stones, and varicose veins.

PAR. 6. In truth and in fact, the number of diseases or ailments attributable to mineral deficiencies are few in number and are but a very small fraction of 90 percent of all diseases or ailments. While mineral balance is necessary to good health and the correction of mineral imbalance improves health, the occurrence of mineral imbalance is rare; and the respondents' product could not be relied upon either to correct mineral imbalance or to correct conditions arising by reason of mineral imbalance. The great bulk of food crops is not produced on impoverished soil but, on the contrary, is produced on soil which contains most of the mineral elements required by man. The normal diet contains adequate minerals and, with the exception of calcium, iron, and iodine, it is difficult to provide a diet which does not contain sufficient quantities of minerals. Respondents' product did not contain sufficient quantities of calcium and iron to be effective as a source of such minerals in cases of mineral deficiency. In certain localized areas where there is a lack of iodine in the soil, respondents' product might have been useful in the prevention of simple goiter due to a deficiency of iodine in the food produced and consumed in such areas. In nongoiter areas, or even in goiter areas where iodized salt or other sources of iodine are used in appropriate amounts, which

is usually the case, respondents' product would not have had therapeutic value in the treatment or prevention of goiter. While at one time it was respondents' practice to add a quantity of potassium iodide to their product, this practice was later discontinued, and the product then would have had no value whatsoever as a source of iodine.

The product was not the natural source of minerals. The natural source of minerals is the plant and animal food consumed in the ordinary diet. The product did not provide the body with adequate amounts of minerals in proper balance. The efficiency of minerals is dependent upon the body processes and not primarily upon any combination of such minerals in a diet. While the efficiency of some minerals, as they exist in the body, is enhanced by the proper amounts of other minerals, this is not true as to all minerals. Respondents' product did not contain a proper balance of minerals so that, after being taken into the body, the efficiency of any one would be enhanced. Proper balance of minerals in the body is maintained by the body processes and not by the intake of the minerals themselves. Any fixed percentage of minerals in a product cannot be represented as a proper balance since the lack of various minerals in the body, when such lack exists, varies with different persons. Respondents' product was, in fact, nothing but filtered sea water to which was added, at one time, as stated above, a quantity of potassium iodide. For some time prior to June 1942 this additive had not been used. The consensus of reliable medical authority is to the effect that filtered sea water has no therapeutic value in the treatment of any diseased condition or ailment of the human body.

Respondents' product was not a cure or remedy for nor did it have any therapeutic value in the treatment of the various diseases, disorders, conditions, and ailments enumerated above.

PAR. 7. The Commission therefore finds that the statements and representations made by respondents with respect to their product, as herein set forth, were erroneous and misleading and constituted false advertisements.

PAR. 8. The Commission finds further that the use by respondents of these false advertisements had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties and value of respondents' product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such product as a result of the erroneous and mistaken belief so engendered.

#### CONCLUSION

The 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, the answer of respondents, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, respondents' admission upon the record, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondents, Michael E. Lee, Myron E. Lee, and Kenneth L. Lee, individually, and trading as Lee-Sons, and as Merlek, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondents' mineral water designated "Merlek," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication,

(a) That 90 percent or any substantial percentage of diseases or ailments are due to a deficiency of minerals in the body.

(b) That respondents' product corrects mineral imbalance, or corrects conditions arising by reason of mineral imbalance.

(c) That plant foods generally are produced from impoverished soils, or that such foods do not ordinarily contain the mineral elements essential to nourishment and good health.

(d) That respondents' product is the natural source of minerals, or that it provides the body with adequate amounts of minerals.

(e) That said product contains a proper balance of minerals, or that the use of said product enhances the efficiency of minerals in the body.

(f) That said product constitutes a cure or remedy for or possesses any therapeutic value in the treatment of prostatitis, weakness, psoriasis, eczema, rickets, headache, Bright's disease, high blood pressure,

## Order

stomach trouble, indigestion, heart trouble, dizziness, pink-eye, sinusitis, diabetes, boils, hay fever, bronchitis, arthritis, rheumatism, pains in side, arms, shoulders, or neck, numbness in hands or arms, hemorrhoids, loss of weight, enlargement of the heart, nervousness, poor eyesight, paralysis, bowlegs, colitis, sour stomach, run-down conditions, osteomyelitis, over-weight, shingles, stomach ulcers, gall bladder trouble, cancer, asthma, nausea, swollen tongue, low blood pressure, anemia, sores, goiter, tetany, bladder trouble, cataracts, bursitis, constipation, throat infection, kidney stones, varicose veins, or any other ailment or condition of the human body.

2. 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 product, which advertisement contains any representation prohibited in paragraph 1 hereof.

*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

LOUIS ULRICH, TRADING AS J-BEE DISTRIBUTING  
COMPANY, AND JULIUS WEINFELTCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4500. Complaint, May 10, 1941—Decision, Oct. 27, 1943*

Where an individual and his manager, engaged in competitive interstate sale and distribution of novelty merchandise, including watches, cameras, clocks, tableware, lamps, toilet articles, and numerous other items; in promoting the sale of their product—

Made use of a method involving distribution of descriptive advertising circulars incorporating a punch card, under a plan by which chance selection and detachment of the card's various tabs determined the article secured by a customer and the price paid therefor, and whether or not the customer received one of the articles, value of which was in excess of the stated price, and their agents were compensated by specified merchandise or cash premium following their remission of proceeds of such sale; and thereby

Supplied to and placed in the hands of their agents or sales representatives— notwithstanding notice on the card which, offering customer the privilege of declining purchase at the listed price, was inconsistent with working of the scheme and was not, apparently, taken advantage of—means of conducting lotteries in the sale and distribution of their merchandise in accordance with aforesaid sales plan involving a lottery scheme, contrary to established public policy of the United States Government and in competition with others who, unwilling to use method involving chance or contrary to public policy, refrain therefrom;

With the result that many persons were attracted by said sales method and the element of chance involved therein, and were induced to buy and sell their merchandise in preference to that of their aforesaid competitors, whereby substantial trade was diverted unfairly to them from such competitors:

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

Before *Mr. Andrew B. Duvall*, trial examiner.

*Mr. J. W. Brookfield, 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 Louis Ulrich, an individual, trading as J-Bee Distributing Co., and Julius Weinfelt, an individual, 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Louis Ulrich, is an individual, trading and doing business as J-Bee Distributing Co., with his office and principal place of business located at 37 West Twentieth Street, New York, N. Y. Respondent, Julius Weinfelt, whose address is the same as that given above, is an individual, and is manager of said business, and, together with respondent, Louis Ulrich, formulates, directs, and controls the policies and practices of said business. The respondents have acted in conjunction and cooperation in carrying out the acts and practices described herein.

Respondents are now and for more than 6 months last past have been engaged in the sale and distribution of watches, cameras, clocks, tableware, lamps, toiletries, 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 and transported from their place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States other than New York, and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by 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 their said business respondents are and have been in competition with other individuals and firms and with corporations 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 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 cause to be distributed to representatives and salesmen and prospective representatives and salesmen certain advertising literature including 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 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 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 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 same sums to the respondents, the 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 cards 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 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 a sort which 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 less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in commerce 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 said products 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 methods by respondents, because of said game of chance, has the tendency and capacity to unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from the said competitors who do not use the same or equivalent methods.

PAR. 5. 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 May 10, 1941, issued and subsequently served its complaint in this proceeding upon the respondents, Louis Ulrich, an individual, trading as J-Bee Distributing Co., and Julius Weinfelt, 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 that act. After the filing of respondents' answer, testimony and other evidence in support of the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondents), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hear-

ing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents 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, Louis Ulrich, is an individual, trading as J-Bee Distributing Co., with his office and principal place of business located at 37 West Twentieth Street, New York, N. Y. Respondent, Julius Weinfelt, whose address is the same as that given above, is an individual, and is manager of the business in question, and together with respondent, Louis Ulrich, formulates, directs, and controls the policies and practices of the business. Respondent, Weinfelt, was formerly the owner of the business, but in 1938 sold it to respondent, Ulrich, and was retained by respondent, Ulrich, in the capacity of manager of the business. The respondents are now and since 1938 have been engaged in the sale and distribution of novelty merchandise, including watches, cameras, clocks, tableware, lamps, toilet articles, and numerous other items.

PAR. 2. Respondents cause and have caused their merchandise, when sold, to be shipped from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents are and have been in substantial competition with other individuals and with firms and corporations engaged in the sale and distribution of similar articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In promoting the sale of their products respondents have distributed advertising or sales circulars through the United States mail to prospective sales representatives located at various points throughout the United States. These circulars contain pictorial representations and descriptive matter with respect to certain articles of merchandise offered by respondents as compensation for the sale of their products, and also pictorial representations and descriptive

matter as to certain of the articles of merchandise which respondents offer for sale.

Each of these circulars also contains what is commonly known as a pull card. This pull card consists of a number of tabs, under each of which is concealed the name of one of the articles of merchandise offered for sale by respondents and the price thereof. Neither the name of the article nor the price thereof is disclosed to the purchaser or prospective purchaser until after the tab has been separated or removed from the card. Adjacent to the pull tabs is a list of the articles of merchandise offered for sale and the price thereof, which corresponds with the names of the articles and the prices concealed under the various pull tabs. When a purchaser detaches a tab and there is thus disclosed which article he is to receive and the price to be paid therefor, his name is written on the list opposite the particular article of merchandise.

Some of the articles of merchandise thus offered for sale have retail values greater than the prices designated for them, but all of the articles are distributed to the purchaser at the prices shown on the tabs. The fact that some of the articles have values in excess of the designated prices induces members of the public to pull the tabs in the hope that they will obtain such articles. Moreover, some of the articles offered for sale are represented through pictures and reading matter in the circular as having values greater than their actual value, which fact serves as a further inducement to prospective purchasers to pull the tabs in an effort to obtain such articles. The specific article which the purchaser receives, the amount of money he is required to pay for such article, and whether the purchaser receives an article having an actual or apparent value greater than the price designated therefor are thus determined wholly by lot or chance.

When the individual operating the pull card has succeeded in selling all of the articles of merchandise listed under the tabs and has collected the respective amounts charged therefor, the total of such amounts is remitted to respondents. Upon receipt of such total amount, respondents ship to their representative the merchandise sold, together with a premium for the representative as compensation for operating the pull card and selling and distributing the merchandise, such premium having been selected by the representative from articles pictured in the circular. If the representative so desires, he is permitted to deduct from the amount of money remitted a specified cash premium in lieu of the merchandise premium. Upon receipt of the merchandise from respondents, the representative delivers the various articles to the purchasers in accordance with the list prepared when the tabs were pulled.

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PAR. 5. In connection with the pull tab device, the following reading matter appears:

**NOTICE TO PURCHASER**—On the back of each slip is printed the price of an article. If after deliberation you decide that you want to buy the article, pay the holder of this card the price shown on the slip. If you do not want the article, you need not buy it.

The Commission finds, however, that despite this notice the articles of merchandise are in fact sold and distributed by means of the pull card device in accordance with the sales plan or method described above. The record indicates that the notice is not ordinarily called to the attention of the prospective purchaser by the sales representative. Moreover, the successful operation of the sales plan is dependent upon the ability of the representative to sell all of the articles listed, so as to permit remittance of the required amount to respondents in order to obtain the merchandise purchased and in order for the operator to obtain the premium for the sale of the merchandise. It is only in very rare cases (about 1 in 500) that partial orders are forwarded to respondents by their sales representatives.

The record discloses no instance in which a person who pulled one of the tabs from the card refused to accept and pay for the merchandise designated on the tab. Moreover, in respondents' instructions to their representatives which appear in the circular there is no direction as to what should be done in the event all of the articles of merchandise are not sold. The circular likewise fails to contain any information as to the premium or compensation which can be obtained by the representative in the event some of the purchasers refuse to accept the article listed on the particular tab pulled. On the contrary, it is apparent from the instructions that the plan contemplates that all of the articles listed are to be sold. For example, the instructions contain the following:

Our plan is very simple and interesting. Just ask your friends and neighbors to pull one or more of the slips on the back page of this folder. On the back of each slip the name of a BIG BARGAIN article and its price is plainly marked. You collect from the purchasers the price stated on the slip for which they will receive the article mentioned on the slip. Prices of these articles range from 9c to 39c—none higher. When the articles are all sold, you will have collected \$7.70. Then fill out the attached Order Blank and mail to us, together with your remittance.

**WHAT YOU WILL RECEIVE:**

As soon as we will receive your order and money order for \$7.70, we will send you your BIG REWARD PREMIUM, your SURPRISE GIFT for sending money order with order, your ADDITIONAL SURPRISE GIFT for selling the order promptly, and the 22 articles you have sold. \* \* \*

The order blank referred to in these instructions reads in part as follows:

As soon as you have sold the 2 articles of merchandise and collected \$7.70 fill out this order blank stating correct number of your REWARD PREMIUM. Write your name and address plainly, and mail this order to us.

\* \* \* Please ship at once charges prepaid, the 22 articles of merchandise I sold together with my valuable reward premium No. -----

The Commission therefore finds that, as a practical matter, the so-called notice to purchasers has no substantial effect upon the operation of the sales plan and that it does not serve to remove the lottery element from respondents' sales method.

PAR. 6. The persons to whom respondents furnish their pull card device use such device in selling and distributing respondents' merchandise in accordance with the sales plan or method herein described. Respondents thus supply to and place in the hands of others a means of conducting lotteries in the sale and distribution of their merchandise in accordance with such sales plan or method. Respondents' merchandise is thus sold and distributed by means of a game of chance, gift enterprise, or lottery scheme, and respondents reap the benefits therefrom. The use by respondents of this sales plan or method in the sale of their merchandise and the sale of such merchandise to the public by and through the use of such sales plan is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 7. Among the individuals, partnerships, and corporations who sell and distribute merchandise in competition with respondents, as set forth in paragraph 3 hereof, are those who are unwilling to adopt and use the method herein described, 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' sales method and 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 those competitors of respondents who do not use the same or any equivalent method. The use of such method by respondents has the tendency and capacity to and does divert substantial trade unfairly to respondents from such competitors.

#### CONCLUSION

The 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 and unfair acts and

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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 respondents, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondents, Louis Ulrich, individually, and trading as J-Bee Distributing Co., or trading under any other name, and Julius Weinfelt, individually, and as manager of said company, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' 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 agents, distributors, or members of the public, pull cards or other lottery devices which are to be used or may be used in the sale or distribution of respondents' merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Selling or otherwise disposing of any merchandise by means of a game of change, 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.



## Complaint

IN THE MATTER OF  
 THOMAS E. COLLINS, TRADING AS THOMAS E.  
 COLLINS CO.

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

*Docket 4816. Complaint, Aug. 17, 1912—Decision, Oct. 27, 1913*

Where an individual engaged in interstate sale and distribution of his "Alimentone" medicinal preparation; through advertisements in periodicals and by circulars and other advertising media, directly or by implication—

- (a) Represented that his said preparation expelled or helped to expel mucus from the body, and provided symptomatic relief for catarrhal conditions generally, nasal catarrh, colds, bronchitis, nonallergic types of asthma, and mucus colitis; and
- (b) Represented that it toned or aided in toning the mucus membranes, fortified them against infection and was of therapeutic value in the treatment of inflammation thereof; was a cure or remedy for colds; and eliminated or aided in the elimination of toxic substances and deposits from the body tissues;

The facts being that while the product in question—composed of powdered wheat embryo, powdered dried skimmed milk, and vegetable concentrates—might have some food value, it was wholly without value as a therapeutic agent and would not accomplish the results so claimed for it;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and to cause it to purchase substantial quantities of such product as a result of the erroneous belief so engendered:

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

Before *Mr. James A. Purcell*, trial examiner.

*Mr. B. G. Wilson* for the Commission.

*Mr. Charles Reagh* and *Mr. Howard Magee*, of San Francisco, 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 Thomas E. Collins, an individual, trading as Thomas E. Collins 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:

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PARAGRAPH 1. Respondent, Thomas E. Collins, is an individual, trading as Thomas E. Collins Co., having his office and principal place of business at 5036 Geary Boulevard, San Francisco, Calif.

The respondent is now, and for more than 2 years last past, has been engaged in the business of offering for sale, sale, and distribution of a medicinal preparation designated "Alimentone" in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes his said product, when sold, to be shipped from his said place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and all times mentioned herein has maintained, a course of trade in his said product 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 and for the purpose of inducing the purchase of his said product, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of, false advertisements concerning his said product by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now causing the dissemination of, false advertisements concerning his said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said product in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, deceptive, and misleading statements and misrepresentations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in magazines and periodicals and by means of circulars and other advertising media, are the following:

Help Nature expel mucus for symptomatic relief in common colds, nasal catarrh, mucus colitis, non-allergic types of asthma and bronchitis, and ordinary catarrhal conditions in general with Alimentone.

Alimentone aids in toning the mucus membranes and fortifying them against the germs of infection.

It aids in cleansing the cell tissues of toxic impurities \* \* \*

It is recommended in the dietary care of inflammations of the mucus membranes.

In cases of bronchitis and bronchial asthma, the use of Alimentone in the diet is followed with loosening and raising large amounts of mucus if there is an accumulation present in the bronchial tubes.

Many sufferers from constant colds have advised us that their colds disappeared when Alimentone was used.

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The tendency of Alimentone is to bring about an effort to eliminate toxic deposits from the tissues commonly called "an attack."

The primary cause of the distress is not Alimentone but is the foul and depraved condition of the colon where toxic poisons originate. When Alimentone apparently is removing these poisons from the body with distress consequent in some instances, the user has good reason to rejoice, rather than to complain.

PAR. 3. Through the use of the foregoing statements and representations, and others of similar import and meaning not specifically set out herein, the respondent represents and has represented, directly and by implication, that the use of his product "Alimentone" expels or helps to expel mucous and provides symptomatic relief for catarrhal conditions, colds, nasal catarrh, mucous colitis and nonallergic types of asthma and bronchitis; that said product tones and aids in toning mucous membranes, fortifies mucous membranes against infection, cleanses and aids in cleansing cell tissues of toxic impurities and is of therapeutic value in the treatment of inflammations of the mucous membranes and has favorable effect on the secretion of mucous from mucous membranes; that it is a cure or remedy for colds; that said product affords relief for bronchial asthma and bronchitis; and that it eliminates toxic substances and deposits from the body and tissues.

PAR. 4. The foregoing statements and representations used and disseminated by the respondent in the manner aforesaid, are false, misleading and deceptive. In truth and in fact the use of respondent's said product will not expel or help to expel mucous or provide relief, symptomatic or otherwise, in the treatment of catarrhal conditions, colds, nasal catarrh, mucous colitis, and nonallergic types of asthma and bronchitis. It will not tone or aid in toning mucous membranes or fortify them against infection nor cleanse or aid in cleansing cell tissue of toxic impurities. It has no therapeutic value in the treatment of inflammation of the mucous membranes and has no effect whatsoever in promoting the secretion of mucous from mucous membranes. It will not afford relief in the treatment of bronchitis or bronchial asthma. It is not a cure or remedy for colds, and it will not eliminate toxic substances or deposits from the body and tissue.

PAR. 5. The use by respondent of the foregoing false, deceptive and misleading statements, representations, and advertisements disseminated as aforesaid with respect to his said product "Alimentone" 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, representations and advertisements are true, and to induce a substantial portion of the

purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said product.

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 August 17, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Thomas E. Collins, an individual, trading as Thomas E. Collins Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondent), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent 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, Thomas E. Collins, is an individual, trading as Thomas E. Collins Co., with his office and principal place of business located at 5036 Geary Boulevard, San Francisco, Calif. Respondent is now and for a number of years last past has been engaged in the sale and distribution of a medicinal preparation designated by him as "Alimentone" and intended for use in the treatment of certain diseases and disorders of the human body.

PAR. 2. Respondent causes and has caused his product, when sold, to be shipped from his place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his product 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 and for the purpose of inducing the purchase of his product, respondent has disseminated and has caused the dissemination of advertisements concerning his product by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and has caused the dissemination of advertisements concerning his product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the various statements and representations contained in such advertisements, disseminated and caused to be disseminated, as set forth above, by the United States mails, by advertisements inserted in magazines and periodicals, and by means of circulars and other advertising media, are the following:

#### HELP NATURE EXPEL MUCUS

for symptomatic relief in common colds, nasal catarrh, mucous colitis, non-allergic types of asthma and bronchitis and ordinary catarrhal conditions in general with

#### ALIMENTONE

Alimentone aids in toning the mucous membranes and fortifying them against the germs of infection. It aids in cleansing the cell tissue of toxic impurities \* \* \*

\* \* \* It is recommended in the dietary care of inflammations of the mucous membranes.

In cases of Bronchitis and Bronchial Asthma the use of Alimentone in the diet is followed with loosening and raising large amounts of mucus if there is an accumulation present in the bronchial tubes

\* \* \* Many sufferers from constant colds have advised us that their colds disappeared when Alimentone was used.

The tendency of Alimentone is to bring about an effort to eliminate toxic deposits from the tissues, commonly called an "attack."

The primary cause of the distress is not Alimentone, but in a foul and depraved condition of the colon where toxic poisons originate. When Alimentone, apparently, is removing these poisons from the body, with distress consequent in some instances, the user has good reason to rejoice rather than to complain.

PAR. 4. Through the use of these statements and others of similar import, respondent has represented, directly or by implication, that his preparation expels or helps to expel mucus from the body; that it provides symptomatic relief for catarrhal conditions generally, nasal catarrh, colds, bronchitis, nonallergic types of asthma, and mucous colitis; that the preparation tones or aids in toning the mucous

membranes and fortifies the mucous membranes against infection; that it is of therapeutic value in the treatment of inflammation of the mucous membranes; that it is a cure or remedy for colds; and that it eliminates or aids in the elimination of toxic substances and deposits from the body and tissues.

PAR. 5. Respondent's preparation, which is sold in both tablet and powder form, is composed of powdered wheat embryo, powdered dried skimmed milk, and vegetable concentrates. The expert testimony in the record, which is uncontradicted, establishes that while the preparation may have some food value, it is wholly without value as a therapeutic agent. It does not expel or help to expel mucus from the body. It is incapable of providing relief, symptomatic or otherwise, for catarrhal conditions, nasal catarrh, colds, bronchitis, any type of asthma, or mucous colitis. It does not tone or aid in toning mucous membranes, nor does it serve to fortify mucous membranes against infection. The preparation is of no therapeutic value in the treatment of inflammation of the mucous membranes. It does not constitute a cure or remedy for colds, nor does it possess any therapeutic value in the treatment of colds. It is wholly incapable of eliminating or aiding in the elimination of toxic substances or deposits from the body or tissues.

PAR. 6. The Commission therefore finds that the statements and representations made by respondent with respect to his preparation, as set forth in paragraphs 3 and 4 hereof, are erroneous and misleading and constitute false advertisements.

PAR. 7. The Commission finds further that the use by respondent of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the therapeutic properties and value of respondent's product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such product as a result of the erroneous and mistaken belief so engendered.

#### CONCLUSION

The 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 respondent,

testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support 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 the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Thomas E. Collins, individually, and trading as Thomas E. Collins Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondent's medicinal preparation designated "Alimentone," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication—

(a) That said preparation expels or helps to expel mucus from the body.

(b) That said preparation affords relief for catarrhal conditions generally, or for nasal catarrh, bronchitis, any type of asthma, or mucous colitis.

(c) That said preparation tones or aids in toning the mucous membranes or fortifies the mucous membranes against infection.

(d) That said preparation possesses any therapeutic value in the treatment of inflammation of the mucous membranes.

(e) That said preparation is a cure or remedy for colds or possesses any therapeutic value in the treatment of colds.

(f) That said preparation eliminates or aids in the elimination of toxic substances or deposits from the body or tissues.

2. 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 preparation, which advertisement contains any representation prohibited in paragraph 1 hereof.

*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

WILLIAM J. COOKSEY (ALSO KNOWN AS ROSS DYAR),  
OPERATING UNDER THE TRADE NAME OF WORLD'S  
MEDICINE COMPANY.

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

*Docket 4847. Complaint, Oct. 14, 1942—Decision, Oct. 27, 1943*

Where an individual engaged in interstate sale and distribution of his "World's Tonic" medicinal preparation, made up of some 25 ingredients, principal of which were the cathartics cascara, buckthorn, senna and aloes, and including also other bitter tasting ingredients tending to impart the properties of an appetiser, stomachic, or "bitter tonic"; by means of newspaper advertisements, radio broadcasts, circulars and other advertising media—

- (a) Represented, directly and by implication, that his said preparation constituted a remedy and effective treatment for pains in the back, side, or limbs, for premature aging, anemia, spots before the eyes, sallow skin, skin blemishes, night risings, loss of weight, gastritis, dizziness, mucous conditions, swollen joints, shortness of breath, kidney disorders, or sore or stiff muscles, and that said conditions were caused by constipation;

The facts being none of the aforesaid conditions are attributable to constipation, and his said preparation possessed no therapeutic value in the treatment thereof;

- (b) Represented, as aforesaid, that said preparation was a remedy and effective treatment for billiousness, headaches, gas bloating, sour stomach, indigestion, heartburn, fatigue, loss of appetite, bad breath, coated fuzzy tongue, nervousness, nausea, or stomach cramps, and that said disorders also were brought about by constipation;

The facts being that while such conditions might in some cases be due to constipation they are frequently due to systemic disorders not connected therewith, in which event the preparation in question would have no therapeutic value; while in those conditions caused by constipation, its therapeutic effect would be limited to such temporary relief as might be afforded through the partial evacuation of the intestinal tract, except that the preparation might, by reason of its bitter properties, afford a temporary stimulus in case of loss of appetite;

- (c) Falsely represented, as aforesaid, that his said preparation prevented colds, alkalinized the system, restored the activity of the liver, toned and stimulated the bowel muscles, and aided digestion; kept the stomach, liver, kidneys, bladder, and bowels operating properly; regulated the bowels and cleansed, soothed, and strengthened the stomach; enabled one to gain and retain health; provided the maximum of nourishment and strength from food, and supplied pep and energy;

- (d) Falsely represented that constipation causes an accumulation of poisons, of which its preparation would rid the system;

- (e) Represented through use of word "tonic" in designation "World's Tonic," that its said preparation was a general tonic, i. e., one serving to restore the normal tone of the body; the facts being that while it possessed to some



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extent the properties of a bitters or bitter tonic, it was without therapeutic value with respect to restoring the normal tone of the body generally; and

- (f) Failed to reveal facts material in the light of the representations contained in his advertisements and with respect to consequences which might result from the use of said preparation under usual or prescribed conditions, in that the preparation, an irritant laxative, possessed harmful potentialities if used in the presence of abdominal pains or other symptoms of appendicitis, making in said advertisements no reference to such fact nor to the cautionary statement on the label of the preparation;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that his preparation possessed certain therapeutic properties and was in all cases safe for use, and to cause such public to purchase substantial quantities of the preparation as a result of such mistaken belief:

*Held*, That said acts and practices, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. J. E. Cox*, trial examiner.

*Mr. William L. Taggart* for the Commission.

*Jacobi & Jacobi*, 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 William J. Cooksey, an individual, also known as Ross Dyar, operating under the trade name of World's Medicine 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, William J. Cooksey, also known as Ross Dyar, is an individual, trading and doing business as World's Medicine Co., with his principal place of business located in the city of Indianapolis, State of Indiana. The post-office address of respondent is P. O. Box 291, Indianapolis, Ind.

PAR. 2. Respondent is now, and for more than 1 year last past, has been, engaged in the sale and distribution of a medicinal preparation designated "World's Tonic." Respondent causes his product, when sold, to be transported from his 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 his products in commerce among and between 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 his aforesaid business, respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning his said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said product in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

That respondent's said preparation is a cure and remedy of and constitutes a competent and effective treatment for billousness, headaches, pains in the back, side and limbs, gas bloating, belching, sour stomach, indigestion, heartburn, premature aging, anemia, spots before the eyes, gastritis, sallow skin, fatigue and all-in feeling, skin blemishes, night risings, loss of appetite, loss of weight, dizziness, mucous conditions, swollen joints, drowsiness after meals, bad breath, coated fuzzy tongue, shortness of breath, kidney disorders, nervousness and irritability, sore and stiff muscles, nausea and stomach cramps and that all of said conditions and disorders are brought about or arise by reason of constipation; that the use of said preparation prevents the oncoming of colds, alkalizes the system, restores the activity of the liver, tones and stimulates the bowel muscles, aids digestion and assists nature to counteract poisons in the red blood cells; that it keeps the stomach, liver, kidneys, bladder and bowels operating properly; that it regulates the bowels and cleanses, soothes and strengthens the stomach; that it enables one to gain and retain health; that it induces a healthy flow of digestive juices in the stomach and provides the maximum of nourishment and strength from food; that it provides pep and energy; that constipation causes the accumulation of poisons in the system and that respondent's preparation will rid the system of such poisons; that respondent's product is an efficient diuretic.

PAR. 4. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's said preparation is not a cure or remedy for and has no therapeutic value in the treatment of such symptoms and conditions as pains in the back, side and limbs, premature aging, anemia, spots before the eyes, sallow skin, skin blemishes, night risings, loss of weight, gastritis, dizziness, mucous condition, swollen joints, drowsiness after meals, shortness of breath, kidney disorders, and sore or

stiff muscles. The use of said preparation will not relieve constipation. It will not prevent the oncoming of colds. Its use will not alkalize the system, restore the activity of the liver, tone or stimulate the bowel muscles, nor will it aid digestion or assist nature to counteract poisons in the red blood cells. Its use will not keep the stomach, liver, kidneys, bladder, or bowels operating properly nor will it regulate the bowels and cleanse, soothe or strengthen the stomach. It will not enable one to gain or retain health. It will not induce a significant flow of digestive juices in the stomach and will have no material value in providing the maximum of nourishment and strength from food. It will not provide pep and energy. Constipation does not cause the accumulation of poisons in the system and respondent's preparation will not be effective in removing poison which may have accumulated in the system. Respondent's preparation will not be effective as a diuretic.

The disorders and conditions of pains in the back, side and limbs, premature aging, anemia, spots before the eyes, gastritis, sallow skin, skin blemishes, night risings, loss of weight, dizziness, mucous conditions, swollen joints, drowsiness after meals, shortness of breath, kidney disorders, and sore and stiff muscles are not symptomatic of or caused by constipation.

Such disorders and conditions as biliousness, headaches, gas bloating, sour stomach, indigestion, heartburn, fatigue and all-in feeling, loss of appetite, bad breath, coated fuzzy tongue, nervousness and irritability, nausea and stomach cramps may or may not be caused by constipation but are not usually symptomatic of, or caused by, constipation and are often caused by other systemic disorders.

When such conditions or disorders are due to causes other than constipation the use of respondent's preparation will have no therapeutic value whatsoever. Respondent's product is essentially a laxative and in those cases of the aforesaid conditions in which constipation is a contributing factor to, or the basic cause of, the therapeutic value of respondent's product is limited to such temporary relief as may be afforded by a partial evacuation of the intestinal tract.

PAR. 5. The use by the respondent of the trade name "World's Tonic" for his preparation is false, misleading and deceptive in that it serves as a representation that his said preparation is a general tonic and will have the effect, when taken, of a general tonic upon the system. In truth and in fact said preparation does not possess significant tonic properties and cannot be properly designated as a general tonic.

PAR. 6. The respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the further reason that they fail to

reveal facts material in the light of such representations and material with respect to consequences which may result from the use of the preparation to which the advertisements relate, under the conditions prescribed in said advertisements and under such conditions as are customary and usual. Respondent's said preparation is an irritant laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomach ache, colic, cramps, nausea, vomiting or other symptoms of appendicitis. Its frequent or continued use may result in dependence on laxatives. Furthermore, the continued administration of this irritant cathartic as recommended in respondent's advertising may cause severe gastrointestinal irritation.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its said product has the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that said preparation is entirely harmless and safe in use and into the purchase of substantial quantities of said preparation as a result of such erroneous and mistaken belief, so engendered.

PAR. 8. 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 October 14, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, William J. Cooksey (also known as Ross Dyar), an individual, operating under the trade name of World's Medicine Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, 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, William J. Cooksey (also known as Ross Dyar), is an individual, trading and doing business under the name World's Medicine Co., with his principal place of business located in the city of Columbus, Ohio, his mailing address in that city being Post Office Box 573. Respondent also maintains a mailing address at Post Office Box 291, Indianapolis, Ind. Respondent is now and for a number of years last past has been engaged in the sale and distribution of a medicinal preparation designated by him as "World's Tonic" and intended for use in the treatment of various ailments and disorders of the human body.

PAR. 2. Respondent causes and has caused his preparation, when sold, to be transported from his place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his preparation in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his preparation, respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his preparation by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, advertisements concerning his preparation by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Through such advertisements, disseminated by means of newspapers, radio broadcasts, circulars, and other advertising media, respondent has represented, directly or by implication, that his preparation constitutes a cure or remedy and a competent and effective treatment for biliousness, headaches, pains in the back, side, and limbs, gas bloating, sour stomach, indigestion, heartburn, premature aging, anemia, spots before the eyes, gastritis, sallow skin, fatigue, skin blemishes, night risings, loss of appetite, loss of weight, dizziness, mucous conditions,

swollen joints, bad breath, coated, fuzzy tongue, shortness of breath, kidney disorders, nervousness, sore and stiff muscles, nausea, and stomach cramps; that all of such conditions and disorders are brought about or caused by constipation; that the preparation prevents colds, alkalizes the system, restores the activity of the liver, tones and stimulates the bowel muscles, and aids digestion; that it keeps the stomach, liver, kidneys, bladder, and bowels operating properly; that it regulates the bowels and cleanses, soothes, and strengthens the stomach; that it enables one to gain and retain health; that it provides the maximum of nourishment and strength from food; that it supplies pep and energy; that constipation causes an accumulation of poisons in the system, and that respondent's preparation will rid the system of such poisons.

PAR. 4. Respondent's preparation is a mixture or compound containing some twenty-five ingredients. The preparation is manufactured for respondent by a commercial laboratory in Columbus, Ohio, according to a formula supplied by respondent. While certain changes in the formula have been made from time to time, such changes have been of a minor nature and have not affected the essential nature of the preparation. Some of the ingredients used are merely for flavoring and coloring purposes, and a number of the other ingredients are present in such small quantities as to be without therapeutic value. The principal ingredients in the preparation are cascara, buckthorn, senna, and aloes, all of which are cathartics. The preparation, therefore, is essentially a cathartic or laxative, although there are present in the preparation in small quantities certain other ingredients, such as gentian root, prickly ash bark, and nux vomica, which, by reason of their bitter taste, tend to give the preparation the properties of an appetizer, stomachic, or "bitter tonic." The cascara, buckthorn, senna, and aloes also have a bitter taste and therefore serve, along with the other ingredients mentioned, to enhance the bitter properties of the preparation. Aside from its value as a laxative and a bitters, the preparation is without therapeutic value.

The preparation is not a cure or remedy for nor does it possess any therapeutic value in the treatment of pains in the back, side, or limbs, premature aging, anemia, spots before the eyes, sallow skin, skin blemishes, night risings, loss of weight, gastritis, dizziness, mucous conditions, swollen joints, shortness of breath, kidney disorders, or sore or stiff muscles. None of these conditions is attributable to or symptomatic of constipation. Neither is the preparation a cure or remedy for biliousness, headaches, gas bloating, sour stomach, indigestion, heartburn, fatigue, loss of appetite, bad breath, coated, fuzzy tongue, nervousness, nausea, or stomach cramps. While these latter

conditions may in some cases be due to constipation, they are frequently due to systemic disorders not connected with constipation, and in such cases respondent's preparation would have no therapeutic value. In those cases where the conditions are caused by constipation, the therapeutic effect of the preparation would be limited to such temporary relief as might be afforded through the partial evacuation of the intestinal tract, except that in the case of loss of appetite the preparation might, by reason of its bitter properties, afford a temporary stimulus to the appetite.

The preparation is incapable of preventing colds, alkalizing the system, restoring the activity of the liver, toning or stimulating the bowel muscles, or aiding digestion. It is likewise incapable of keeping the stomach, liver, kidneys, bladder, or bowels operating properly. It does not regulate the bowels or cleanse, soothe, or strengthen the stomach, nor can it enable one to gain or retain health. It does not provide nourishment or strength from food. It is likewise incapable of supplying pep or energy. Constipation does not cause an accumulation of poisons in the system, and respondent's preparation will not rid the system of poisons.

PAR. 5. The Commission therefore finds that the representations made by respondent with respect to his preparation, as set forth in paragraph 3 hereof, are erroneous and misleading and constitute false advertisements.

PAR. 6. The name "World's Tonic," used by respondent to designate his preparation, is also misleading in that it represents or implies that the preparation is a general tonic—that is, that it serves to restore the normal tone of the body. As set forth above, the preparation possesses to some extent the properties of a bitters or bitter tonic, but it is without therapeutic value with respect to restoring the normal tone of the body generally.

PAR. 7. Respondent's preparation, being essentially an irritant laxative, possesses harmful potentialities if used in the presence of abdominal pains, nausea, vomiting, or other symptoms of appendicitis. Respondent's advertisements, however, make no reference to this fact nor to the cautionary statement which appears on the label of the preparation, and the Commission therefore finds that the advertisements are false for the further reason that they fail to reveal facts material in the light of representations contained in the advertisements and material with respect to consequences which may result from the use of the preparation under the conditions prescribed in the advertisements or under such conditions as are customary or usual.

PAR. 8. The Commission finds further that the use by respondent of these false advertisements has the tendency and capacity to mislead

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and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's preparation possesses therapeutic properties which it does not in fact possess, and that the preparation is in all cases safe for use; and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the preparation as a result of such erroneous and mistaken belief.

## CONCLUSION

The 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 respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondent William J. Cooksey (also known as Ross Dyar), individually, and trading as World's Medicine Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of respondent's medicinal preparation designated "World's Tonic," or any other preparation of substantially similar composition or possessing substantially similar properties, under whatever name sold, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication—

- (a) That said preparation is a cure or remedy for or possesses any therapeutic value in the treatment of pains in the back, side, or limbs, premature aging, anemia, spots before the eyes, sallow skin, skin blemishes, night risings, loss of weight, gastritis, dizziness, mucous condition, swollen joints, shortness of breath, kidney disorders, or sore or stiff muscles, or that any of such conditions is caused by constipation.



(b) That said preparation is a cure or remedy for biliousness, headaches, gas bloating, sour stomach, indigestion, heartburn, fatigue; bad breath, coated, fuzzy tongue, nervousness, nausea, or stomach cramps, or that said preparation possesses any therapeutic value in the treatment of such conditions in excess of such temporary relief as may be afforded through the partial evacuation of the intestinal tract in those cases where the condition is due to constipation.

(c) That said preparation possesses any therapeutic value in the treatment of loss of appetite in excess of such relief as may be afforded through a temporary stimulus of the appetite, and through the partial evacuation of the intestinal tract in those cases where such condition is due to constipation.

(d) That said preparation prevents colds, alkalizes the system, restores the activity of the liver, tones or stimulates the bowel muscles, or aids digestion.

(e) That said preparation keeps the stomach, liver, kidneys, bladder, or bowels operating properly, or that it regulates the bowels or cleanses, soothes, or strengthens the stomach.

(f) That said preparation enables the user to gain or retain health.

(g) That said preparation provides nourishment or strength from food.

(h) That said preparation provides pep or energy.

(i) That constipation causes an accumulation of poisons in the system, or that said preparation will rid the system of poisons.

(j) That said preparation possesses any therapeutic properties other than those of a laxative and bitters, or which advertisement—

(k) Uses the word "tonic," or any other word of similar import, to designate or describe respondent's preparation, or otherwise represents that said preparation is a general tonic: *Provided, however,* That this order shall not be construed as prohibiting respondent from designating and describing said preparation as a "bitter tonic."

2. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to reveal that said preparation should not be used in the presence of nausea, vomiting, abdominal pains, or other symptoms of appendicitis: *Provided, however,* That such advertisement need contain only the statement, "CAUTION: Use only as Directed," if and when the directions for use, wherever they appear, on the label, in the labeling, or both on the label and in the labeling, contain a warning to the above effect.

3. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce,

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directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any representation prohibited in paragraph 1 hereof, or which fails to comply with the affirmative requirements set forth in paragraph 2 hereof.

*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  
THE EMBALMERS' SUPPLY COMPANY

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

*Docket 3936. Complaint, Oct. 27, 1939—Decision, Nov. 2, 1943*

Where a corporation engaged in the manufacture and interstate sale and distribution of embalming fluids and chemicals including its "San-Velno Spray," for use on the remains of deceased persons—

Represented, directly or by implication, through statements in advertising circulars, folders and circular letters and in advertisements in magazines, that the formula for the chemical preparation used in connection with the exhumation of the remains of American soldiers buried in France during the first World War, was originated and developed by the United States Army or War Department; that it obtained said formula from the War Department and that its said "San-Velno Spray" was the same as that preparation;

The facts being that while a substitute for the more costly proprietary preparation used in said exhumations was developed by the War Department, such substitute was, in fact, never used; and while, at said corporation's request, the War Department did supply it with a statement showing the various ingredients of said substitute and the proportions thereof, its efforts to duplicate the preparation were unsuccessful, the War Department withholding information as to the method of mixing certain ingredients, as involving a process being patented by the discoverer thereof; and its said "San-Velno Spray," in addition, departed to some extent from the proportions specified in the War Department's statement and included at least one other ingredient;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to said preparation, and to cause it to purchase substantial quantities thereof as a result of the mistaken belief so engendered:

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

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

*Mr. D. E. Hoopingarner* and *Mr. R. P. Bellinger* for the Commission.

*Mr. Earl H. Jagoe*, of Westport, Conn., and *Tammany & Connery*, of South Norwalk, Conn., 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

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Trade Commission having reason to believe that Embalmers' Supply Co., a corporation, hereinafter referred to as the 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. Embalmers' Supply Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business located at Westport, in the State of Connecticut.

PAR. 2. Respondent is, and for a number of years last past has been, engaged in the business of manufacturing embalming fluids and chemicals, including a product designated "San-Veino Spray", a disinfectant, deodorant, and preservative, for use on the remains of bodies, and in the sale of said products in commerce between and among the various States of the United States and in the District of Columbia. It causes, and has caused, the said products, including the San-Veino Spray, when sold, to be shipped from its place of business in the State of Connecticut, to purchasers thereof located in a State or States other than Connecticut and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said San-Veino Spray 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 and for the purpose of inducing the purchase of said preparation, respondent has made, by means of advertising circulars, folders, and circular letters and by means of advertisements inserted in magazines, all of which are circulated generally throughout the United States, many representations concerning said product. Among said representations made by respondent are the following:

- San Veino Spray, (in a form adapted for convenient indoor use) is compounded solely and exclusively by Esco from the *official formula of the U. S. Government*, originally developed by the War Department for exhumation purposes on the battlefields of France.

Formula developed by the U. S. War Dept. for exhumations on the battlefields of France.

San Veino Spray is the only commercial adaptation of the official U. S. Army formula. This famous compound was originally developed by the Chemists of the War Department—for the dangerous task of exhumations and reburials, after the Great War, in France and Flanders. By great good fortune, we received the historic formula, officially and direct from the Adjutant-General's Office at Washington.

Headlines of War \* \* \* We here recall the technical risks of handling those tragic, putrefied remains of gallant men. The risks were extremely high—and the "discomforts" of the work so overwhelming—that the task of

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exhumation was, for a time, almost impossible. Nor could the work have been properly completed \* \* \* except at enormous cost of infection and disease \* \* \* had it not been for an extremely effective disinfecting spray—specially developed by the Chemists of the U. S. Army, at Washington. The formula of that Spray was received by Esco, directly and officially, from the War Department. And it is this same Spray, now adapted for indoor use, which is today compounded under our trade-name of San-Veino Spray.

Through the aforesaid statements and representations herein set out appearing in all of its advertising literature and through other statements of similar import and effect, and through other means, respondent directly and by inference represents that the United States War Department or the United States Army or their respective chemists developed, originated and perfected the formula used for exhumation purposes on the battlefields of France; that the formula from which respondent now produces its San-Veino Spray made possible the work of exhumation of bodies of the United States soldiers buried in France without the spread of infection and diseases and that the United States Government has given the respondent the official and exclusive right to said formula.

PAR. 4. The representations thus made by respondent are grossly exaggerated, false, misleading and untrue. In truth and in fact, the formula used for exhumation purposes on the battlefields of France was not developed, originated or perfected by the United States War Department or the United States Army or their chemists. The formula from which respondent now produces its San-Veino Spray did not make possible the work of the exhumation of bodies of the United States soldiers buried in France during the World War without the spread of infection and disease. Neither the United State Government nor any agency thereof has given to respondent the exclusive use of said formula. The true facts are that the United States War Department used the fluid made from the formula now held by respondent only for experimental purposes in connection with the work of the exhumation of the bodies of United States soldiers buried in France. This formula was not originated or developed by the United States War Department, United States Army, or their chemists.

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations in describing its product as hereinabove set out was and is calculated to, and has had and now has the tendency and capacity to, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and into the purchase of a substantial volume of respondent's product because of said erroneous and mistaken belief.

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 October 27, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, The Embalmers' Supply Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (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, The Embalmers' Supply Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business located at Westport, Conn. Respondent is now, and for a number of years last past has been, engaged in the manufacture, sale, and distribution of embalming fluids and chemicals, including a product designated by it as "San-Veino Spray," a disinfectant, deodorant, and preservative, for use on the remains of deceased persons.

PAR. 2. Respondent causes and has caused its products, including San-Veino Spray, when sold, to be shipped from its place of business in the State of Connecticut to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its San-Veino Spray and other products in commerce among and between the various States of the United States and in the District of Columbia.

## Findings

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its preparation San-Veino Spray, respondent has made various representations concerning such preparation, such representations having been made by means of advertising 'circulars, folders, and circular letters and also by means of advertisements inserted in magazines, all of which advertising has been circulated generally throughout the United States. Among the representations so made by respondent are the following:

Formula developed by the U. S. War Dept. for exhumations on the battlefields of France.

Headlines of War \* \* \* We here recall the technical risks of handling those tragic, putrefied remains of gallant men. The risks were extremely high—and the "discomforts" of the work so over-whelming—that the task of exhumation was, for a time, almost impossible. Nor could the work have been properly completed \* \* \* except at enormous cost of infection and disease \* \* \* had it not been for an extremely effective disinfecting spray—specially developed by the Chemists of the U. S. Army, at Washington. The formula of that Spray was received by Esco, directly and officially, from the War Department. And it is this same Spray, now adapted for indoor use, which is today compounded under our trade-name of San-Veino Spray.

PAR. 4. Through the use of these representations and others of similar import, respondent has represented, directly or by implication, that the formula for the chemical preparation used in connection with the exhumation of the remains of American soldiers who had been buried in France during the first World War was originated and developed by the United States Army or the War Department of the United States Government; that this formula was obtained by respondent from the War Department; and that respondent's preparation San-Veino Spray is the same as the preparation used by the United States Government in such exhumations.

PAR. 5. The evidence establishes, and the Commission finds, that these representations were erroneous and misleading. The preparation actually used in the exhumation work in question was not one which had been originated or developed by the War Department or any other agency of the United States Government, but was a proprietary preparation called "Necrosan," which was obtained by the Government from a private business concern in the United States. Because of the costliness of Necrosan, efforts were made by the chemists of the War Department to develop a substitute preparation, and such a preparation was in fact developed. This substitute preparation, frequently referred to in the record as "Necrosan Substitute," while differing substantially from Necrosan, was considered by the War Department as fairly satisfactory for the purpose, although it appears to have been somewhat less effective than the original preparation in some respects.

It further appears from the record that the actual use of Necrosan Substitute did not extend beyond the experimental stage. While the authorities in France who were in charge of the exhumation work were authorized by the War Department to use the substitute preparation, the record discloses that there was on hand at all times a sufficient quantity of the original preparation to perform the work and that this, rather than the substitute preparation, was used.

Upon respondent's request the War Department supplied it with a statement showing the various ingredients used in Necrosan Substitute and the proportion of each ingredient. This statement, however, did not include the directions for mixing or combining the several ingredients, and in consequence respondent's efforts to duplicate the preparation were unsuccessful. Respondent sought this additional information but was unable to obtain it, the War Department stating that the method of mixing certain of the ingredients was in process of being patented by the discoverer thereof and therefore could not be supplied. Moreover, in the preparation of its San-Veino Spray respondent has departed to some extent from the proportions specified in the War Department's statement, and at least one ingredient has been added which was not included in the statement.

The Commission therefore finds that the respondent did not obtain from the United States Government or any agency thereof the formula for the chemical preparation used in connection with the exhumation of the remains of American soldiers who had been buried in France during the first World War, and that San-Veino Spray is not the same as that preparation.

PAR. 6. The Commission finds further that the use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the identity, origin, and composition of respondent's preparation, and the tendency and capacity to cause such portions of the public to purchase substantial quantities of respondent's preparation as a result of the erroneous and mistaken belief so engendered.

#### CONCLUSION

The 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 respondent, testimony, and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, The Embalmers' Supply Co., a corporation, and its officers, 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 respondent's preparation designated "San-Veino Spray," or any other preparation of substantially similar composition whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

1. That formula for the preparation used by the United States Government in the exhumation of the remains of American soldiers who died in France during the first World War was originated or developed by the United States Army or any agency or department of the United States Government.

2. That the formula for the preparation used in said exhumations was obtained by respondent from the United States Government or any agency thereof.

3. That respondent's preparation is the same as the preparation used in said exhumations.

*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 matter and form in which it has complied with this order.

IN THE MATTER OF  
**WILLIAM WHEELER, TRADING AS MIRACLE  
 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 4623. Complaint, Oct. 31, 1941—Decision, Nov. 2, 1943*

Where an individual, engaged in the manufacture and interstate sale and distribution of his "Miracle Radio Control" and "Miracle Aerial Loop", attachments for radio receiving sets—

Represented directly or by implication that the use of his said devices would result in greatly improved radio reception, enable one to hear clearly and at all times radio broadcasts, otherwise unobtainable, both domestic and foreign and both long and short-wave, and that the results obtained through the use of such devices were "remarkable," "marvelous," and "unbelievable", through such statements in periodical advertisements and advertising circulars and leaflets as "World's Master of Airways—Miracle Radio Control. Marvelous—Unbelievable. For long and short wave amateur, police and ship calls, code, etc.—Gets them all! \* \* \* Foreign stations every day clear and loud. Nothing like it on the market. \* \* \* Gets stations the world over. \* \* \* Adds many more stations you could not get before. \* \* \* Radio's Old Reliable—Miracle Aerial Loop—Remarkable Reception—for local and foreign stations—attach direct to radio";

The facts being that examination and tests of said devices by the Bureau of Standards and the testimony of the expert by whom the examinations and tests were made disclosed that said "Miracle Radio Control" had no effect whatever upon a radio receiving set, and that said "Miracle Aerial Loop"—which was nothing more than a length of insulated copper wire attached to a wire loop—was no more effective than a length of ordinary copper wire, and aside from such value as it might have as an aerial or aerial extension, added nothing to the performance of a radio receiving set;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to his products, and to cause it to purchase substantial quantities thereof as a result of the erroneous belief so engendered:

*Held*, That such acts and practices, as above set forth, were all to the prejudice of the public and constituted unfair acts and practices in commerce.

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

*Mr. L. E. Creel, Jr.*, and *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 William Wheeler, an individual, trading as Miracle Manufacturing 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, William Wheeler, is an individual, trading as Miracle Manufacturing Co., having his office and place of business located in the city of Conshohocken, in the State of Pennsylvania. Respondent is now, and for more than 1 year last past has been engaged in the manufacture, sale and distribution of certain mechanical devices designated "Miracle Radio Control" and "Miracle Aerial Loop."

Respondent causes his said products, when sold, to be shipped from his said place of business to purchasers thereof located in 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 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, as aforesaid, and for the purpose of inducing the purchase of his said products, respondent has disseminated and now disseminates false, deceptive, and misleading statements and representations with respect to the prices of his said products, such statements and representations being made by means of advertisements appearing in newspapers, trade publications, circulars, and other written or printed matter. Among the statements and representations so disseminated by respondent with respect to his aforesaid "Miracle Radio Control" is the following:

Special factory adv. price \$2.85.

PAR. 3. The price indicated of \$2.85 as a "Special Factory adv. price" for "Miracle Radio Control" was and is not a special price, but is the usual and regular price and the only price at which he has sold said "Miracle Radio Control."

PAR. 4. In the further course and conduct of his business, as aforesaid, respondent has disseminated and now disseminates, through newspapers, trade publications, circulars, and other written or printed matter, other false, deceptive, and misleading statements and representations with respect to his aforesaid products, for the purpose of inducing the purchase of his said products, typical of which are the following:

World's Master—Airways MIRACLE RADIO CONTROL. Marvelous—Unbelievable. For long and short wave amateur; police and ship calls, code,

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etc.—Gets them all! Quick pick-up—no fade-out. Foreign stations every day clear and loud. Nothing like it on the market.

Gets stations the world over.

Adds many more stations you could not get before.

Can be operated without aerial or ground.

Radios's Old Reliable  
MIRACLE AERIAL LOOP

Gets local and foreign stations clear as a crystal; just connect to radio; no aerial, no ground required. Most remarkable reception you have ever heard.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and other statements and representations similar thereto, not specifically set out herein, all of which purport to be descriptive of the results to be obtained through the use of respondent's aforesaid products, respondent represents, directly and by implication, that the use of the device designated "Miracle Radio Control" or the device designated "Miracle Aerial Loop" as an attachment to a radio receiving set will improve radio reception broadcast over domestic and foreign, local and long-distance stations by short and long wave frequencies; that each of said devices will prevent fade-out or diminution of sound volume in radio reception and will bring in foreign stations clear and loud; that each of said devices will make it possible to bring in radio broadcasts from stations which, without said device, could not be tuned in, and that said devices will make possible satisfactory radio reception without aerial or ground connections; and that said devices will improve radio reception in an "unbelievable" and "wonderful" manner; and that said devices will amplify and control the sound waves in radio reception.

PAR. 6. The statements and representations advertised and disseminated by respondent, as aforesaid, are grossly exaggerated, false, and misleading.

In truth and in fact, the use of respondent's said products will not improve radio reception broadcast over domestic and foreign, local and long-distance stations, by short- and long-wave frequencies. Said devices will not prevent fade-out or diminution of sound volume in radio reception or bring in foreign stations clear or loud. Said devices will not make it possible to tune in broadcast programs which could not be brought in otherwise, or amplify or control the sound waves or radio reception. Practically all radio sets manufactured within the past 6 or 8 years will give satisfactory reception without antenna or ground connections, and there is no advantage in this connection to be gained by the use of said devices. Neither of said devices, whether used singly or in combination, will improve radio reception in any manner whatsoever.

PAR. 7. The acts and practices of the respondent in using the foregoing false, deceptive, and misleading statements and representations has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and advertisements were and are true. As a result of such erroneous and mistaken belief, so induced, a substantial number of the purchasing public have purchased respondent's said products.

PAR. 8. 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 October 31, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, William Wheeler, an individual, trading as Miracle Manufacturing Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. No answer was filed by the respondent. Thereafter, testimony and other evidence in support of and in opposition to the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the matter came on for final hearing before the Commission on the complaint, testimony, and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent 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, William Wheeler, is an individual, trading as Miracle Manufacturing Co., with his office and place of business located at 520 Harry Street, Conshohocken, Pa. Respondent is, and for some five years last past has been, engaged in the manufacture, sale, and distribution of certain mechanical devices designed as attachments for radio receiving sets and designated by respondent as "Miracle Radio Control" and "Miracle Aerial Loop."

PAR. 2. Respondent causes, and has caused, his products, when sold, to be shipped from his place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States. Respondent maintains and has maintained a course of trade in his products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his products, respondent has made various representations with respect to such products, such representations having been made by means of advertisements inserted in periodicals and also by means of advertising circulars and leaflets distributed among prospective purchasers. Among these representations were the following:

World's Master of Airways—MIRACLE RADIO CONTROL. Marvelous—Unbelievable. For long and short wave amateur; police and ship calls, code, etc.—Gets them all! Quick pick-up—fade-out. Foreign stations every day clear and loud. Nothing like it on the market.

\* \* \* \* \*  
Gets stations the world over.

\* \* \* \* \*  
Adds many more stations you could not get before.

Radio's Old Reliable—MIRACLE AERIAL LOOP—Remarkable Reception—for local and foreign stations—attach direct to radio.

PAR. 4. Through the use of these representations and others of similar import, respondent has represented, directly or by implication, that the use of his devices, Miracle Radio Control and Miracle Aerial Loop, will result in greatly improved radio reception, that such devices enable one to hear clearly and at all times radio broadcasts, both domestic and foreign, and both long-wave and short-wave, which otherwise would be unobtainable, and that the results obtained through the use of such devices are "remarkable," "marvelous," and "unbelievable."

PAR. 5. At the instance of the Commission both of respondent's devices were examined and tested by the National Bureau of Standards and the results of such tests form a part of the record in this proceeding. These tests, as well as the testimony of the expert who conducted them, disclose that the device Miracle Radio Control has no effect whatever upon a radio receiving set. It is wholly without value insofar as improving radio reception is concerned. The device Miracle Aerial Loop is, in fact, nothing more than a length of insulated copper wire attached to a wire loop. The device is capable of serving as an ordinary aerial or aerial extension for a radio receiving set, but is no more effective for that purpose than is a length of ordinary

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copper wire. Aside from such value as it may have as an aerial or aerial extension, the device adds nothing to the performance of a radio receiving set.

PAR. 6. The Commission therefore finds that the representations made by respondent with respect to his devices, as set forth in paragraphs 3 and 4 hereof, are erroneous and misleading.

PAR. 7. The Commission finds further that the use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the value and effectiveness of respondent's products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products as a result of the erroneous and mistaken belief so engendered.

## CONCLUSION

The 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, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support 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 the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, William Wheeler, individually, and trading as Miracle Manufacturing Co., or trading under any other name, and 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 respondent's devices designated "Miracle Radio Control" and "Miracle Aerial Loop," or any similar devices, whether sold under the same names or under any other names, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's device Miracle Radio Control has any beneficial effect upon a radio receiving set.

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2. That respondent's device Miracle Aerial Loop has any beneficial effect upon a radio receiving set in excess of that of an ordinary aerial or aerial extension.

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



## Complaint

IN THE MATTER OF  
DICKSON WEATHERPROOF NAIL CO.

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

*Docket 4700. Complaint, Feb. 5, 1942—Decision, Nov. 2, 1943*

Where an individual engaged in the manufacture and interstate sale and distribution of various kinds of roofing nails, for use principally for fastening sheet metal roofing to wooden roofs—

Represented that the holding strength of its "Dickson Lock Screw Shank Lead Head Nail" was 25 percent greater than that of plain drive screw nails, through such statements in advertising circulars and advertisements in trade journals as "Dickson Lock Screw Shank Lead Head Nail. This nail turns as it is driven. The tapered locking projections cause it to have 25 percent more holding strength than a plain drive screw";

The facts being that results of tests by the Bureau of Standards and other evidence disclosed that there was little difference, if any, in holding strength between its said product and that of plain drive screw nails;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and to cause it to purchase substantial quantities of such product as a result of the mistaken belief so engendered:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair acts and practices in commerce.

Before *Mr. Edward E. Reardon* and *Mr. John W. Addison*, trial examiners.

*Mr. R. P. Bellinger* for the Commission.

*Mr. Robert B. Dickson*, of Evanston, 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 the Dickson Weatherproof Nail 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, Dickson Weatherproof Nail Co., is a corporation, organized and existing by virtue of the laws of the State of Delaware, with its principal office and place of business at 1615 Sherman Avenue, Evanston, Ill., and a branch office and factory located at Birmingham, Ala. Respondent is now, and for more than 4 years

last past has been, engaged in the manufacture and sale of various kinds of lead head roofing nails used principally for fastening galvanized sheet metal roofing to wooden roofs. Respondent makes and sells a nail, called by it, "Dickson Long Screw Shank Lead Head Nail." Respondent causes said product, when sold, to be transported from its places of business in the States of Illinois and Alabama to 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 product in commerce between and among the several 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 its roofing nails designated as "Dickson Long Screw Shank Lead Head Nail," respondent has made false and misleading statements with respect to the claimed superiority and efficiency of its said product by means of circulars disseminated to prospective purchasers through the United States mails and distributed to prospective purchasers in connection with samples of said product. Among and typical of the statements and representations so used and circulated is the following:

Dickson Long Screw Shank Lead Head Nail. This nail turns as it is driven. The tapered locking projections cause it to have 25% more holding strength than a plain drive screw.

PAR. 3. Through the use of the foregoing statement and representation and others of similar import and meaning not set out herein, the respondent has represented and now represents that the holding strength of its Dickson Long Screw Shank Lead Head Nail is 25 percent greater than a plain drive screw nail under all conditions and circumstances.

PAR. 4. The above and foregoing statement and representation is false, misleading and deceptive. The holding power of the Dickson Long Screw Shank Lead Head Nail is not 25 percent greater than plain drive screw nails manufactured and sold by competitors. In truth and in fact, there is little difference, if any, between the holding power of respondent's Long Screw Shank Lead Head Nail and plain drive screw roofing nails.

PAR. 5. The use by the respondent of the foregoing false and misleading statement and representation respecting its said product has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such statement and representation is true, and causes a substantial portion of the purchasing public, because

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of such mistaken and erroneous belief, to purchase substantial quantities of respondent's product.

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 February 5, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Dickson Weatherproof Nail Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. No answer was filed by respondent. Thereafter, testimony and other evidence in support of and in opposition to the complaint were introduced before trial examiners of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the matter came on for final hearing before the Commission on the complaint, testimony and other evidence, report of the trial examiners upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being not fully advised in the premises, finds that this proceeding is in the interest 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, Dickson Weatherproof Nail Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1515 Sherman Avenue, Evanston, Ill., and with a branch office and factory located in Birmingham, Ala. Respondent is now, and for a number of years last past has been, engaged in the manufacture and sale of various kinds of roofing nails, such nails being used principally for fastening sheet metal roofing to wooden roofs. Among respondent's products is a nail designated by it as "Dickson Lock Screw Shank Lead Head Nail."

PAR. 2. Respondent causes and has caused its products, when sold, to be shipped from its places of business in the States of Illinois and Alabama to purchasers thereof located in various other States of the

United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its 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 its business and for the purpose of inducing the purchase of its Dickson Lock Screw Shank Lead Head nails, respondent has made various representations with respect to such nails, such representations having been disseminated among prospective purchasers by means of advertising circulars and also by means of advertisements inserted in trade journals which have wide circulation throughout the United States. Among such representations are the following:

Dickson Lock Screw Shank Lead Head Nail. This nail turns as it is driven. The tapered locking projections cause it to have 25% more holding strength than a plain drive screw.

Through the use of these representations and others of similar import, respondent has represented that the holding strength of its Dickson Lock Screw Shank Lead Head nail is 25 percent greater than the holding strength of plain drive screw nails.

PAR. 4. At the instance of the Commission, tests were made by the National Bureau of Standards to determine the holding strength of respondent's nail as compared with that of plain drive screw nails, and the results of the tests are in evidence in this proceeding. These tests, as well as other evidence in the record, disclose that the holding strength of respondent's nail is not 25 percent greater than the holding strength of plain drive screw nails. In fact, there is little difference, if any, between the holding strength of respondent's nail and that of plain drive screw nails. The Commission therefore finds that respondent's representations with respect to its nail, as set forth above, are erroneous and misleading.

PAR. 5. The Commission finds further that the use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such product as a result of the erroneous and mistaken belief so engendered.

#### CONCLUSION

The 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

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, Dickson Weatherproof Nail Co., a corporation, and its officers, 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 respondent's "Dickson Lock Screw Shank Lead Head" nails, or any other nails of substantially similar design, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

1. That said nails possess 25 percent or any other substantial percentage or amount of greater holding strength than plain drive screw nails.

2. That said nails possess any holding strength in excess of that actually possessed by them.

*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 C. LUCAS, TRADING AS FOX STUDIOS, AND  
 FORMERLY TRADING AS UNITED STUDIOS, 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 4807. Complaint, Aug. 10, 1942—Decision, Nov. 3, 1943*

A drawing is a representation produced by the art of drawing, and a painting is a likeness, image or scene depicted with paints without the aid of photography, a water color being a painting with pigments for which water and not oil is used as a solvent, and an oil painting being a painting done by hand with brushes and plastic oil colors on canvas, or other materials, without the aid of photography.

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.

Where an individual trading as "United Studios" and "Fox Studios" and his associate, engaged in interstate sale and distribution of photographs and, particularly, tinted or colored enlargements and miniatures thereof, in competition with others similarly engaged and with those engaged in the sale of genuine original paintings; contacting customers and prospective customers through newspaper advertising and through house-to-house salesmen canvassing various towns in crews, supplied with attractive samples of said individuals' work and with order coupons displaying aforesaid trade name "Fox Studios," and obtaining signatures to contracts for photographs—

- (a) Falsely represented that the tinted or colored photographs and the tinted enlargements or miniatures made therefrom, were "portraits in oil," "oil paintings," "oil portraits," "hand paintings," "hand colored paintings," or "paintings" through so describing them in order blanks, advertisements in newspapers, price lists, and representations employed by their canvassers;
- (b) Represented as the customary prices for their said pictures, prices which were in excess of those at which they were customarily offered, through salesmen's representations or statements in certificates that said so-called paintings, etc., were of a "\$7.50 value" or "\$5.00 value," etc.; represented that said pictures were being sold as "special introductory offers," "special opening bargains," "special Easter values," "Mother's Day specials" or at a reduced price for a limited time and to a limited number of customers; and, in soliciting from those who had already placed orders, sale of additional photographs at higher prices, represented through said salesmen that they could not make any money unless additional orders were given and would be forced out of business since the original offer was at less than cost or at the "special" offer price;

The facts being that photographs in question were of the sort ordinarily sold by popular price coupon photographic studios for \$1.00 each, and their aforesaid "special introductory" offers, etc., were not limited or special, but comprised part of a continuous scheme of solicitation in the regular course of their business;

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(c) Represented falsely that they employed in their studio photographers from Hollywood who had there acquired experience and proficiency as motion picture photographers, and that their lighting effects were those used in motion picture photography, through such statements in newspaper advertisements as "Fox Studio Has Hollywood Cameramen"; "By Utilizing the Very Latest in Hollywood Lighting Effects Fox Is Able to Make Pictures to Suit Personalities"; "Howard Sheld, recent arrival from Hollywood, one of the most popular motion-picture photographers of that city \* \* \*" and pictures taken with Hollywood lightings"; and

(d) Referred in price lists and in salesmen's talks to their products as "Gold Tone Oil Painting" and "Goldtone Vignetted Oil Paintings";

The facts being their said product was not the genuine "Goldtone" print resulting from the more laborious and expensive process involving use of a toning bath employing salts or chloride of gold and resulting in a much warmer tone than in the case of the black-and-white or sepia, but was the much less costly sepia print, slightly tinted, and the toning process employed was an ordinary one in universal use in the production of sepia effects;

With the result of misleading and deceiving the purchasing public and inducing it to purchase said products under such mistaken belief, thereby unfairly diverting trade to them from their competitors who truthfully represent their products; to the substantial injury of competition in commerce:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and their competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

*Mr. Randolph W. Branch* for the Commission.

*Mr. Fred M. Taylor*, of Boise, Idaho, for John C. Lucas and Isla Fineman Lucas.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by authority vested in it by said act, the Federal Trade Commission, having reason to believe that John C. Lucas, individually, and trading as Fox Studios, and formerly trading as United Studios, and Saul C. Fineman, Isla Fineman Lucas, Harry Becko, Howard Sheld, Harvey Grastey, Dick Sperling, and Nicholas Mück, individuals, hereinafter designed and 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, John C. Lucas, formerly trading as United Studios, is an individual, now trading as Fox Studios, with his principal office and place of business located at 915 Main Street, Boise, Idaho. The resident or business addresses of the remaining individual respondents, so far as known to the Commission, are as

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follows: Saul C. Fineman, 915 Main Street, Boise, Idaho; Isla Fineman Lucas, 915 Main Street, Boise, Idaho; Harry Becko, 915 Main Street, Boise, Idaho; Howard Sheld, 915 Main Street, Boise, Idaho; Harvey Grastey, 915 Main Street, Boise, Idaho; Dick Sperling, 915 Main Street, Boise, Idaho; and Nicholas Mock, 915 Main Street, Boise, Idaho. These respondents are associated with and representatives of John C. Lucas, formerly trading as United Studios, and now trading as Fox Studios.

All of said respondents are engaged in the sale and distribution of photographs, and particularly tinted or colored enlargements and miniatures of photographs.

Respondents sell and distribute such products to customers located in various States of the United States and cause and have caused said products, when sold, to be transported from their place of business in Idaho to purchasers thereof located in various States of the United States other than the State of Idaho, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents have been, and are now, engaged in direct and substantial competition with various corporations, partnerships and individuals 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 photographs and tinted or colored enlargements and miniatures of photographs, and 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. 3. Said respondents during the period of time for more than three years last past, acting under the control and direction of respondent, John C. Lucas, have entered into and carried out various understandings, agreements, combinations and conspiracies with each other and with divers other persons whose names are to the Commission unknown, to sell photographs, including tinted or colored enlargements and miniatures of photographs to the purchasing public by and through the use of false, misleading and deceptive acts, methods and practices.

PAR. 4. In the course and conduct of said business of producing, selling and distributing photographs and colored or tinted enlargements and miniatures of photographs, respondent, John C. Lucas, directs and controls the policies, affairs and activities of the business conducted under the name of Fox Studios and exercises a substantial measure of direction and control over the organization, management, policies, operation and financing of the remaining respondents herein



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in carrying out the unfair methods of competition and the unfair and deceptive acts and practices alleged herein.

PAR. 5. In the course and conduct of their said business and for the purpose of inducing the sale and distribution of their said products in commerce, as described herein, respondents have made, and are now making various advertising and sales representations concerning their said products. Customers and prospective customers are contacted variously through the medium of newspaper advertising, by the use of United States mails and by house-to-house canvassers or sales agents operating from and under the direction of the said Fox Studios.

PAR. 6. Respondents' plan of operation is in substance as follows:

House-to-house salesmen or canvassers, each group or crew being in charge of a crew manager, go out into various cities and towns located in States other than the State of Idaho. All such salesmen are equipped with attractive samples of respondents' work and with various types of coupons to be used in obtaining orders for respondents' products. Said crews, after locating in a town, canvass the same and obtain signatures to contracts for photographs or pictures. The customer signing for a picture pays 50 cents or other initial sum to the manager of a sales or canvassing crew. After a crew has worked a town they transmit to Fox Studios a list of the names and addresses of the customers obtained, the amount paid by each customer, and a statement of the work to be done. The crew then moves on to the next town. Respondent, Lucas, follows said canvassing crews, contacts those customers who have made contracts for pictures, collects the balance due from each customer, takes the customer's picture, then moves on to the next town. Negatives for the pictures thus taken by respondent, John C. Lucas, are sent in to the Fox Studios in Boise, where unfinished prints therefrom are made. When the prints are ready, respondent, Lucas, again visits the towns in question, again contacts the customers who have signed contracts and attempts to obtain additional business from them. When the customer completes the payment on his contract, the prints, with instructions as to coloring or finishing, are sent back to Fox Studios. When the pictures are finally completed, they are mailed out from Fox Studios in Boise, Idaho, to the respective purchasers in other States than the State of Idaho.

In visiting the homes of customers and prospective customers in the course and conduct of their said business, and acting under the direction and at the instance of respondent, John C. Lucas, respondents induce prospective customers to pay 50 cents on the purchase price of a picture and to execute an order therefor which entitles the customer

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to one "7 x 11 beautiful oil colored photograph" to be taken at a place to be designated later and upon the payment at that time of an additional 48 cents. At various times similar offers are made at different prices. Purchasers of such photographs are led to believe that they are contracting or dealing with duly constituted agents or representatives of an association of artists organized under the name and known as, "Fox Studios." Each said respondent is furnished by said respondent Lucas with various identification cards and price lists. Respondent, John C. Lucas, causes the orders or contracts for pictures or paintings to be taken on printed forms provided by him bearing the name and address of "Fox Studios," across the top thereof, and in such order it is variously stated that the customer is entitled to a "beautiful oil colored portrait" or "beautiful oil colored photograph" or "oil colored true-tone photograph." The said order is duly signed by one of the respondents herein as "representative" on a line provided therefor and delivered to the customer.

Said order blanks, used by respondents under the trade name "Fox Studios," contain various statements and representations, of which the following are typical:

- This offer expires in 10 days after date of purchase;
- Only One Offer To a Family;
- Latest Modernistic Lighting Used On All Sittings;
- One 7 x 11 Beautiful Oil Colored Photograph \* \* \* Special 98¢ Only.

The prospective purchaser is told and impressed with the fact that the order which he has executed entitles him to a photograph or painting at a "special offer" price or at a "cost of production" price or at a "reduced" price. Respondents particularly call attention to the high grade of the work done, to its beauty, the finish and to the natural color produced of the hair, eyes, complexion, and clothing. The pictures produced by respondents are represented and referred to by respondents' salesmen and canvassers as "paintings," "oil paintings," "oil portraits," "hand paintings," and "hand painted portraits," and are represented as being of "\$7.50 value" or "\$5.00 value" or similar amounts.

Subsequent to the down payment of 50 cents for the order the prospective customer is notified of the date on which a sitting for a photograph will be held. The prospective purchaser reports to the designated place, which is usually a temporary hotel room or an auto camp and upon the payment of the additional sum of 48 cents the photograph is taken. At this time considerable pressure is placed upon the prospective customer to order additional photographs of the same or larger size and in greater numbers than one, and prices stated therefor are considerably higher than the price of the original

offer. Respondents represent at this time that they cannot make any money unless additional orders are given, and that if the customer only takes one photograph the respondent will be forced out of business, since the original offer is given at less than cost or at the "special offer" price.

Respondents inform the prospective purchaser that the completed "painting" finished by the respondent will be of the grade, type, and quality of samples exhibited and will fully conform to the representations made.

Delivery of pictures or "paintings" is made by shipping the completed product c. o. d. directly to the customer or by personal delivery of a "follow-up" salesman or representative. If the delivery is made in person, additional orders are attempted by means of the same representations used at the sitting.

PAR. 7. On other occasions respondents insert advertisements in the various newspapers circulating in States other than the State of Idaho. Said advertisements represent that any customer who presents one of these advertisements at the studio is entitled to a "Beautiful 6 x 8 hand colored hand painting for only 48¢." Respondents represent that this offer is for the purpose of advertising and introducing the Fox Studios to the public. At various other times similar offers are made at different prices. Typical among the statements made in these advertisements are the following:

"Special opening bargain good only for one week"; "A beautiful 6 x 8 hand painting"; "Special—This Week Only \* \* \* a beautiful 8 x 10 oil painting \* \* \* Hollywood motion picture lighting used"; "Special Easter Value"; "Mother's Day Special"; "Hand Colored Painting."

In special news write-ups appearing as advertisements in daily papers circulating in States other than the State of Idaho there have appeared the following, among other statements and representations:

"Fox Studio Has Hollywood Cameramen"; "By Utilizing the Very Latest in Hollywood Lighting Effects Fox Is Able to Make Pictures to Suit Personalities"; "Howard Sheld, recent arrival from Hollywood, one of the most popular motion picture photographers of that city \* \* \*" and "pictures taken with Hollywood lighting."

In other certificates employed by the said respondent, John C. Lucas, trading as United Studios, or otherwise, pictures offered and sold by him in commerce as herein described have been represented respectively as being a "Special Advertising Offer"; as having values of \$7.50 and \$5; as produced by "Hollywood Lightings," and as being a " \* \* \* Beautiful Oil Colored Portrait."

In price lists distributed by respondents to customers and prospective customers and in sales talks by respondents' salesmen and can-

vassers, respondents' products are described and represented as "Gold Tone Oil Paintings" and "Goldtone Vignetted Oil Paintings."

PAR. 8. The aforesaid false and misleading statements, representations, acts, practices and methods employed by the respondents in connection with the conduct of their business enterprise, as aforesaid, are not all inclusive, but are merely illustrative of the character and type of statements, representations, acts, practices and methods used by respondents to mislead and deceive members of the purchasing public, and to induce the purchase of their said products.

PAR. 9. 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 in 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 and plastic oil colors on canvas; or other materials, without the aid of photography.

PAR. 10. The aforesaid representations and implications made and employed by respondents as aforesaid, are false, misleading, and deceptive in that:

The photographs or pictures produced and distributed by respondents are not "portraits in oil," "oil paintings," "oil portraits," "hand paintings" or "hand colored paintings." Said photographs or pictures are not "paintings" nor "oil painted," they do not conform to the established belief of the public as to what constitutes a "painting" or an "oil painted" production, nor do said photographs or pictures constitute "paintings" or "oil painted" products as understood by artists who paint pictures or photographers who color photographs. Respondents' said photographs or pictures, in truth and in fact, as produced and sold by them, are merely sepia prints produced from a photographic base and negative, and slightly tinted or colored thereafter.

The photographs or pictures represented as having values of \$7.50 and \$5 have not had and do not have any such values, and have not been sold for \$7.50 nor for \$5, for in truth and in fact, photographs or pictures of the same kind, type and quality as those sold by respondents are regularly and ordinarily sold by popular-price, coupon photographic studios for \$1 each.

The offers that are advertised as terminating on or being limited to a given date or period, are not actually terminated or withdrawn at, or limited to, the time stated as to each, nor are any of said advertising or coupon offers "Special Introductory Offers," "Special Opening Bargains," "Special Easter Values" or "Mother's Day Specials." Said offers, in truth and in fact, comprise only a part of a continuous scheme of solicitation in the regular course and conduct of the business of respondents.

Respondents do not employ, and have not employed "Hollywood Cameramen," nor is respondent, Howard Sheld, a "recent arrival from Hollywood," or "one of the most popular motion picture photographers of the city." Pictures taken by respondents are not and have not been taken with any so-called "Hollywood lighting effects," but, on the contrary, constitute the ordinary photographs, slightly tinted or colored, made by the average photographic studio employing a coupon selling plan.

PAR. 11. A genuine "Goldtone" print or picture is a product resulting from a process involving the use of a toning bath employing salts or chloride of gold. The process produces a much warmer tone than is true in the case of black and white or sepia, involves more labor and detail, comprehending the toning of a print or pictures a second time, and is considerably more expensive than the process employed in the production of black-and-white or sepia prints or pictures. The toning process employed by respondents is an ordinary one in universal use in the production of sepia effects.

In truth and in fact, the colored photograph advertised and represented by respondents to be a "Goldtone Oil Painting" or "Goldtone Vignetted Oil Painting" is not in fact a Goldtone picture but is instead a slightly tinted or colored sepia print which costs much less to produce and which respondents do not actually color or paint in oil.

PAR. 12. Each of said respondents herein has acted and does act in concert and cooperation with one or more of the other respondents herein in doing and performing the acts and practices herein alleged and in furtherance of said understandings, agreements, combinations and conspiracies.

PAR. 13. The use by the respondents of the aforesaid false and misleading representations, acts and practices in the sale and offering for sale purported portraits and paintings has had and now has the tendency and capacity to and does mislead and deceive the purchasing public concerning the quality and value of respondents' products sold as herein described, and has thereby induced and is inducing the purchasing public to purchase said products under the erroneous and mistaken belief that the same were and are high-grade, quality por-

traits or paintings of exceptional value. The use by respondents of the aforesaid acts and practices has a tendency and capacity to and does unfairly divert trade to respondents from their competitors also engaged in the sale and distribution of tinted or colored enlargements or miniatures of photographs in commerce among and between 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 respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR 14. The aforesaid acts and practices of respondents, including said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove 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 August 10, 1942, issued its complaint charging John C. Lucas, Saul C. Fineman, Isla Fineman Lucas, Harry Backo, Howard Sheld, Harvey Grastey, Dick Sperling, and Nicholas Mock 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. Said complaint was duly served on respondents, John C. Lucas, Isla Fineman Lucas, and Saul C. Fineman, but no service of said complaint was effected as to respondents, Harry Becko, Howard Sheld, Harvey Grastey, Dick Sperling, and Nicholas Mock. Thereafter, on August 4, 1943, the Commission permitted respondents, John C. Lucas and Isla Fineman Lucas, to file their answer dated June 22, 1943, in which said answer respondents 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, this proceeding regularly came on for final hearing before the Commission on said complaint and the answer of the respondents, John C. Lucas and Isla Fineman Lucas, 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 as to said answering respondents.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, John C. Lucas, is an individual, who, prior to about September 1, 1942, traded first under the name United Studios and thereafter the name Fox Studios with his last principal office and place of business at 915 Main Street, Boise, Idaho. Respondent, Isla Fineman Lucas, was associated with him in the enterprise described herein.

Said respondents were engaged in the sale and distribution of photographs, and particularly tinted or colored enlargements and miniatures of photographs. Respondents sold and distributed such products to customers located in various States of the United States and caused said products, when sold, to be transported from their place of business in Idaho to purchasers thereof located in various States of the United States other than the State of Idaho, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, respondents were engaged in direct and substantial competition with various corporations, partnerships, and individuals 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 photographs and tinted or colored enlargements and miniatures of photographs, and 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. 3. In the course and conduct of their said business and for the purpose of inducing the sale and distribution of their said products in commerce, as described herein, respondents have made various advertising and sales representations concerning their said products. Customers and prospective customers were contacted variously through the medium of newspaper advertising, by the use of the United States mails and by house-to-house canvassers or sales agents operating from and under the direction of the said Fox Studios.

PAR. 4. Respondents plan of operation was in substance as follows: House-to-house salesmen or canvassers, each group or crew being in charge of a crew manager, went out into various cities and towns located in States other than the State of Idaho. All such salesmen were equipped with attractive samples of respondents' work and with various types of coupons to be used in obtaining orders for respondents' products. Said crews, after locating in a town, canvassed the same and obtained signatures to contracts for photographs or pic-

tures. The customer signing for a picture paid 50 cents or other initial sum to the manager of a sales or canvassing crew. After a crew had worked a town they transmitted to Fox Studios a list of the names and addresses of the customers obtained, the amount paid by each customer, and a statement of the work to be done. The crew then moved on to the next town. Respondent, Lucas, followed said canvassing crews, contacted those customers who had made contracts for pictures, collected the balance due from each customer, took the customer's picture, then moved on to the next town. Negatives for the pictures thus taken by respondent, John C. Lucas, were sent in to the Fox Studio in Boise, where unfinished prints therefrom were made. When the prints were ready, respondent Lucas again visited the towns in question, again contacted the customers who had signed contracts and attempted to obtain additional business from them. When the customer completed the payment on his contract the prints, with instructions as to coloring or finishing, were sent back to Fox Studios. When the pictures were finally completed, they were mailed out from Fox Studios in Boise, Idaho, to the respective purchasers in other States than the State of Idaho.

In visiting the homes of customers and prospective customers in the course and conduct of their said business, and acting under the direction and at the instance of respondent, John C. Lucas, respondents' salesmen or canvassers induced prospective customers to pay 50 cents on the purchase price of a picture and to execute an order therefor which entitled the customer to one "7 x 11 beautiful oil colored photograph" to be taken at a place to be designated later and upon the payment at that time of an additional 48 cents. At various times similar offers were made at different prices. Purchasers of such photographs were led to believe that they were contracting or dealing with duly constituted agents or representatives of an association of artists organized under the name and known as, "Fox Studios." Said salesmen were furnished by said respondents with various identification cards and price lists. Respondent, John C. Lucas, caused the orders or contracts for pictures or paintings to be taken on printed forms provided by him bearing the name and address of "Fox Studios" across the top thereof, and in such order it was variously stated that the customer was entitled to a "beautiful oil colored portrait" or "beautiful oil colored photograph" or "oil colored true-tone photograph." The said order was duly signed by one of the salesmen of the respondent herein as "representative" on a line provided therefor, and delivered to the customer.

Said order blanks contained various statements and representations of which the following are typical:



## Findings

This offer expires in 10 days after date of purchase;  
 Only One Offer to a Family;  
 Latest Modernistic Lighting Used On All Sittings;  
 One 7x11 Beautiful Oil Colored Photograph \* \* \* Special 98¢ Only.

The prospective purchaser was told and impressed with the fact that the order which he had executed entitled him to a photograph or painting at a "special offer" price or at a "cost of production" price or at a "reduced" price. Respondents particularly called attention to the high grade of the work done, to its beauty, the finish, and to the natural color produced of the hair, eyes, complexion and clothing. The pictures produced by respondents were represented and referred to by respondents' salesmen and canvassers as "paintings," "oil paintings," "oil portraits," "hand paintings," and "hand painted portraits," and were represented as being of "\$7.50 value" or "\$5.00 value" or similar amounts.

Subsequent to the down payment of 50 cents for the order the prospective customer was notified of the date on which a sitting for a photograph would be held. The prospective purchaser reported to the designated place, usually a temporary hotel room or an auto camp, and upon the payment of the additional sum of 48 cents the photograph was taken. At this time considerable pressure was placed upon the prospective customer to order additional photographs of the same or larger size and in greater numbers than one, and prices stated therefor were considerably higher than the price of the original offer. Respondents represented at that time that they could not make any money unless additional orders were given, and that if the customer only took one photograph the respondent would be forced out of business, since the original offer was given at less than cost or at the "special offer" price.

Respondents informed the prospective purchaser that the completed "painting" finished by the respondent would be of the grade, type, and quality of samples exhibited and would fully conform to the representations made.

Delivery of pictures or "paintings" was made by shipping the completed product c. o. d. directly to the customer or by personal delivery of a "follow-up" salesman or representative. If the delivery was made in person, additional orders were attempted by means of the same representations used at the sitting.

PAR. 5. On other occasions respondents inserted advertisements in the various newspapers circulating in States other than the State of Idaho. Said advertisements represented that any customer who presented one of these advertisements at the studio was entitled to a "Beautiful 6 x 8 hand colored hand painting for only 48¢." Re-

spondents represented that this offer was for the purpose of advertising and introducing the Fox Studios to the public. At various other times similar offers were made at different prices. Typical among the statements made in these advertisements were the following:

"Special opening bargain good only for one week"; "A beautiful 6 x 8 hand painting"; "Special—This Week Only \* \* \* a beautiful 8 x 10 oil painting \* \* \* Hollywood motion picture lighting used"; "Special Easter Value"; "Mother's Day Special"; "Hand Colored Painting."

In special news write-ups appearing as advertisements in daily papers circulating in States other than the State of Idaho there have appeared the following, among other statements and representations:

"Fox Studio Has Hollywood Cameramen"; "By Utilizing the Very Latest in Hollywood Lighting Effects Fox Is Able to Make Pictures to Suit Personalities"; "Howard Sheld, recent arrival from Hollywood, one of the most popular motion picture photographers of that city \* \* \*" and "pictures taken with Hollywood lighting."

In other certificates employed by the said respondent, John C. Lucas, trading as United Studios or otherwise, pictures offered and sold by him in commerce as herein described were represented respectively as being a "Special Advertising Offer"; as having values of \$7.50 and \$5; as produced by "Hollywood Lightings," and as being a "\* \* \* Beautiful Oil Colored Portrait."

In price lists distributed by respondents to customers and prospective customers and in sales talks by respondents' salesmen and canvassers, respondents' products were described and represented as "Gold Tone Oil Paintings" and "Goldtone Vignetted Oil Paintings."

PAR. 6. The aforesaid false and misleading statements, representations, acts, practices and methods employed by the respondents in connection with the conduct of their business enterprise, as aforesaid, are not all inclusive, but are merely illustrative of the character and type of statements, representations, acts, practices, and methods used by respondents to mislead and deceive members of the purchasing public, and to induce the purchase of their said products.

PAR. 7. 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 and plastic oil colors on canvas, or other materials, without the aid of photography.

PAR. 8. The aforesaid representations and implications made and employed by respondents as aforesaid were false, misleading and deceptive in that:

The photographs or pictures produced and distributed by respondents were not "portraits in oil," "oil paintings," "oil portraits," "hand paintings" or "hand colored paintings." Said photographs or pictures were not "paintings" nor "oil painted," they did not conform to the established belief of the public as to what constitutes a "painting" or an "oil painted" production, nor did said photographs or pictures constitute "paintings" or "oil painted" products as understood by artists who paint pictures or photographers who color photographs. Respondents' said photographs or pictures, in truth and in fact, as produced and sold by them, were merely sepia prints produced from a photographic base and negative, and slightly tinted or colored thereafter.

The photographs or pictures represented as having values of \$7.50 and \$5 did not have any such values, and were not sold for \$7.50 nor for \$5, for in truth and in fact photographs or pictures of the same kind, type, and quality as those sold by respondents were regularly and ordinarily sold by popular price, coupon photographic studios for \$1 each.

The offers that were advertised as terminating on or as being limited to a given date or period, were not actually terminated or withdrawn at, or limited to, the time stated as to each, nor were any of said advertising or coupon offers "Special Introductory Offers," "Special Opening Bargains," "Special Easter Values" or "Mother's Day Specials." Said offers, in truth and in fact, comprised only a part of a continuous scheme of solicitation in the regular course and conduct of the business of respondents.

Respondents did not employ, and have not employed "Hollywood Cameramen," nor was respondent, Howard Sheld, a "recent arrival from Hollywood," or "one of the most popular motion picture photographers of the city." Pictures taken by respondents were not taken with any so-called "Hollywood lighting effects," but, on the contrary, constituted the ordinary photographs, slightly tinted or colored, made by the average photographic studio employing a coupon selling plan.

PAR. 9. A genuine "Goldtone" print or picture is a product resulting from a process involving the use of a toning bath employing salts

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or chloride of gold. This process produces a much warmer tone than is true in the case of black and white or sepia, involves more labor and detail, comprehending the toning of a print or pictures a second time, and is considerably more expensive than the process employed in the production of black-and-white or sepia prints or pictures. The toning process employed by respondents was an ordinary one in universal use in the production of sepia effects.

In truth and in fact, the colored photograph advertised and represented by respondents to be a "Goldtone Oil Painting" or "Goldtone Vignetted Oil Painting" was not in fact a Goldtone picture but was instead a slightly tinted or colored sepia print which cost much less to produce and which respondents did not actually color or paint in oil.

PAR. 10. The use by the respondents of the aforesaid false and misleading representations, acts and practices in the sale and offering for sale of purported portraits and paintings had the tendency and capacity to and did mislead and deceive the purchasing public concerning the quality and value of respondents' products sold as herein described, and thereby induced the purchasing public to purchase said products under the erroneous and mistaken belief that the same were high-grade, quality portraits or paintings of exceptional value. The use by respondents of the aforesaid acts and practices had a tendency and capacity to and did unfairly divert trade to respondents from their competitors also engaged in the sale and distribution of tinted or colored enlargements or miniatures of photographs in commerce among and between 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 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 hereinabove found, were all to the prejudice and injury of the public and of respondents' competitors, and constituted 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 John C. Lucas and Isla Fineman Lucas, in which answer said respondents

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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 the facts, and the Commission having made its findings as to the facts and conclusion that said respondents, John C. Lucas and Isla Fineman Lucas, have violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That respondents, John C. Lucas, individually, and trading as Fox Studios or United Studios, or trading under any other name, and Isla Fineman Lucas, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of photographs, including tinted or colored photographs and enlargements or miniatures thereof 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 tinted or colored photographs, including tinted or colored enlargements or miniatures made from a photographic base, are "Portraits in Oil," "Oil Paintings," "Oil Portraits," "Hand Paintings," "Hand Colored Paintings," or "Paintings," or that respondents' said products are works of art produced by the skill and brush of a painter.

2. Representing as the customary, regular or studio prices for respondents' pictures, enlargements or miniatures, any prices which are in fact in excess of the prices at which said pictures, enlargements or miniatures are customarily offered for sale in the normal and usual course of respondents' business.

3. Representing that pictures being sold in the regular course of business at the usual and customary prices therefor are being or will be sold only to a limited number of customers or as "Special Introductory Offers," "Special Opening Bargains," "Special Easter Values," as "Mother's Day Specials" or at a "reduced price" or that the offer expires on any given date, or in any other manner representing that a purchaser is receiving an advantage in price or other consideration not ordinarily available.

4. Representing that any specified sum in excess of the actual cost of production is merely the "cost of production" of respondents' said products.

5. Representing that respondents have employed in their studio photographers from Hollywood, Calif., who have acquired experience and proficiency as motion picture photographers in said city, or that the lighting effects employed by respondents in their studio are those used in motion picture photography.

6. Using the expression "Goldtone" alone or in conjunction with any other word or words, to describe, designate or indicate any sepia or

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other finish picture which is not the result of a toning or developing bath or process employing chloride of gold salts.

It appearing that respondents, Harry Becko, Howard Sheld, Harvey Grastey, Dick Sperling, and Nicholas Mock, have not been served with the complaint and respondent, Saul C. Fineman, has not been served with notice of hearing, *It is ordered*, That the proceeding be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same as to said respondents.

*It is further ordered*, That said respondents, John C. Lucas and Isla Fineman Lucas, 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

## EVENING DRESS GUILD, INC., ET AL.

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

*Docket 4751. Complaint, Apr. 22, 1942—Decision, Nov. 16, 1943*

Where eleven corporations, a partnership and an individual, members of a corporate "Guild" (later dissolved), doing a substantial volume of the whole of the business—particularly in the metropolitan area surrounding New York City—of the manufacture and interstate sale and distribution of popular priced women's and misses' formal evening dresses in competition with one another, except as below set forth, and with others;

Entered into, maintained, and carried out agreements and understandings between and among themselves to suppress competition in said business; and

In pursuance of said agreements, etc., and to make them effective, concertedly—

- (1) Organized said Guild to control and regulate their business;
- (2) Fixed and maintained prices and terms and conditions of sale in connection with the marketing of their said merchandise;
- (3) Attended meetings held from time to time under the auspices of said Guild, at which the prices of their said merchandise to retail dealer customers were increased; and
- (4) Adopted also under said Guild auspices, trade practice rules forbidding certain trade deductions and allowances to their customers which they had theretofore permitted;

Capacity, tendency and effect of which agreements, etc., and acts performed in pursuance thereof, were unreasonably to suppress and restrain competition in the sale and distribution of said articles of merchandise in commerce and to deprive the public of the full benefit of competition therein;

Held, That said acts and practices, under the circumstances set forth, were all to the prejudice of the public, had a dangerous tendency to and did actually restrain and eliminate price competition in the sale and distribution of formal evening dresses in commerce; placed in their hands power to control and enhance prices; unreasonably restrained such commerce in formal evening dresses; and constituted unfair acts and practices in commerce and unfair methods of competition therein.

*Mr. George W. Williams* for the Commission.

*Mr. Lawrence I. Gerber*, of New York City, for Harry Goodman, Herman Goodman, and Joseph Scafuri.

*Mr. Herman Haines*, of New York City, for Murray E. Gottesman, Meyer Schatzberg, Jack Levy, Mike Reiter, Clover Dance Frocks, Inc., Debonair Dance Frocks, Inc., Gaytime Frocks, Inc., Hollywood Formals, Inc., Patio Dress Co., Inc., Penelope Frocks, Inc., Seville Dress Manufacturing Co., Inc., Studio Dance Frocks, Inc., and S. Wicha, Inc.

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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 parties named in the caption hereof, and hereinafter particularly described, designated and referred to as respondents, have violated the provisions of section 5 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, Evening Dress Guild, Inc., hereinafter referred to as respondent "Guild," 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 152 West Forty-second Street (at the office of attorney Harold Harmatz), New York, N. Y.

The following individuals are, or were within the time hereinafter mentioned, the acting officers of said respondent Guild and as such officers, and individually, are designated as respondents herein: Harry Goodman, acting president, 134 West Thirty-seventh Street, New York, N. Y.; Murray E. Gottesman, acting secretary (Studio Dance Frocks, Inc.), 1359 Broadway, New York, N. Y.; and Mcyer Schatzberg, acting treasurer (Clover Dance Frocks, Inc.), 1359 Broadway, New York, N. Y.

The following named individuals constitute the board of directors of said Guild, or were within the time hereinafter mentioned, and as such directors, and individually, are designated as respondents herein: Jack Levy (Gaytime Frocks, Inc.), 1359 Broadway, New York, N. Y.; Murray E. Gottesman (Studio Dance Frocks, Inc.), 1359 Broadway, New York, N. Y.; and Mike Reiter (Seville Dress Manufacturing Co., Inc.), 134 West Thirty-seventh Street, New York, N. Y.

The membership of said respondent Guild is made up of numerous corporations, partnerships, firms and individuals, hereinafter referred to as respondent members, engaged in the manufacture, sale and distribution of popular priced women's and misses' formal evening dresses.

PAR. 2. Respondent, Bouquet Formals, 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 1359 Broadway, New York, N. Y.

Respondent, Clover Dance Frocks, 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 1359 Broadway, New York, N. Y.

Respondent, Darling Formals, 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 1359 Broadway, New York, N. Y.

Respondent, Debonair Dance Frocks, 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 1359 Broadway, New York, N. Y.

Respondent, Gaytime Frocks, 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 1359 Broadway, New York, N. Y.

Respondent, Hollywood Formals, 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 1359 Broadway, New York, N. Y.

Respondent, Judy Formals, 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 134 West Thirty-seventh Street, New York, N. Y.

Respondent, Patio Dress 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 at 218 West Thirty-seventh Street, New York, N. Y.

Respondent, Penelope Frocks, 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 491 Seventh Avenue, New York, N. Y.

Respondent, Seville Dress 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 office and principal place of business at 134 West Thirty-seventh Street, New York, N. Y.

Respondent, Studio Dance Frocks, 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 1359 Broadway, New York, N. Y.

Respondent, Tango Formals, 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 134 West Thirty-seventh Street, New York, N. Y.

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Respondent, S. Wicha, 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 491 Seventh Avenue, New York, N. Y.

Respondents, Harry Goodman and Herman Goodman, are individuals, trading under their own names as copartners, with their office and principal place of business at 134 West Thirty-seventh Street, New York, N. Y.

Respondent, Joseph Scafuri, is an individual, trading under the firm name and style of Adorable Dance Frocks, with his office and principal place of business at 1357 Broadway, New York, N. Y.

Respondent, Murray Oliphant, is an individual, with his office and principal place of business at 1385 Broadway, New York, N. Y.

PAR. 3. Said respondent members at all times herein mentioned have been, and are now, engaged in the manufacture, sale and delivery of popular priced women's and misses' formal evening dresses, and delivering the same to their customers in the various States of the United States, other than New York, the State of origin, and in the District of Columbia, whereby said respondents created and maintained, and still maintain, a constant and continuous current of commerce in said evening dresses, between the respondent members and the purchasers thereof, in, among and between the various States of the United States, and in the District of Columbia.

The volume of business done by respondent members constitutes a substantial portion of the whole of such business done by this industry, particularly in the metropolitan area surrounding New York City.

PAR. 4. Said respondent members are in competition with one another in the manufacture, sale and distribution of their said articles of merchandise in the various States of the United States and in the District of Columbia, except insofar as their said competition has been hindered, lessened or restrained, or potential competition among them forestalled, by the acts, practices, methods and policies of said respondents hereinafter set forth.

There are other corporations, partnerships, firms and individuals not affiliated with respondent Guild, and which are engaged in the manufacture, sale and distribution of similar articles of merchandise in the area in which said respondents trade, in competition with one another, and with one or more of said member respondents, except insofar as such competition has been hindered, lessened and restrained, or potential competition among them forestalled, by the said respondents' acts, practices, methods and policies hereinafter described.

PAR. 5. Said respondents within the last two years, have entered into, maintained and carried out agreements, understandings, combinations and conspiracies, between and among themselves to suppress, hinder, and lessen competition in the manufacture, sale, and delivery of said articles of merchandise in the course of said commerce, in, among, and between the various States of the United States, and in the District of Columbia.

Pursuant to, and in furtherance of, and to make effective said agreements, understandings, combinations and conspiracies, said respondent members and individuals have cooperatively, concertedly and collectively adopted, engaged in, and carried out, among others, the following methods, acts and practices:

1. Organized respondent Guild, as aforesaid, to control and regulate the business of manufacturing, selling and delivering the said articles of merchandise.

2. Fixed, established and maintained prices and the terms and conditions of sale in connection with the marketing of the respective lines of their said articles of merchandise, in the various States of the United States, and in the District of Columbia.

3. Attended meetings held from time to time under the auspices of respondent Guild, at which the prices of said articles of merchandise manufactured or sold by respondent members, as aforesaid, were increased to retail dealer customers.

4. Adopted under the auspices of respondent Guild, trade practice rules forbidding certain trade deductions and allowances which had theretofore been permitted by said members to their customers.

PAR. 6. The capacity, tendency, and effect of the aforesaid agreements, understandings, combinations and conspiracies and the methods, acts and practices and things done and performed by respondents in pursuance thereof are, and have been, to unreasonably lessen, suppress, and restrain competition in the manufacture, sale, and delivery of said articles of merchandise in the various States of the United States and in the District of Columbia, and to deprive the purchasing, using, and consuming public of the advantage of competitive prices, terms, and conditions in connection with the purchase thereof, and other advantages which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction and detriment to, the freedom of fair and legitimate competition in such trade and industry; and particularly among the members of said Guild.

PAR. 7. The acts and practices of said respondents, and the things done and performed by them, as herein alleged, are all to the prejudice

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of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented competition between and among said member respondents in the manufacture, sale, and delivery of their said articles of merchandise in commerce, within the intent and meaning of section 4 of the Federal Trade Commission Act; and placed in member respondents the power to control and enhance prices and other terms and conditions in connection with the manufacture, sale and delivery of their said articles of merchandise; have a dangerous tendency to create in member respondents a monopoly in said articles of merchandise in said commerce; have unreasonably restrained such commerce in their said articles of merchandise, and constitute unfair methods of competition and unfair and deceptive acts or practices in commerce, within the intent and meaning of section 5 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 April 1942, issued and subsequently served its complaint in this proceeding upon the above-named respondents 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 section 5 of said act. All of the above-named respondents, except the Evening Dress Guild, Inc., Darling Formals, Inc., Judy Formals, Inc., and Murray Oliphant, filed admission answers admitting all material allegations of fact set forth in said complaint and waiving 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 said answers, 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, Evening Dress Guild, Inc., hereinafter referred to as "respondent Guild," was 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 152 West Forty-second Street, New York, N. Y. Said respondent was dissolved and ceased doing business on September 14, 1942.

Respondent, Harry Goodman, 134 West Thirty-seventh Street, New York, N. Y., is an individual and was an officer of respondent Guild,

having held the office of acting president during the times herein mentioned.

Respondent, Murray E. Gottesman, 1359 Broadway, New York, N. Y., is an individual and representative of Studio Dance Frocks, Inc., and was an officer and director of respondent Guild, having held the office of acting secretary during the times herein mentioned.

Respondent, Meyer Schatzberg, 1359 Broadway, New York, N. Y., is an individual and representative of Clover Dance Frocks, Inc., and was an officer of respondent Guild, having held the office of acting treasurer during the times herein mentioned.

Respondents, Jack Levy, 1359 Broadway, New York, N. Y., an individual and representative of Gaytime Frocks, Inc., and Mike Reiter, 134 West Thirty-seventh Street, New York, N. Y., an individual and representative of Seville Dress Manufacturing Co., Inc., were directors of respondent Guild during the times herein mentioned.

Respondent, Bouquet Formals, 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 1359 Broadway, New York, N. Y.

Respondent, Clover Dance Frocks, 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 1359 Broadway, New York, N. Y.

Respondent, Debonair Dance Frocks, 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 1359 Broadway, New York, N. Y.

Respondent, Gaytime Frocks, 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 1359 Broadway, New York, N. Y.

Respondent, Hollywood Formals, 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 1359 Broadway, New York, N. Y.

Respondent, Patio Dress 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 at 218 West Thirty-seventh Street, New York, N. Y.

Respondent, Penelope Frocks, 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 491 Seventh Avenue, New York, N. Y.

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Respondent, Seville Dress 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 office and principal place of business at 134 West Thirty-seventh Street, New York, N. Y.

Respondent, Studio Dance Frocks, 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 1359 Broadway, New York, N. Y.

Respondent, Tango Formals, 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 134 West Thirty-seventh Street, New York, N. Y.

Respondent, S. Wicha, 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 491 Seventh Avenue, New York, N. Y.

Respondents, Harry Goodman and Herman Goodman, are individuals, trading under their own names as copartners, with their offices and principal place of business at 134 West Thirty-seventh Street, New York, N. Y.

Respondent, Joseph Scafuri, is an individual, trading under the firm name and style of Adorable Dance Frocks, with his office and principal place of business at 1357 Broadway, New York, N. Y.

Respondent, Darling Formals, Inc., was a corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1359 Broadway, New York, N. Y. Said respondent was dissolved and ceased doing business on May 1, 1942.

Respondent, Judy Formals, Inc., was a corporation, organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 134 West Thirty-seventh Street, New York, N. Y. Said respondent was dissolved and ceased doing business on July 23, 1942.

Respondent, Murray Oliphant, is an individual, with his office and principal place of business at 1395 Broadway, New York, N. Y. Said respondent never took any active part in the formation of respondent Guild and was never a member thereof.

The aforesaid respondents, Bouquet Formals, Inc., Clover Dance Frocks, Inc., Debonair Dance Frocks, Inc., Gaytime Frocks, Inc., Hollywood Formals, Inc., Patio Dress Co., Inc., Penelope Frocks, Inc., Seville Dress Manufacturing Co., Inc., Studio Dance Frocks, Inc., Tango Formals, Inc., S. Wicha, Inc., Harry Goodman and Herman Goodman, copartners, and Joseph Scafuri, trading as Adorable

## Findings

Dance Frocks, were members of respondent Evening Dress Guild, Inc., and, for convenience, will hereinafter be referred to as "respondent members."

PAR. 2. Respondent members are now, and have been, engaged in the manufacture, sale, and distribution of popular priced women's and misses' formal evening dresses. Said respondent members cause said formal evening dresses, when sold by them, to be transported from their respective places of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondent members maintain, and at all times mentioned herein have maintained, a course of trade in said formal evening dresses in commerce among and between the various States of the United States and in the District of Columbia.

The volume of business done by respondent members constituted, and constitutes, a substantial portion of the whole of such business done by this industry, particularly in the metropolitan area surrounding New York City.

PAR. 3. Said respondent members were, and are, in competition with one another in the manufacture, sale, and distribution of said articles of merchandise in various States of the United States and in the District of Columbia, except insofar as their said competition has been hindered, lessened, or restrained, or potential competition among them forestalled, by the acts, practices, methods, and policies of said respondents hereinafter set forth.

There are other corporations, partnerships, firms, and individuals not affiliated with respondent Guild and which are engaged in the manufacture, sale, and distribution of similar articles of merchandise in the area in which said respondent members trade, in competition with one another, and with one or more of said respondent members, except insofar as such competition has been hindred, lessened, or restrained, or potential competition among them forestalled, by the acts, practices, methods, and policies hereinafter described.

PAR. 4. Said respondent members, within the two years preceding the filing of the complaint, have entered into, maintained, and carried out agreements, understandings, combinations, and conspiracies between and among themselves to suppress, hinder, and lessen competition in the manufacture, sale, and distribution of said articles of merchandise in the course of said commerce in, among, and between the various States of the United States, and in the District of Columbia.

Pursuant, to and in furtherance of, and to make effective said agreements, understandings, combinations, and conspiracies, said respondent members and individuals have cooperatively, concertedly,

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and collectively adopted, engaged in, and carried out, among other things, the following methods, acts, and practices:

1. Organized respondent Guild to control and regulate the business of manufacturing, selling, and delivering the said articles of merchandise.

2. Fixed, established, and maintained prices and the terms and conditions of sale in connection with the marketing of the respective lines of their said articles of merchandise, in the various States of the United States, and in the District of Columbia.

3. Attended meetings held from time to time under the auspices of respondent Guild, at which the prices of said articles of merchandise manufactured or sold by respondent members were increased to retail dealer customers.

4. Adopted under the auspices of respondent Guild, trade practice rules forbidding certain trade deductions and allowances which had theretofore been permitted by said members to their customers.

PAR. 5. The capacity, tendency, and effect of the aforesaid agreements, understandings, combinations, and conspiracies and the methods, acts, and practices and things done and performed by respondents in pursuance thereof are, and have been, to unreasonably lessen, suppress, and restrain competition in the sale and distribution of said articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia, and to deprive the public of the full benefit of competition in said commerce among and between the respondent members and between them and their competitors.

#### CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public; have a dangerous tendency to and have actually hindered, suppressed, lessened, restrained, and eliminated price competition in the sale and distribution of formal evening dresses in commerce as "commerce" is defined in the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in formal evening dresses; and constitute unfair acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning 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 and the answers of the



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respondents, in which answers the said respondents admit all the material allegations of fact set forth in said complaint and waive all intervening procedure and further hearings as to the facts; 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 respondents, Bouquet Formals, Inc., a corporation; Clover Dance Frocks, Inc., a corporation; Debonair Dance Frocks, Inc., a corporation; Gaytime Frocks, Inc., a corporation; Hollywood Formals, Inc., a corporation; Patio Dress Co., Inc., a corporation; Penelope Frocks, Inc., a corporation; Seville Dress Manufacturing Co., Inc., a corporation; Studio Dance Frocks, Inc., a corporation; Tango Formals, Inc., a corporation; and S. Wicha, Inc., a corporation, and their respective officers, representatives, agents, and employees; and respondents, Harry Goodman and Herman Goodman, individually, and as copartners, Joseph Scafuri, individually, and trading as Adorable Dance Frocks, and Murray E. Gottesman, Meyer Schatzberg, Jack Levy, and Mike Reiter, individually, 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 formal evening dresses or other similar articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, mutual agreement, understanding, combination, or conspiracy between and among any two or more of said respondents or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or practices:

1. Establishing, fixing, or maintaining prices, terms, or conditions of sale for formal evening dresses or other similar articles of merchandise, or adhering to or promising to adhere to prices, terms, or conditions of sale so fixed.
2. Holding or participating in any meeting or discussion among themselves or under the auspices of any association or other medium or agency when the intent, purpose, or effect of same is to fix, establish, maintain, or adhere to the prices to be charged dealers for formal evening dresses or other similar articles of merchandise.
3. Employing or utilizing any association or other medium or agency as an instrument, vehicle, or aid in establishing, fixing, or maintaining the prices, terms, or conditions of sale for formal evening dresses or other similar articles of merchandise.

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*It is further ordered*, That the complaint herein be, and the same hereby is, dismissed as to the respondents, Evening Dress Guild, Inc., a corporation; Darling Formals, Inc., a corporation; Judy Formals, Inc., a corporation; and Murray Oliphant, an individual.

*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

STANLEY J. REMUS, DOING BUSINESS AS STANLEY J. REMUS & COMPANY; P. E. HARRIS & COMPANY; KELLEY-CLARKE COMPANY<sup>1</sup>; AND OCEANIC SALES COMPANY

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

*Docket 4833. Complaint, Sept. 14, 1942—Decision, Nov. 20, 1943*

Where an individual engaged, principally as a jobber, in interstate buying and selling in his own name and for his own account of canned salmon, tuna, shrimp, and sardines which he purchased from a corporation operating canneries in Alaska and selling its pack and that of others; and from a Washington State distributor, also—

(a) Received and accepted from aforesaid sellers on said purchases of canned fish in his own behalf and on his own account, brokerage fees, and discounts in lieu thereof in substantial amounts through monthly rebates from them in amount equal to an agreed percentage of all such purchases in his own behalf during the preceding month; and

Where aforesaid canning corporation and said corporate distributor, engaged in interstate sale and distribution of canned fish—

(b) Paid and delivered to said individual brokerage fees, or allowances, or discounts in lieu thereof, in substantial amounts through payment, among other ways, of monthly rebate checks in amounts determined as aforesaid:

*Held*, That such receipt and acceptance by said individual of brokerage fees or commissions in lieu of brokerage, and such payment thereof by said concerns, violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

*Mr. Edward S. Ragsdale* for the Commission.

*Mr. Edward M. Keating*, of Chicago, Ill., for Stanley J. Remus.

*Bogle, Bogle & Gates* and *Eggerman, Rosling & Williams*, of Seattle, Wash., for P. E. Harris & Co.

*Medley & Haugland*, of Seattle, Wash., for Kelley-Clarke Co.

<sup>1</sup> Order of Commission dismissing complaint as to Kelley-Clarke Co. made as of November 5, 1942, follows:

This matter coming on to be heard by the Commission upon the motion of respondent Kelley-Clarke Company through its attorneys, Eggerman, Rosling & Williams of 1824 Exchange Building, Seattle, Wash., to dismiss the complaint against said respondent on the grounds that the respondent was a corporation which has been voluntarily dissolved and the assets distributed to shareholders on September 15, 1942, and the Commission having duly considered the matter and now being fully advised in the premises;

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed without prejudice as to Kelley-Clarke Co.

Complaint

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## COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Stanley J. Remus, is an individual, doing business under the firm name and style of Stanley J. Remus & Co. Respondent Remus, has his principal office and place of business at 437 West Ontario Street, Chicago, Ill., and is now and for many years prior hereto has been engaged in business, principally as a jobber, buying and selling in his own name and for his own account canned salmon, tuna, shrimp, and sardines (hereinafter called canned fish).

PAR. 2. Respondent, P. E. Harris & Co., is a corporation, organized under the laws of the State of Washington with its principal office and place of business located at 1222 Dexter Horton Building, Seattle, Wash., and is engaged in the business of canning fish and in the distribution and sale of its own pack and the pack of other canners. Said respondent operates several canneries in the Territory of Alaska, one of which is located in each of the following places: Hawk Inlet, Rose Inlet, False Pass, and Ketchikan, Alaska.

Respondent, Kelley-Clarke Co., is a corporation, organized under the laws of the State of Washington with its principal office and place of business located in the Exchange Building at 321 West Fourth Avenue, Seattle, Wash., and is engaged in the distribution and the sale of canned fish. Respondent, Kelley-Clarke Co., operates several branch offices and warehouses, one of which is located at each of the following points: Los Angeles and San Francisco, Calif.; Portland, Oreg.; and Spokane and Tacoma, Wash.

Respondent, Oceanic Sales Co., is a corporation, organized under the laws of the State of Washington, with its principal office and place of business located in the Smith Tower Building, Seattle, Wash., and is engaged in the distribution and sale of canned fish.

Each of the three respondents named in paragraph 2 will hereinafter be referred to as "seller respondents."

PAR. 3. Each of said seller respondents is engaged in the sale of canned fish and other products to respondent, Remus, and to other customers residing in States other than the respective States in which the seller respondents are located. Pursuant to the purchase orders and instructions of respondent, Remus, and other customers of seller

respondents, canned fish are sold, shipped, and transported by each of said seller respondents into and across State lines to the respondent, Remus, and to other customers.

Respondent, Remus, in the course and conduct of his said business as a jobber, purchases a substantial portion of his requirements of canned fish from each of the seller respondents who are located in States other than the State in which respondent Remus is located. Pursuant to his purchase orders and instructions such commodities are caused to be shipped and transported by the respective seller respondents thereof across State lines to him or to his customers.

PAR. 4. Respondents, P. E. Harris & Co., a corporation; Kelley-Clarke Co., a corporation; and Oceanic Sales Co., a corporation, since June 19, 1936, in connection with the sale in interstate commerce of canned fish to respondent, Remus, for his own account, have transmitted, paid, and delivered, and do transmit, pay, and deliver directly or indirectly to said Stanley J. Remus, trading as Stanley J. Remus & Co., brokerage fees or allowances and discounts in lieu thereof in substantial amounts.

Among other methods of paying such brokerage fees, discounts, and allowances in lieu thereof, each of the seller respondents customarily transmits and pays to the respondent, Remus, monthly rebate checks in amounts equal to an agreed percentage of the invoice price of the canned fish sold by the respective seller respondents to the respondent, Remus, in his own name and/or for his own account during the preceding month.

PAR. 5. Respondent, Remus, since June 19, 1936, in connection with the purchase of his requirements of canned fish in interstate commerce, in his own behalf and for his own account, from each of said seller respondents, has been and is now receiving, and accepting from said seller respondents, brokerage fees, or allowance and discounts in lieu of brokerage fees, or allowances and discounts in lieu of brokerage in substantial amounts.

Among the methods of so receiving and accepting brokerage fees, discounts, and allowances in lieu thereof, respondent, Remus, customarily receives and accepts monthly rebates from each of the seller respondents in an amount equal to an agreed percentage of the invoice prices of all canned fish purchased by said respondent, Remus, in his own name and/or in his own behalf during the preceding month from each of the respective seller respondents.

PAR. 6. The receipt and acceptance by the respondent, Stanley J. Remus, doing business as Stanley J. Remus & Co., of brokerage fees or allowances and discounts in lieu of brokerage as aforesaid and the transmission and payment of the aforesaid brokerage fees or allow-

ances and discounts in lieu of brokerage to him by P. E. Harris & Co., a corporation; Kelley-Clarke Co., a corporation; and Oceanic Sales Co., a corporation; in the manner and under the circumstances hereinabove set forth, are in violation of the provisions of section 2, subsection (c) of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936.

#### 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 the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), the Federal Trade Commission on September 14, 1942, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with violating the provisions of subsection (c) of section 2 of said act, as amended.

After the issuance of said complaint, the respondent, Kelley-Clarke Co., a corporation, presented evidence of the dissolution of said corporation and the distribution of its assets on September 15, 1942, and the complaint herein as to this respondent was dismissed by the Commission on November 5, 1942.

The other respondents, set out in the caption, namely, Stanley J. Remus, doing business as Stanley J. Remus & Co., P. E. Harris & Co., and Oceanic Sales Co., in due course filed answers to said complaint, in which each respondent respectively denied that its acts and practices were in violation of subsection (c) of section 2 of the Clayton Act, as amended.

Thereafter each of the respondents, namely, Stanley J. Remus, doing business as Stanley J. Remus & Co., P. E. Harris & Co., and Oceanic Sales Co., moved and received permission from the Commission to withdraw their original answers and to file in lieu thereof substitute answers admitting all material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearings as to said facts.

Each of said respondents in said substitute answers set out that since the Commission's complaint was issued the practices complained of had been voluntarily discontinued, but that in view of the times they desired to avoid the expense and inconvenience incidental to contesting the issues.

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 same and being now 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, Stanley J. Remus, is an individual, doing business under the firm name and style of Stanley J. Remus & Co. Respondent, Remus, has his principal office and place of business at 437 West Ontario Street, Chicago, Ill., and is now and for many years prior hereto has been engaged in business, principally as a jobber, buying and selling in his own name and for his own account canned salmon, tuna, shrimp, and sardines (hereinafter called canned fish).

**PAR. 2.** Respondent, P. E. Harris & Co., is a corporation, organized under the laws of the State of Washington with its principal office and place of business located at 1222 Dexter Horton Building, Seattle, Wash., and is engaged in the business of canning fish and in the distribution and sale of its own pack and the pack of other canners. Said respondent operates several canneries in the Territory of Alaska, one of which is located in each of the following places: Hawk Inlet, Rose Inlet, False Pass, and Ketchikan, Alaska.

Respondent; Oceanic Sales Co., is a corporation, organized under the laws of the State of Washington, with its principal office and place of business located in the Smith Tower Building, Seattle, Wash., and is engaged in the distribution and sale of canned fish.

Each of the two respondents named in paragraph 2 will hereinafter be referred to as "seller respondents."

**PAR. 3.** Each of said seller respondents is engaged in the sale of canned fish and other products to respondent, Remus, and to other customers residing in States other than the respective States in which the seller respondents are located. Pursuant to the purchase orders and instructions of respondent, Remus, and other customers of seller respondents, canned fish are sold, shipped, and transported by each of said seller respondents into and across State lines to the respondent Remus and to other customers.

Respondent, Remus, in the course and conduct of his said business as a jobber, purchases a substantial portion of his requirements of canned fish from each of the seller respondents who are located in States other than the State in which respondent, Remus, is located. Pursuant to his purchase orders and instructions such commodities are caused to be shipped and transported by the respective seller respondents thereof across State lines to him or to his customers.

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PAR. 4. Respondents, P. E. Harris & Co., a corporation, and Oceanic Sales Co., a corporation, since June 19, 1936, in connection with the sale in interstate commerce of canned fish to respondent, Remus, for his own account, have transmitted, paid, and delivered, and do transmit, pay, and deliver, directly or indirectly to said Stanley J. Remus, trading as Stanley J. Remus & Co., brokerage fees, or allowances and discounts in lieu thereof in substantial amounts.

Among other methods of paying such brokerage fees, discounts, and allowances in lieu thereof, each of the seller respondents customarily transmits and pays to the respondent, Remus, monthly rebate checks in amounts equal to an agreed percentage of the invoice price of the canned fish sold by the respective seller respondents to the respondent, Remus, in his own name and/or for his own account during the preceding month.

PAR. 5. Respondent, Remus, since June 19, 1936, in connection with the purchase of his requirements of canned fish in interstate commerce, in his own behalf and for his own account, from each of said seller respondents, has been and is now receiving, and accepting from said seller respondents, brokerage fees, or allowances and discounts in lieu of brokerage fees, or allowances and discounts in lieu of brokerage in substantial amounts.

Among the methods of so receiving and accepting brokerage fees, discounts and allowances in lieu thereof, respondent, Remus, customarily receives and accepts monthly rebates from each of the seller respondents in an amount equal to an agreed percentage of the invoice prices of all canned fish purchased by said respondent, Remus, in his own name and/or in his own behalf during the preceding month from each of the respective seller respondents.

## CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the respondent, Stanley J. Remus, an individual, doing business as Stanley J. Remus & Co., was engaged in business in commerce as a buyer of canned salmon, tuna, shrimp and sardines, and other sea food products; that said respondent purchased such commodities in his own name and for his own account for resale; that interstate purchases of said commodities were made from P. E. Harris & Co. and Oceanic Sales Co.; and that on said purchases from said sellers brokerage fees or commissions in lieu of brokerage were paid to, and were received and accepted by, respondent, Stanley J. Remus, doing business as Stanley J. Remus & Co., in the manner and under the circumstances hereinabove set forth, in violation



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of the provisions of section 2, subsection (c) of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936.

The Commission further concludes that the respondents, P. E. Harris & Co., a corporation, and Oceanic Sales Co., a corporation, are engaged in the interstate distribution and sale in commerce of canned fish, and that said respondents have sold and distributed said commodities to Stanley J. Remus, doing business as Stanley J. Remus & Co., in his own name and for his own account for resale, and have paid and granted to such buyer on his own purchases of said canned fish and other commodities brokerage fees or commissions in lieu of brokerage on such purchases. Wherefore the Commission concludes that the acts and practices engaged in by respondents, P. E. Harris & Co. and Oceanic Sales Co., in the manner and under the circumstances hereinabove set forth, are in violation of the provisions of section 2, subsection (c) of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answers filed by the respondents, Stanley J. Remus, doing business as Stanley J. Remus & Co., P. E. Harris & Co., and Oceanic Sales Co., which answers admit all of the material allegations of the complaint to be true, and waive all other intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and conclusions herein that said respondents, Stanley J. Remus, doing business as Stanley J. Remus & Co., P. E. Harris & Co., and Oceanic Sales Co. have violated the provisions of subsection (c) of section 2 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 an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C. title 15, sec. 13).

*It is ordered*, That the respondent, Stanley J. Remus, individually, and trading as Stanley J. Remus & Co., or under any other name, and his agents, employees, and representatives, directly or through any corporate or other device, in connection with the purchase of canned fish or other commodities in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from P. E. Harris & Co., Oceanic Sales Co., or any other seller, anything of value as a commission, brokerage, or other compensation, or any allowance or

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discount in lieu thereof, upon purchases of canned fish or other commodities made for respondent's own account.

*It is further ordered,* That the respondents, P. E. Harris & Co., a corporation, and Oceanic Sales Co., a corporation, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the sale and distribution of canned fish and other commodities in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to respondent, Stanley J. Remus, doing business as Stanley J. Remus & Co., or to any other purchaser, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon purchases of canned fish or other commodities made by, or for the account of, any such purchaser.

*It is further ordered,* That said respondents, Stanley J. Remus, doing business as Stanley J. Remus & Co., P. E. Harris & Co., a corporation, and Oceanic Sales Co., a corporation, 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 said respondents are complying and have complied with the order to cease and desist hereinabove set forth.

## Complaint

IN THE MATTER OF  
 WINTERINE 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 4945. Complaint, Apr. 16, 1943—Decision, Nov. 22, 1943*

Where a corporation engaged in the manufacture and interstate sale and distribution of a so-called antifreeze solution which it sold to garages and service stations; through advertisements in newspapers, radio continuities, advertising folders, and otherwise, directly and by implication—

- (a) Represented that its said product furnished protection to the cooling systems of automobiles and other combustion type engines against freezing and other damaging effects, was safe and dependable for use as recommended, and had proved itself to be a superior permanent type antifreeze; and
- (b) Represented that it protected the entire cooling system of automobile engines against corrosion, rust, and deterioration, would not cause rust or other damage to the hose connections, radiator finish, or engine, and would not evaporate or clog passages in the cooling system;

The facts being that its said product, composed of a calcium chloride base, was inferior to antifreeze solutions containing glycerine or alcohol bases and was not safe and dependable, but use thereof caused rust, corrosion, clogged passages, and other serious damage to the engines, radiators, ignition wire, spark plugs, hose connections, and exterior finish of automobiles;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and of inducing it to purchase substantial quantities of said product as a result of such mistaken belief:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Randolph Preston*, trial examiner.

*Mr. Jesse D. Kash* for the Commission.

*McDonough & McDonough*, of Denver, Colo., 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 Winterine Manufacturing 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:

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PARAGRAPH 1. Respondent, Winterine Manufacturing Co., is a corporation, organized and existing under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 105-109 Wazee Market, Denver, Colo.

PAR. 2. The respondent is now, and for more than 1 year last past, has been engaged in the manufacture, sale, and distribution of a so-called antifreeze solution designated "Antartic" recommended for use in the cooling system of automobiles and other combustion type engines. Said product is sold by the respondent to jobbers, garages, and service stations for resale to the purchasing public. Respondent causes its said product when sold to be transported from its place of business in the State of Colorado to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains and at all times mentioned herein has maintained a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business and for the purpose of inducing the purchase of its said product "Antartic" the respondent has circulated and is now circulating among prospective purchasers throughout the United States many false advertisements concerning its said product by means of the United States mails, by advertisements in newspapers, by radio continuities, by means of advertising folders, pamphlets, display posters, and other advertising material. Among and typical of such false statements and representations circulated as aforesaid, are the following:

When you put a Permanent-type Antifreeze solution in the cooling system of your car you do it for *protection* \* \* \* a protection against freezing and its damaging effects for an *entire season* \* \* \* you have a right to *expect that protection*.

The result of painstaking experiments and months of careful research and development, Antartic is a safe, dependable and trouble-free, all-winter protection for your car.

ANTARCTIC does more than protect your car against unexpected freezing. It also protects against corrosion, rust and deterioration of the entire cooling system. \* \* \*

GUARANTEE. The manufacturer of Antartic antifreeze guarantees; If used according to directions, in a normal cooling system, *Antartic Antifreeze* will protect the cooling system from freezing for a full winter season. It will not cause rust or deteriorate the hose, radiator or engine of your car. It will not cause damage to the finish of your car. It will not evaporate. It will not clog passages in the cooling system.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, the respondent has represented directly or by implication that its product "Antartic" furnishes protection to the cooling systems of

automobile and other types of combustion engines against freezing and other damaging effects; that it is safe and dependable for use as recommended and has proved itself to be a superior permanent-type antifreeze; that it protects the entire cooling system of automobile engines against corrosion, rust and deterioration; that its use will not cause rust or other damage to the hose connections, radiator, finish of automobiles, or the engine; and that it will not evaporate or clog passages in the cooling system.

PAR. 5. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's product "Antarctic" is composed of a calcium chloride base and is inferior to antifreeze solutions containing glycerine or alcoholic bases. It is not a safe and dependable product for use as recommended and has not proven itself to be a superior type of antifreeze. It does not protect the cooling system of engines against corrosion, rust, or other deterioration. The use of said product causes and has caused rust, corrosion, clogged passages, and other serious damage to the engines, radiators, ignition wires, spark plugs, hose connections, and to the exterior finish of automobiles.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations disseminated as aforesaid has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and advertisements are true and to induce, and does induce, the public to purchase substantial quantities of respondent's product as the result of such belief.

PAR. 7. 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 April 16, 1943, issued and subsequently served its complaint in this proceeding upon respondent, Winterine Manufacturing Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of provisions of that act. An answer was filed by the respondent on May 3, 1943. A hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing a stipulation as to the facts was entered into between the attorney for the Commission and the attorney for respondent, and read into the

record. This stipulation provides that, subject to the approval of the Commission, the facts therein set forth shall be taken as the facts in this proceeding and in lieu of testimony in support of the allegations of 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 and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondent expressly waived the filing of a trial examiner's report upon the evidence. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer and stipulation as to the facts, said stipulation having been accepted and approved by the Commission; 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. Winterine Manufacturing Co., is a corporation, organized and existing under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 105-109 Wazee Market, Denver, Colo.

PAR. 2. The respondent, for more than 1 year prior to December 19, 1942, had been engaged in the manufacture, sale, and distribution of a so-called antifreeze solution designated "Antarctic," recommended for use in the cooling system of automobiles and other combustion-type engines. Said product was sold by respondent to jobbers, garages, and service stations for resale to the purchasing public. Respondent caused said product, when sold, to be transported from its place of business in the State of Colorado to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintained, and at all times mentioned herein had maintained, a course of trade in said product among and between various States of the United States.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said product "Antarctic," respondent, prior to December 19, 1942, circulated among prospective purchasers throughout the United States many advertisements concerning its said product by means of the United States mails, by advertisements in newspapers, by radio continuities, by means of advertising folders, pamphlets, display folders, and other advertising material. Among and typical of such statements and representations circulated as aforesaid are the following:

When you put a permanent type antifreeze solution in the cooling system of your car conditioned for *protection*—a protection against freezing and its damaging effects for an *entire season* \* \* \* you have a right to *expect that protection*.

\* \* \* \* \*

The result of painstaking experiments and months of careful research and development, Antarctic is a safe, dependable, and trouble-free, all-winter protection for your car. Antarctic does more than protect your car against unexpected freezing. It also protects against corrosion, rust, and deterioration of the entire cooling system.

\* \* \* \* \*

Guarantee. The manufacturer of Antarctic Antifreeze guarantees: If used according to directions, in a normal cooling system, ANTARCTIC ANTIFREEZE will protect the cooling system from freezing for a full winter season. It will not cause rust or deteriorate the hose, radiator or engine of your car. It will not evaporate. It will not clog passages in the cooling system.

Said guarantee was conditioned upon adherence by the user to detailed directions for use supplied by respondent.

PAR. 4. Through the statements and representations herein set forth and other similar statements not specifically set out herein, the respondent has represented, directly or by implication, that its product "Antarctic" furnishes protection to the cooling systems of automobiles and other types of combustion engines against freezing and other damaging effects; that it is safe and dependable for use as recommended, and has proved itself to be a superior permanent type antifreeze; that it protects the entire cooling system of automobile engines against corrosion, rust, and deterioration; that its use will not cause rust or other damage to the hose connections, radiator, finish on automobiles, or to the engine; and that it will not evaporate or clog passages in the cooling system.

PAR. 5. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's product "Antarctic" is composed of a calcium chloride base and is inferior to antifreeze solutions containing glycerine or alcohol bases. It is not a safe and dependable product for use as recommended, and has not proved itself to be a superior type of antifreeze. It does not protect the cooling systems of engines against corrosion, rust, or other deterioration. The use of said product causes, and has caused, rust, corrosion, clogged passages, and other serious damages to the engines, radiators, ignition wires, spark plugs, hose connections, and to the exterior finish of automobiles.

PAR. 6. The use by the respondent of the foregoing statements and representations, disseminated as aforesaid, had the tendency and capacity to, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations were true, and induced the public

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to purchase substantial quantities of respondent's product as a result of such belief.

## CONCLUSION

The foregoing acts and practices of 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, the answer of the respondent, and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent upon the record, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent 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 its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, Winterine Manufacturing 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its antifreeze solution designated "Antarctic," or in any other antifreeze solution of substantially similar composition or having substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

1. That said product is a safe and dependable antifreeze preparation for use in the cooling systems of automobile or other internal combustion engines.
2. That said product is a superior type of antifreeze preparation.
3. That said product will protect the cooling systems of automobile or other internal combustion engines against rust, corrosion, or other deterioration.
4. That said product will not rust, corrode, or clog the cooling systems of automobile or other internal combustion engines, or will not damage radiators, hose connections, or the exterior finish of automobiles.



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

Complaint

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IN THE MATTER OF

S. BUCHSBAUM &amp; CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT 26, 1914*Docket 4450. Complaint, Jan. 25, 1941—Decision, Nov. 23, 1943*

Where a corporation engaged in the manufacture and interstate sale and distribution of men's accessories, including suspenders, belts, garters, wrist-watch bands, key chains, raincoats, and other similar merchandise made from "vinylite," a resinous derivative of vinyl with an added plasticizer—  
 Represented through use of trade name, "Elasti-Glass," to designate and describe its said products, and through advertisements in newspapers and other periodicals, form letters, and other advertising material, that its said products were made of glass, as understood by the general public, processed in such a manner as to give it elastic properties;

The facts being plastic material in question had none of the characteristics of glass other than that of transparency; it had a molding temperature of about 120° to 130° C. as compared to that of common glass, which is about 800° to 900° C. higher; it differed from glass also in that it did not have a high-scratch hardness, low-water absorption or high-softening and decomposition point; and differed along with other similar synthetic resinous compounds, and so greatly in composition, methods of manufacture and properties from common glass as to constitute a separate division of chemical technology;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the products so designated were made from common glass processed to make it pliable and elastic, and to cause them to purchase its products because of such mistaken belief:  
*Held*, That said acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Charles A. Vilas*, trial examiner.

*Mr. Eldon P. Schrup*, *Mr. D. C. Daniel*, and *Mr. James W. Cassidy* for the Commission.

*Moses, Kennedy, Stein & Bachrach*, 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 S. Buchsbaum & 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, S. Buchsbaum & Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 243 East Huron Street, in the city of Chicago, State of Illinois.

Said respondent operates a factory located at said address, wherein are manufactured various men's accessories, including suspenders, belts, garters, wrist-watch bands, key chains, raincoats, and allied merchandise, made from "Vinylite," an organic material of glass-like appearance.

Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of said merchandise in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said merchandise, when sold, to be transported from its place of business in the 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.

Respondent now maintains and at all times mentioned herein has maintained a course of trade in said merchandise sold and distributed by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. "Vinylite" is the registered trade-mark of a chemically manufactured plasticized resinous material resembling glass, purchased by respondent in the form of pliable, clear or colored, transparent or translucent, semielastic sheets, which after further processing, respondent converts into various of the afore-described men's accessories. Articles of men's accessories manufactured by respondent from said material are advertised, offered for sale and sold by respondent, as being made of "Elasti-Glass," respondent's trade name for the material so used.

PAR. 3. Processes for the fabrication of inorganic glass into materials suitable for use in the manufacture of various men's accessories, as well as women's accessories and household furnishings, have been developed and are now in process of being developed at considerable expense by various members of the glass industry. Many such articles of merchandise made from inorganic glass materials have already been manufactured and amidst wide publicity have been and are being marketed and sold to the public, long accustomed to the worth and the use of glass.

PAR. 4. Respondent in aid of the sale and distribution of its merchandise made from "Vinylite" and in the conduct of its business in the course of trade in commerce as aforesaid, has inserted or caused to be

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inserted in various magazines and periodicals having interstate circulation, certain advertisements illustrative of the men's accessories made by respondent from "Vinylite." Said advertisements conspicuously state that such products are made of "Elasti-Glass," "science's latest miracle," picture the transparency of said material, state it to be elastic in action and further ascribe to it many of the properties commonly associated with glass such as among others, durability and imperviousness to water and moisture. Many of such advertisements quote the retail prices of such accessories and contain printed coupons to be filled out and mailed directly to respondent's Chicago address in purchase of such products.

Respondent, by means of its salesmen and through use of the United States mails, also disseminates like advertisements by describing to and furnishing retail merchants located throughout the United States various advertising mats, advertising copy and other materials containing illustrations and statements of similar import and effect and thereby causes the further dissemination of such advertisements in the newspaper advertising and other advertising media employed by such merchants. Respondent awards premiums to retail merchants for such forms of advertising and by means of circular letters addressed to its representatives calling on said retail merchants, explanatory and descriptive of "Vinylite" and its process of manufacture, further expressly stresses that such material is a form of glass.

PAR. 5. Respondent through and by means of the said illustrations, statements, and claims set forth in its magazine and periodical advertisements, advertising mats, advertising copy, circular letters, and other materials, represents and implies, and causes to be represented and implied, to the purchasing public and to retail merchants purchasing respondent's said merchandise for resale, and through and by means of such merchants' advertising media, has further caused and causes to be stated, represented and implied to the purchasing public, that articles of men's accessories made of Vinylite and designated by respondent as made of Elasti-Glass, are made and constructed of glass.

Respondent's said statements, representations, and implications made and caused to be made, as aforesaid, with reference to the manufacture, construction and materials contained in respondent's articles of men's accessories made of Vinylite are grossly exaggerated, false, misleading, and deceptive.

In truth and in fact respondent's articles of men's accessories made of Vinylite contain no glass whatsoever, for the product known as Vinylite is not a glass but rather is a product made by the heating and mixing of petroleum or coal and salt with a special catalytic agent and chemicals to induce the formation of certain gases and distillates,

which in cooling results in the synthetic resin product known as Vinylite.

PAR. 6. Respondent's said statements, representations, and implications to retail merchants and to the purchasing public, made and disseminated as aforesaid, have had and now have the capacity and tendency to and do mislead and deceive a substantial number of such merchants and the purchasing public into the erroneous and mistaken impression that the statements and representations contained in respondent's magazine and periodical advertisements and in respondent's advertising mats, advertising copy, circular letters, and other materials furnished such merchants, and in such merchants' newspaper and other advertising media, are true, and many merchants and members of the purchasing public have been and are induced to purchase respondent's aforesaid products, made of Vinylite, under the mistaken and erroneous belief that such products are made of glass.

Respondent's said acts and practices, as hereinabove detailed, place in the hands of retail merchants a means and instrumentality whereby in the sale of respondent's said products such merchants may mislead and deceive the purchasing public in the manner hereinbefore described.

PAR. 7. 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 January 25, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, S. Buchsbaum & 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. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer thereto, testimony and other evidence, report of Trial Examiner Charles A. Vilas upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument 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, S. Buchsbaum & Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 243 East Huron Street in the city of Chicago, State of Illinois.

Said respondent is engaged in the manufacture and in the sale and distribution of men's accessories, including suspenders, belts, garters, wrist-watch bands, key chains, raincoats, and other similar merchandise, under the trade name "Elasti-Glass." Respondent causes said merchandise, when sold, to be transported from its place of business in the State of Illinois to 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 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 its said business and for the purpose of inducing the purchase of its various products, the respondent has represented that its various products are made of glass through the use of the trade name "Elasti-Glass" to designate and describe such products, and also through statements and representations which respondent has inserted and caused to be inserted in various advertisements in magazines, newspapers, and other periodicals and in form letters and other advertising material.

**PAR. 3.** The various products sold and distributed by the respondent under the trade name "Elasti-Glass" are made from a resinous material, a derivative of vinyl, which is sold under the trade name of "vinylite" and to which a plasticizer has been added. Vinylite is a plastic material which can be worked and molded into definite shapes under mechanical stress and which retains its shape after being formed. Respondent processes and molds this material into various belts, suspenders, and other articles of merchandise.

**PAR. 4.** Glass as understood and recognized by the general public is a hard, transparent, brittle material, with a relatively high-softening point, and is substantially insoluble in water and organic solvents and is noninflammable in the usual sense. This is the common glass found in window panes, tumblers, and bottles. For centuries this glass has been made with silica combined with soda and lime and is a product of fusion.

PAR. 5. The use by the respondent of the term "Elasti-Glass" conveys to members of the purchasing public the impression that such articles consist of common glass processed in such a manner as to give it elastic properties.

PAR. 6. The plastic material used by the respondent in the manufacture of its products has none of the characteristics of glass as recognized and understood by the general public, other than that of transparency. It has a molding temperature of about 120° to 130° C., as compared to that of common glass, which is about 800° to 900° C. or higher. This material also differs from ordinary glass in that it does not have a high-scratch hardness, low-water absorption, or high-softening and decomposition point.

PAR. 7. In the course of the hearings in this case a considerable amount of scientific testimony was introduced, most of which was of a controversial nature relative to the properties of special glasses and the similarity in some respects between resinous compounds and glass. The Commission has given consideration to this scientific testimony and in addition has considered the additional exhibits identified in the respondent's memorandum in support of its motion to introduce additional exhibits. Based upon the testimony and other evidence in this record, the Commission finds that respondent's products are not glass as understood by the purchasing public. Vinylite and other similar synthetic resinous compounds differ so greatly in composition, methods of manufacture, and properties from those substances commonly known as glass that they constitute a separate division of chemical technology.

PAR. 8. The use by the respondent of the term "Elasti-Glass" to designate and describe its products and the use of statements and representations in advertising material which represent that respondent's products are made of glass, have a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the products so designated and represented are made from common glass specially processed in some manner to make it pliable and elastic, and to cause them to purchase respondent's products because of such erroneous and mistaken belief.

#### 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

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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, answer of the respondent, testimony, and other evidence in support of and in opposition to the allegations of said complaint taken before trial examiners of the Commission theretofore duly designated by it, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; 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, S. Buchsbaum & Co., a corporation, and 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 accessories, including suspenders, belts, garters, wrist-watch bands, key chains, raincoats, and other similar articles of merchandise, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Elasti-Glass" or any other term containing the word "glass" to designate or describe any article of merchandise made of the material vinylite or any other similar synthetic resinous compound.

2. Representing in any manner, either directly or by implication, that any article of merchandise made of vinylite or any other similar synthetic resinous compound is made of glass.

*It is further ordered*, That the respondent shall, with 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

**JACK SILVERMAN, TRADING UNDER THE NAMES J. SILVERMAN AND ASSOCIATES, GENERAL FORWARDING SYSTEM, AND COMMERCIAL PEN CO.**

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

*Docket 4846. Complaint, Oct. 6, 1942—Decision, Nov. 29, 1943*

Where an individual engaged in interstate sale and distribution of postcards for use by creditors and collection agencies in obtaining information concerning debtors, some of which displayed trade name "General Forwarding System" and, captioned "Final Notice," advised the debtor—or other recipient from whom information was sought—that "we have on hand a prepaid package for party whose name appears on reverse side of this card," that "due to change or error of address and lack of identification we cannot make delivery," and under caption "Consignee Must Be Identified, Fill in All Spaces Below or Package Will Not Be Delivered," asked for such information as the person's address and that of his employer:

Making use of a plan under which he placed on the postage prepaid reply cards, a serial number to identify the particular customer, purchaser inserted on blank line following "charges" the word "none" and on blank line following "Dept." the word "unclaimed"; purchaser stamped and addressed cards to debtors or others from whom information was sought, and forwarded them to said individual, who deposited them in the mail and sent back to customers reply cards received, identified as aforesaid, and to the debtor an ordinary pen point worth a cent or so, together with a printed circular advertising a pen and pencil set—

- (a) Falsely represented, directly, through use of trade name "General Forwarding System," in connection with said cards, that he was connected with the delivery of shipments to the proper consignee; and
- (b) Falsely represented through said cards, and placed in the hands of his customers the means of representing to debtors and others, that such debtors were consignees of packages sent by business concerns which had come into his hands in the usual course of business; and that delivery of the packages could not be made because of change or error in the address or lack of identification of the consignee;

The facts being the sole purpose of the cards was to obtain, through subterfuge, information concerning debtors of his customers; and

Where said individual, engaged as aforesaid, making use of name "Commercial Pen Co." on similar cards, which, captioned "To Introduce Our Pens," advised consignee that "We will mail you one of them absolutely free of charge provided you will show it to your friends and fellow employees where you work," that "in order to avoid duplication, name of employer must be given," that "you must act promptly, as only a limited number of pens will be distributed in this manner," that "Yours will be sent you as soon as this request card is returned," and on reply cards under caption "Free Coupon," following question blanks for name and address of debtor and of his employer, displayed legends "Coupon Expires after 30 days" and "This Coupon is Not Transferable"—

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- (c) Falsely represented through the use of these cards, and placed in the hands of his customers means of representing, that the pen referred to was such that the debtor's friends might be interested in purchase thereof, and that the proposal made through the card was for the purpose of introducing the pen to prospective purchasers; and
- (d) Falsely represented directly through use of trade name, "Commercial Pen Company," in connection with said cards, that his business was that of selling and distributing pens;

The facts being the pen sent to those who returned the "reply card" was nothing more than an ordinary pen point, and the sole purpose of said cards was to obtain, through subterfuge, information concerning debtors; With tendency and capacity to mislead and deceive persons to whom his cards were sent into the mistaken belief that such representations were true, and to cause them to supply information which they would not otherwise have supplied:

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

Before *Mr. James A. Purcell*, trial examiner.

*Mr. Randolph W. Branch* for the Commission.

*Seaman & Jackson*, of San Francisco, 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 Jack Silverman, an individual, trading under the names Jack Silverman and Associates, General Forwarding System, and Commercial Pen 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, Jack Silverman, is an individual, trading under the names Jack Silverman and Associates, General Forwarding System, and Commercial Pen Co., with an office and principal place of business at 821 Market Street, San Francisco, Calif.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the business of selling and distributing post cards designed and intended to be used by creditors and collection agencies in obtaining information concerning debtors.

Respondent causes the said post cards to be transported from his aforesaid place of business in the State of California to purchasers thereof 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 post cards in com-

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

In his business of selling and distributing the said post cards, respondent has traded under the names Jack Silverman and Associates, General Forwarding System, and Commercial Pen Co.

PAR. 3. The said cards sold and distributed by respondent when using the name "General Forwarding System," are in the form exemplified by photostatic copies thereof, marked "Exhibits A and B," attached hereto and by this reference made a part hereof; when using the name "Commercial Pen Co." the cards are in the form exemplified by a photostatic copy thereof, marked "Exhibit C," attached hereto, and by this reference made a part hereof.

PAR. 4. In the space for "Package Reference Number" on the cards as exemplified by exhibits A and B, when they are delivered to purchasers thereof, respondent has placed a number, which is his serial number and identifies the customer to him, and after the words "Charge" and "Dept.," respondent has placed the words "None" and "Unclaimed."

Respondent's purchasers address the cards to the debtors, or others from whom information concerning debtors is sought, attach the necessary postage stamps to both parts of the cards, and cause them to be delivered to respondent in San Francisco, Calif. Respondent then deposits the individual cards in the United States mail.

Such of the return cards as are filled out and mailed are received by respondent, the customers identified by the serial numbers, and sent by him to the proper customer.

Respondent then sends to the debtor about whom the information has been sought, in a cardboard mailing envelope, a pen point, together with a circular advertising a pen and pencil set. The pen points cost respondent less than a penny each.

PAR. 5. By means of the aforesaid cards respondent has falsely represented, and placed in the hands of his customers means of falsely representing, directly or by implication, to customers' debtors, and others from whom information concerning such debtors is sought, that such debtors are consignees of packages, sent by firms other than respondent and in the hands of respondent in the usual course of his business; that the shipments involved transportation charges which had been prepaid by the consignor; that the packages were of more than the trivial value of a penny, and that delivery could not be made by reason of change of or error in the address of the consignee and lack of identification.

PAR. 6. Through the use of the name "General Forwarding System" respondent has represented, directly and by implication, that he is, in some capacity, connected with the movement and transportation of goods, and their delivery to the proper consignees.

PAR. 7. The said representations were false and misleading. In truth and in fact, respondent's business has, so far as the recipients of said cards are concerned, nothing whatever to do with the movement or transportation of goods, or their delivery to the proper consignees. The persons with respect to whom the said cards are intended to elicit information are not consignees of packages sent by others than respondent, and in the hands of respondent. The packages to which the cards refer are those made up by respondent, containing the pen point and circular referred to in paragraph 4 hereof. The whole scheme was merely an attempt to obtain information by subterfuge.

PAR. 8. In the space opposite "No" on the cards exemplified by exhibit C, when they are delivered to purchasers thereof, respondent has placed a number which is his serial number and identifies the customer to him. The cards are used and handled to all practical intents and purposes, in the same manner as are the "General Forwarding System" cards, as set forth in paragraph 4 hereof.

PAR. 9. By means of the aforesaid cards respondent has falsely represented, and placed in the hands of his customers means of falsely representing, directly or by implication, to customers' debtors, that the pens are something other than common pen points and are of such a character that the debtor's fellow employees and friends might be interested in the purchase thereof, and that respondent's proposal was made in order to introduce them to prospective purchasers.

PAR. 10. Through the use of the name "Commercial Pen Co." respondent has represented, directly and by implication, that the said cards are in some fashion connected with the business of selling and distributing pens.

PAR. 11. The said representations were false and misleading. In truth and in fact the pen sent by respondent to those who return the "Reply Card" is a common pen point, the cost of which to respondent is less than a penny. Such pen points are readily obtainable at retail for a penny or two, were not of such a character as to be of any possible interest to the persons to whom they might be exhibited, and were not sent to debtors as a method of getting their merits before possible purchasers. The said cards had no substantial connection with the sale and distribution of pens. The whole scheme was merely a subterfuge for obtaining information.

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PAR. 12. The use, as hereinabove set forth, of the foregoing false and misleading statements and representations, has had the tendency and capacity to, and has misled and deceived many persons to whom the said cards were sent into the erroneous and mistaken belief that said statements and representations were true, and by reason thereof to give information which they would not otherwise supply.

PAR. 13. 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.

**MAIL THIS CARD TO US PROMPTLY**  
**GENERAL FORWARDING SYSTEM**  
**SAN FRANCISCO, CALIF.**

Package Reference Number **10766** Checked By.....  
Charges..... **NONE**  
Dept. **UNCLAIMED**

Please send package (Fully Prepaid, with NO CHARGES) to me. My address and correct identification is as follows:

Consignee Must Be Identified  
Fill in All Spaces Below  
**OR PACKAGE WILL NOT BE DELIVERED**  
**DELIVER THE ABOVE PACKAGE TO**

NAME.....  
ADDRESS.....  
CITY..... STATE.....  
For Identification I Refer you to My Employer and Bank and Friend  
BANK.....  
ADDRESS.....  
PRESENT EMPLOYER.....  
ADDRESS.....  
FRIEND.....  
ADDRESS.....

**NO POSTAGE OR ADDRESSING NECESSARY**

**FINAL NOTICE**

We have on hand a PREPAID package for party whose name appears on reverse side of this card.

Due to change or error of address and lack of identification, we cannot make delivery.

We will hold same at your risk, subject to your forwarding directions, and FULL and PROPER identification as indicated.

**General Forwarding System**  
**821 MARKET STREET**  
**SAN FRANCISCO, CALIF.**

No Postage required on the attached Reply Card. Please answer Promptly.  
Always refer to Package reference number when corresponding

Place stamp here

*Exhibit "A"*

**General Forwarding System**  
**821 Market Street, Room 806**  
**San Francisco, Calif.**

POSTPAID  
POSTAGE IS  
NECESSARY

Place 1 cent stamp here

*Exhibit "A"*

**REPLY CARD**

**GENERAL FORWARDING SYSTEM**

**821 Market Street**

**San Francisco, Calif.**

Unclaimed Package Division  
Form 108

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MAIL THIS CARD TO US PROMPTLY.

GENERAL FORWARDING SYSTEM  
SAN FRANCISCO, CALIF.

Place  
stamp  
here

Exhibit "B"

Package Reference Number	Checked By.....
	Charges..... <b>NONE</b>
	Dept..... <b>UNCLAIMED</b>

We are holding a package for

NAME .....

ADDRESS .....  
which we are unable to deliver owing to change of address. Will you kindly fill in the present address below and mail to us using stamped card for your convenience?

Fill In All Spaces Below  
Consignee Must Be Identified  
**OR PACKAGE WILL NOT BE DELIVERED**

Deliver the Above Package To

Name .....

RESIDENCE .....

CITY .....

Present Employer.....

Address .....

Bank .....

Address .....

Package will be sent direct to the person intended for only at their address, and not in care of anyone else.

NO POSTAGE OR ADDRESSING NECESSARY

General Forwarding System  
821 Market Street, Room 866  
San Francisco, Calif.

POSTMASTER  
FORWARD IF  
NECESSARY.

**FINAL NOTICE**

Place  
1 cent  
stamp  
here

Exhibit "B"

We have on hand a PREPAID package for party whose name appears on reverse side of this card.

Due to change or error of address and lack of identification, we cannot make delivery.

Package will be forwarded with NO CHARGES to proper party if you will fill in and return the attached Reply Card.

**General Forwarding System**  
821 MARKET STREET  
SAN FRANCISCO, CALIF.

**REPLY CARD**

GENERAL FORWARDING SYSTEM

821 Market Street,

San Francisco, Calif.

Unclaimed Package Division  
SUITE 866

No Postage required on the attached Reply Card. Please answer Promptly.

Always refer to Package reference number when corresponding

TO INTRODUCE  
OUR PENS



We will mail you one of them **ABSOLUTELY FREE OF CHARGE** provided you will show it to your friends and fellow employees where you work.

In order to avoid duplication, name of employer must be given.

You must act promptly, as only a limited number of pens will be distributed in this manner. Yours will be sent you as soon as this request card is returned.

**FREE COUPON** NO. ....

This certifies that .....  
 is entitled to one pen free of charge and without any  
 obligation when filled and returned to the Commercial Pen  
 Co., San Francisco, California.

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_

EMPLOYED BY \_\_\_\_\_ DEPT. \_\_\_\_\_  
 Coupon Expires after 30 days

ADDRESS \_\_\_\_\_  
 This Coupon is Not Transferable

Place  
1 cent  
stamp  
here

**COMMERCIAL PEN CO**  
866 PACIFIC BUILDING  
SAN FRANCISCO, CALIF.

POSTMASTER:  
FORWARD IF  
NECESSARY

Exhibit "C"

Place  
1 cent  
stamp  
here

**REPLY CARD**

**COMMERCIAL PEN COMPANY**  
866 PACIFIC BUILDING  
SAN FRANCISCO CALIF.

Exhibit "C"



## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on October 6, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Jack Silverman, an individual, trading under the names J. Silverman and Associates, General Forwarding System, and Commercial Pen Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of, and in opposition to, the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and briefs in support of, and in opposition to, the complaint (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, Jack Silverman, is an individual, trading under the names J. Silverman and Associates, General Forwarding System, and Commercial Pen Co., with his office and principal place of business located at 821 Market Street, San Francisco, Calif. Respondent is now, and for more than 4 years last past has been, engaged in the business of selling and distributing post cards designed and intended for use by creditors and collection agencies in obtaining information concerning debtors.

PAR. 2. Respondent causes, and has caused, his post cards, when sold, to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and has maintained, a course of trade in his post cards in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The cards sold and distributed by respondent under the name General Forwarding System are in the form exemplified by copies thereof attached hereto as Exhibits A and B. In the space

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provided for the so-called "Package Reference Number" on these cards, respondent places a number when the cards are sold. This number is a serial number and serves to identify the particular customer purchasing the card. On the blank line following the word "Charges," respondent inserts the word "None"; and on the blank line following the word "Dept.," respondent inserts the word "Unclaimed."

The purchasers of the cards address them to the debtors or to others from whom information concerning debtors is sought, attach the required postage stamps to the cards, and then forward the cards to respondent at his place of business in San Francisco. Upon receiving the cards, respondent deposits them in the United States mail. Upon receipt of such of the reply cards as are filled out and mailed by the recipients thereof, respondent identifies his various customers by the serial numbers on the cards and then forwards the cards to the proper customers. Respondent sends to the debtor an ordinary pen point of the value of a penny or so, together with a printed circular advertising a pen and pencil set.

PAR. 4. Through the use of these cards, respondent represents and places in the hands of his customers the means of representing, directly or by implication, to debtors and others from whom information concerning debtors is sought, that such debtors are consignees of packages sent by business concerns other than respondent and which have come into the hands of respondent in the usual course of business; and that delivery of the packages cannot be made because of some change or error in the address of the consignee and because of lack of identification of the consignee.

The use by respondent of the trade name "General Forwarding System" in connection with such cards constitutes within itself a representation that respondent is in some way connected with the movement and transportation of goods and with the delivery of shipments to the proper consignees thereof.

PAR. 5. These representations are wholly false. Respondent's business is in no way connected with the movement or transportation of goods or the delivery of shipments to the proper consignees. The persons concerning whom information is sought through the cards are not consignees of packages sent by business concerns other than respondent and which have come into respondent's hands in the usual course of business. The sole purpose of the cards is to obtain, through subterfuge, information concerning debtors of respondent's customers.

PAR. 6. The cards sold and distributed by respondent under the name Commercial Pen Co. are in the form exemplified by a copy

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## Exhibits

thereof attached hereto as Exhibit C. These cards are used and handled in substantially the same manner as those referred to above, except that they are sent only to the debtors themselves. The various purchasers of these cards are identified by respondent through serial numbers inserted on the blank line following the word "No." (number) on the card.

PAR. 7. Through the use of these cards, respondent represents and places in the hands of his customers the means of representing, directly or by implication, that the pen referred to on the card is something more than an ordinary pen point and is of such character that the debtor's friends and fellow employees may be interested in the purchase thereof, and that the proposal made through the card is for the purpose of introducing the pen to prospective purchasers.

The use by respondent of the trade name "Commercial Pen Co." in connection with such cards constitutes within itself a representation by respondent that his business is that of selling and distributing pens.

PAR. 8. These representations are wholly false. The pen sent by respondent to those who return the "reply card" is in fact nothing more than an ordinary pen point which is readily obtainable at retail for a penny or so. The pen points can be of no possible interest to any persons to whom they might be exhibited and are not sent to debtors for the purpose of introducing them to prospective purchasers. As in the case of the other cards referred to above, the sole purpose of these cards is to obtain, through subterfuge, information concerning debtors.

PAR. 9. The use as herein set forth of these false and misleading representations has the tendency and capacity to mislead and deceive many persons to whom respondent's cards are sent into the erroneous and mistaken belief that such representations are true, and the tendency and capacity to cause such persons to supply information which they would not otherwise have supplied.

## CONCLUSION

The 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.

## EXHIBIT A

(Card addressed to debtor)

## FINAL NOTICE

We have on hand a PREPAID package for party whose name appears on reverse side of this card.

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Due to change or error of address and lack of identification, we cannot make delivery.

We will hold same at your risk, subject to your forwarding directions, and FULL and PROPER identification as indicated.

GENERAL FORWARDING SYSTEM

821 Market Street  
San Francisco, Calif.

No postage required on the attached Reply Card. Please answer Promptly. Always Refer to Package reference number when corresponding.

(Reply card to be filled out and returned)

MAIL THIS CARD TO US PROMPTLY

GENERAL FORWARDING SYSTEM

San Francisco, Calif.

Package Reference Number
--------------------------------

Checked By \_\_\_\_\_  
 Charges \_\_\_\_\_ NONE \_\_\_\_\_  
 Dept \_\_\_\_\_ UNCLAIMED \_\_\_\_\_

Please send package (Fully Prepaid, with NO CHARGES) to me. My address and correct identification is as follows :

Consignee Must be Identified  
 Fill in All Spaces Below  
 OR PACKAGE WILL NOT BE DELIVERED

DELIVER THE ABOVE PACKAGE TO

NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_

For Identification I refer you to My Employer and Bank and Friend

BANK \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 Present  
 EMPLOYER \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 FRIEND \_\_\_\_\_  
 ADDRESS \_\_\_\_\_

NO POSTAGE OR ADDRESSING NECESSARY

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Exhibits

EXHIBIT B

(Card addressed to person other than debtor)

FINAL NOTICE

We have on hand a PREPAID package for party whose name appears on reverse side of this card.

Due to change or error of address and lack of identification, we cannot make delivery.

Package will be forwarded with NO CHARGES to proper party if you will fill in and return the attached Reply Card.

GENERAL FORWARDING SYSTEM  
821 Market Street  
San Francisco, Calif.

No postage required on the attached  
Reply Card. Please answer Promptly.  
Always refer to Package reference number  
when corresponding.

(Reply card to be filled out and returned)

MAIL THIS CARD TO US PROMPTLY

GENERAL FORWARDING SYSTEM  
San Francisco, Calif.

Package  
Reference  
Number

Checked By \_\_\_\_\_  
Charges \_\_\_\_\_ NONE \_\_\_\_\_  
Dept. \_\_\_\_\_ UNCLAIMED \_\_\_\_\_

We are holding a package for

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_

which we are unable to deliver owing to change of address. Will you kindly fill in the present address below and mail to us using stamped card for your convenience?

Fill In All Spaces Below  
Consignee Must Be Identified  
OR PACKAGE WILL NOT BE DELIVERED

Deliver the Above Package To

Name \_\_\_\_\_  
RESIDENCE \_\_\_\_\_  
CITY \_\_\_\_\_

Order

37 F. T. C.

Present Employer \_\_\_\_\_  
 Address \_\_\_\_\_  
 Bank \_\_\_\_\_  
 Address \_\_\_\_\_

Package will be sent direct to the person intended for only at their address, and not in care of anyone else.

NO POSTAGE OR ADDRESSING NECESSARY

## EXHIBIT C

(Card addressed to debtor)

## TO INTRODUCE OUR PENS

We will mail you one of them **ABSOLUTELY FREE OF CHARGE** provided you will show it to your friends and fellow employees where you work.

In order to avoid duplication, name of employer must be given.

You must act promptly, as only a limited number of pens will be distributed in this manner. Yours will be sent you as soon as this request card is returned. (Reply card to be filled out and returned)

## FREE COUPON

No. \_\_\_\_\_

This certifies that \_\_\_\_\_  
 is entitled to one pen **FREE OF CHARGE AND WITHOUT ANY OBLIGATION** when filled and returned to the Commercial Pen Co., San Francisco, California.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Employed by \_\_\_\_\_

Dept. \_\_\_\_\_

Address \_\_\_\_\_

Coupon Expires after  
30 days

This Coupon is Not  
Transferable

## 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 a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the

## Order

facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, Jack Silverman, individually, and trading as J. Silverman and Associates, General Forwarding System, and Commercial Pen Co., or trading under any other name, and 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 post cards designed for use in obtaining information concerning debtors, or any other printed or written material of a substantially similar nature, do forthwith cease and desist from:

1. Using the name "General Forwarding System," or any other name of similar import, to designate, describe, or refer to respondent's business; or otherwise representing, directly or by implication, that respondent is connected in any way with the movement or transportation of goods or shipments, or with the delivery of goods or shipments to the consignees thereof.

2. Representing, directly or by implication, that persons concerning whom information is sought through respondent's post cards or other material are, or may be, consignees of goods or packages in the hands of respondent, or that the information sought through such means is for the purpose of enabling respondent to make delivery of goods or packages to such persons.

3. Using the name "Commercial Pen Co.," or any other name of similar import, to designate, describe, or refer to respondent's business; or otherwise representing, directly or by implication, that respondent is engaged in the business of selling or distributing pens or other merchandise.

4. Using, or supplying to others for use, post cards or other material which represents, directly or by implication, that such cards or other material are for the purpose of introducing pens or any other merchandise to the public.

5. Using, or supplying to others for use, post cards or other material which represents, directly or by implication, that respondent's business is other than that of obtaining information for use in the collection of debts, or that the information sought through such cards or other material is for any purpose other than for use in the collection of debts.

*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

ROY A. WHIPPLE AND MRS. RUTH CARTER WHIPPLE,  
TRADING AS McFADDEN 3 SISTERS SPRINGSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4940. Complaint, Apr. 12, 1943—Decision, Nov. 30, 1943*

Where two individuals engaged in interstate sale and distribution of mineral waters; through statements in advertisements, circulars, and other advertising material—

- (a) Falsely represented that their mineral water from Spring No. 1 was a cure or remedy and a competent and effective treatment for arthritis, neuritis, rheumatism, Bright's disease, diabetes, dropsy, pus in kidney, bladder and urethra, cystitis, enlarged prostate gland paralysis, stones in kidneys, and other urinary troubles, change of life and female irregularities, insomnia, anemia, nervous prostration, high- and low-blood pressure, gout, and hyperacidity;
- (b) Falsely represented that their mineral water from Spring No. 2 was a cure or remedy and a competent and effective treatment for chronic constipation, acute and chronic indigestion, catarrh of stomach and intestines, excessive acid, gastritis, ulcerated stomach, poor assimilation and elimination, stagnant or poor circulation, nervousness, high- or low-blood pressure, gall stones, and mucous colitis;
- (c) Falsely represented that the water from Spring No. 3 was a cure or remedy and a competent and effective treatment for flux, diarrhea, dysentery, cholera infantum, diabetic sores, eczema, granulated and sore eyes, catarrh of head and nose, and sinusitis; and
- (d) Represented that accumulated wastes in the body form poisons which attack the liver, kidneys, and bladder, resulting in many different ailments, and that their mineral waters were effective in removing such poisons by flushing process, thereby preventing or curing aforesaid ailments; and that said waters, being alkaline, were effective in the elimination of excess acids and impurities through the kidneys and bladder and that use of them would maintain a proper balance of minerals in the body;

The facts being that while waters in question possess a slight alkaline reaction, the amount of alkaline material provided by their use would not significantly affect the acid base balance of the body and be effective in eliminating excess acids and impurities;

With effect of deceiving a substantial portion of the purchasing public into the mistaken belief that said representations were true, and of inducing it by reason, thereof, to purchase substantial quantities of their said products;

*Held*, That such acts and practices, under the circumstances set forth 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. Curtis L. Ridgway*, of Hot Springs, Ark., for respondents.



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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 Roy A. Whipple and Mrs. Ruth Carter Whipple, trading as McFadden 3 Sisters Springs, 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Roy A. Whipple and Mrs. Ruth Carter Whipple, are individuals, trading as McFadden 3 Sisters Springs, with their principal place of business located at Hot Springs National Park, Ark., and their residence and post office address at 170 Woodland Avenue, Winnetka, Ill.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the business of offering for sale, sale, and distribution of mineral waters under the trade name of McFadden 3 Sisters Springs, in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause their said products, when sold, to be transported from their said place of business in the State of Arkansas to purchasers thereof in various 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 their said 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 said business, and for the purpose of inducing the purchase of their said products, the respondents have disseminated, and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated, and are now causing the dissemination of, false advertisements concerning their said products by various other means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive, and misleading statements, representations, and claims contained in said false advertise-

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ments, disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, and by means of circulars and other advertising material, are the following:

## Spring No. 1

Recommended for treatment of Bright's Disease, Diabetes, Dropsy, Pus in Kidney, Bladder and Urethra, Cystitis, Enlarged Prostate Gland, Paralysis, Stones in Kidneys and other Urinary troubles, Change of Life and Female Irregularities, Insomnia, Anemia, Nervous Prostration and High or Low Blood Pressure, caused from any of the above troubles, Gout, Hyperacidity, etc.

## Spring No. 2

Affords relief in innumerable cases of Chronic Constipation, Acute and Chronic Indigestion, Catarrh of Stomach and Intestines, Excessive Acid, Gastritis, Ulcerated Stomach, Poor Assimilation and Elimination, Stagnant or Poor Circulation, Nervousness, High or Low Blood Pressure caused from any of the above troubles, Gall Stones, Mucous, Colitis as indicated by countless letters from users.

## Spring No. 3

This water is highly astringent, quite constipating and not recommended for general beverage purposes. Should be used only for Flux, Diarrhea, Dysentery, Cholera Infantum and kindred troubles. Has proved very helpful as tub or sponge bath for diabetic sores and eczema. Used widely with eye glass for granulated and sore eyes, and with atomizer for catarrh of the head and nose as well as sinuses.

**NOW YOU CAN DRINK ORIGINAL  
McFADDEN 3 SISTERS SPRINGS  
NATURAL MINERAL WATER AT HOME!  
Direct-to-You from Hot Springs Arkansas**

Ask your physician about drinking water from

**SPRING NUMBER 1**

if one suffers from Arthritis, Neuritis, Rheumatism, Bright's Disease, Diabetes, Dropsy, Pus in Kidney, Bladder and Urethra, Cystitis, Enlarged Prostate Gland, Paralysis, Stones in Kidneys, and other Urinary troubles, Change of Life and Female Irregularities, Insomnia, Anemia, Nervous Prostration and High or Low Blood Pressure, caused from any of the above troubles, Gout, Hyperacidity, etc.

Ask your physician about drinking water from

**SPRING NUMBER 2**

if one suffers from Chronic Constipation, Acute and Chronic Indigestion, Catarrh of Stomach and Intestines, Excessive Acid, Gastritis, Ulcerated Stomach, poor Assimilation and Elimination, Stagnant or Poor Circulation, Nervousness, High or Low Blood Pressure caused from any of the above troubles, Gall Stones, Mucus Colitis.

Ask your physician about drinking water from

### SPRING NUMBER 3

if one suffers from Flux, Diarrhea, Dysentery, Cholera Infantum, or bathing for Diabetic Sores, Eczema, Granulated and Sore Eyes, Catarrh of Head and Nose, Sinuses. Not recommended for general beverage purposes as it is highly astringent and quite constipating.

Their function is to flush out accumulated wastes which form poisons to attack vital organs, the liver, kidney and bladder. From these poisons many different ailments develop.

McFadden 3 Sisters Springs Mineral Water being mildly alkaline, aids the elimination of excess acids and impurities through the kidneys and bladder.

About 70% of the body is water. The rest are minerals, all of which, in varying proportions, must be present if the vital organs are to remain in good healthy condition.

For health, intake of minerals is absolutely essential and some of them must be obtained daily in order to maintain good health. Some of these are supplied in the food we eat, but often the amount of minerals taken normally are insufficient because of loss through faulty elimination, etc. The proper balance must be maintained. If, by systematic drinking of McFadden 3 Sisters Springs waters which expert analysis show to contain minerals that are essential to relieve all organic ailments and to assist these organs to continually "click" efficiently, then it is easy to understand that nature has provided a very pleasant and effective way to drive out poisons that cause so much distress.

PAR. 4. Though the use of foregoing statements and representations and others similar thereto not, specifically set out herein, respondents represent and have represented that their mineral water from Spring No. 1 is a cure or remedy and constitutes a competent and effective treatment for arthritis, neuritis, rheumatism, Bright's disease, diabetes, dropsy, pus in kidney, bladder and urethra, cystitis, enlarged prostate gland, paralysis, stones in kidneys and other urinary troubles, change of life and female irregularities, insomnia, anemia, nervous prostration, high- and low-blood pressure, gout, and hyperacidity.

That the water from Spring No. 2 is a cure or remedy and constitutes a competent and effective treatment for chronic constipation, acute and chronic indigestion, catarrh of stomach and intestines, excessive acid, gastritis, ulcerated stomach, poor assimilation and elimination, stagnant or poor circulation, nervousness, high- or low-blood pressure, gall stones, and mucous colitis.

That the water from Spring No. 3 is a cure or remedy and constitutes a competent and effective treatment for flux, diarrhea, dysentery, cholera infantum, diabetic sores, eczema, granulated and sore eyes, catarrh of head and nose, and sinusitis.

That accumulated wastes in the body from poisons which attack the liver, kidneys, and bladder, resulting in many different ailments and

that respondents' mineral waters are effective in removing these poisons by flushing process, thereby preventing or curing said ailments; that said waters being alkaline are effective in the elimination of excess acids and impurities through the kidneys and bladder and that by the use of said waters a proper balance of minerals can be maintained in the body.

PAR. 5. The foregoing statements and representations disseminated by respondents are false, misleading, and deceptive. In truth and in fact, said mineral waters are not cures or remedies and do not constitute adequate or competent treatments for any of the various ailments, diseases, or conditions set out in paragraph 4 herein. Wastes which may accumulate in the system do not ordinarily cause the formation of poisons which attack the liver, kidneys, and bladder. Such poisons as may develop from accumulated wastes in the body are not commonly the cause of human ailments. Respondents' waters will have no significant eliminating effect upon poisons in the system by flushing or otherwise. While said waters possess a slight alkaline reaction, the amount of alkaline material provided to the body by their use will not significantly affect the acid base balance of the body and will not be effective in eliminating excess acids and impurities from the body through the kidneys and bladder, or otherwise. The amounts of various minerals existing in these waters are not sufficient to maintain a proper balance of minerals in the body.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, 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 said statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products.

PAR. 7. The aforesaid acts and practices of respondents, 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 April 12, 1943, issued and thereafter served its complaint in this proceeding upon respondents, Roy A. Whipple and Mrs. Ruth Carter Whipple, trading as McFadden 3 Sisters Springs, charging them with unfair and deceptive acts and

practices in commerce in violation of the provisions of said act. On August 16, 1943, the respondents filed their answer, in which answer 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 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. Respondents, Roy A. Whipple and Mrs. Ruth Carter Whipple, are individuals, trading as McFadden 3 Sisters Springs, with their principal place of business located at Hot Springs National Park, Ark., and their residence and post office address at 170 Woodland Avenue, Winnetka, Ill.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the business of offering for sale, sale, and distribution of mineral waters under the trade name of McFadden 3 Sisters Springs, in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause their said products, when sold, to be transported from their said place of business in the State of Arkansas to purchasers thereof in various 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 their said 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 said business, and for the purpose of inducing the purchase of their said products, the respondents have disseminated, and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated, and are now causing the dissemination of, false advertisements concerning their said products by various other means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

## Findings

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Among and typical of the false, deceptive, and misleading statements, representations and claims contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by United States mails, and by means of circulars and other advertising material, are the following:

## Spring No. 1

Recommended for treatment of Bright's Disease, Diabetes, Dropsy, Pus in Kidney, Bladder and Urethra, Cystitis, Enlarged Prostrate Gland, Paralysis, Stones in Kidneys and other Urinary troubles, Change of Life and Female Irregularities, Insomnia, Anemia, Nervous Prostration and High or Low Blood Pressure, caused from any of the above troubles, Gout, Hyperacidity, etc.

## Spring No. 2

Affords relief in innumerable cases of Chronic Constipation, Acute and Chronic Indigestion, Catarrh of Stomach and Intestines, Excessive Acid, Gastritis, Ulcerated Stomach, Poor Assimilation and Elimination, Stagnant or Poor Circulation, Nervousness, High or Low Blood Pressure caused from any of the above troubles, Gall Stones, Mucous Colitis as indicated by countless letters from users.

## Spring No. 3

This water is highly astringent, quite constipating and not recommended for general beverage purposes. Should be used only for Flux, Diarrhea, Dysentery, Cholera Infantum and kindred troubles. Has proved very helpful as tub or sponge bath for diabetic sores and eczema. Used widely with eye glass for granulated and sore eyes, and with atomizer for catarrh of the head and nose as well as sinuses.

**NOW YOU CAN DRINK ORIGINAL  
McFADDEN 3 SISTERS SPRINGS  
NATURAL MINERAL WATER AT HOME!**

Direct-to-You from Hot Springs Arkansas

Ask your physician about drinking water from

**SPRING NUMBER 1**

If one suffers from Arthritis, Neuritis, Rheumatism, Bright's Disease, Diabetes, Dropsy, Pus in Kidney, Bladder and Urethra, Cystitis, Enlarged Prostate Gland, Paralysis, Stones in Kidneys and other Urinary troubles, Change of Life and Female Irregularities, Insomnia, Anemia, Nervous Prostration and High or Low Blood Pressure, caused from any of the above troubles, Gout, Hyperacidity, etc.

Ask your physician about drinking water from

**SPRING NUMBER 2**

If one suffers from Chronic Constipation, Acute and Chronic Indigestion, Catarrh of Stomach and Intestines, Excessive Acid, Gastritis, Ulcerated Stomach, poor Assimilation and Elimination, Stagnant or Poor Circulation,

Nervousness, High or Low Blood Pressure caused from any of the above troubles, Gall Stones, Mucous Colitis.

Ask your physician about drinking water from

### SPRING NUMBER 3

if one suffers from Flux, Diarrhea, Dysentery, Cholera Infantum, or bathing for Diabetic Sores, Eczema, Granulated and Sore Eyes, Catarrh of Head and Nose, Sinuses. Not recommended for general beverage purposes as it is highly astringent and quite constipating.

Their function is to flush out accumulated wastes which form poisons to attack vital organs, the liver, kidney and bladder. From these poisons many different ailments develop.

McFadden 3 Sisters Springs Mineral Water being mildly alkaline, aids the elimination of excess acids and impurities through the kidneys and bladder.

About 70% of the body is water. The rest are minerals, all of which, in varying proportions, must be present if the vital organs are to remain in good healthy condition.

For health, intake of minerals is absolutely essential and some of them must be obtained daily in order to maintain good health. Some of these are supplied in the food we eat, but often the amount of minerals taken normally are insufficient because of loss through faulty elimination, etc. The proper balance must be maintained. If, by systematic drinking of McFadden 3 Sisters Springs waters which expert analysis show to contain minerals that are essential to relieve organic ailments and to assist these organs to continually "click" efficiently, then it is easy to understand that nature has provided a very pleasant and effective way to drive out poisons that cause so much distress.

PAR. 4. Through the use of the foregoing statements and representations and others similar thereto not specifically set out herein, respondents represent and have represented that their mineral water from Spring No. 1 is a cure or remedy and constitutes a competent and effective treatment for arthritis, neuritis, rheumatism, Bright's disease, diabetes, dropsy, pus in kidney, bladder, and urethra, cystitis, enlarged prostate gland, paralysis, stones in kidneys and other urinary troubles, change of life and female irregularities, insomnia, anemia, nervous prostration, high- and low-blood pressure, gout, and hyperacidity.

That the water from Spring No. 2 is a cure or remedy and constitutes a competent and effective treatment for chronic constipation, acute and chronic indigestion, catarrh of stomach and intestines, excessive acid, gastritis, ulcerated stomach, poor assimilation and elimination, stagnant or poor circulation, nervousness, high- or low-blood pressure, gall stones, and mucous colitis.

That the water from Spring No. 3 is a cure or remedy and constitutes a competent and effective treatment for flux, diarrhea, dysentery, cholera infantum, diabetic sores, eczema, granulated and sore eyes, catarrh of head and nose, and sinusitis.

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That accumulated wastes in the body form poisons which attack the liver, kidneys, and bladder, resulting in many different ailments and that respondents' mineral waters are effective in removing these poisons by flushing process, thereby preventing or curing said ailments; that said waters being alkaline are effective in the elimination of excess acids and impurities through the kidneys and bladder and that by the use of said waters a proper balance of minerals can be maintained in the body.

PAR. 5. The foregoing statements and representations disseminated by respondents are false, misleading, and deceptive. In truth and in fact, said mineral waters are not cures or remedies and do not constitute adequate or competent treatments for any of the various ailments, diseases, or conditions set out in paragraph 4 herein. Respondents' waters will have no significant eliminating effect upon poisons in the system by flushing or otherwise. While said waters possess a slight alkaline reaction, the amount of alkaline material provided to the body by their use will not significantly affect the acid base balance of the body and will not be effective in eliminating excess acids and impurities from the body through the kidneys and bladder, or otherwise. The amounts of various minerals existing in these waters are not sufficient to maintain a proper balance of minerals in the body.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, 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 said statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products.

#### CONCLUSION

The aforesaid acts and practices of 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 inter-



## Order

vening 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 respondents, Roy A. Whipple and Mrs. Ruth Carter Whipple, trading as McFadden 3 Sisters Springs, 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, or distribution of McFadden 3 Sisters Springs mineral waters or any other products of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

(a) That the product designated as water from Spring No. 1 is a cure or remedy or constitutes an adequate or competent treatment for arthritis, neuritis, rheumatism, Bright's disease, diabetes, dropsy, pus in kidney, bladder and urethra, cystitis, enlarged prostate gland, paralysis, stones in kidneys and other urinary troubles, change of life and female irregularities, insomnia, anemia, nervous prostration, high or low blood pressure, gout, or hyperacidity.

(b) That the product designated as water from Spring No. 2 is a cure or remedy or constitutes an adequate or competent treatment for chronic constipation, acute and chronic indigestion, catarrh of stomach and intestines, excessive acid, gastritis, ulcerated stomach, poor assimilation and elimination, stagnant or poor circulation, nervousness, high or low blood pressure, gall stones, or mucous colitis.

(c) That the product designated as water from Spring No. 3 is a cure or remedy or constitutes an adequate or competent treatment for flux, diarrhea, dysentery, cholera infantum, diabetic sores, eczema, granulated and sore eyes, catarrh of head and nose, or sinusitis.

(d) That the use of said mineral waters, or any of them, will eliminate poisons from the system to any significant extent.

(e) That the use of said mineral waters, or any of them, will be effective in eliminating excess acids and impurities through the kidneys and bladder.

(f) That the use of said mineral waters, or any of them, will maintain a proper balance of minerals in the body.

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2. Disseminating, or causing to be disseminated, by any means, any advertisement 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 respondents' products, which advertisement contains any of the representations prohibited in paragraph 1 hereof and the respective subdivisions 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

WHELESS W. GAMBILL, JR., RUSSELL M. CAMPBELL, AND  
M. YUHAS, TRADING AS CHEMICALS OF THE SOUTH,  
ETC.

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

*Docket 4999. Complaint, July 9, 1943—Decision, Dec. 3, 1943*

Where three individuals engaged in the manufacture of "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze," recommended for use in the cooling systems of automobiles and other combustion engines, and in the sale thereof to a concern in which one of them was a partner and which sold said products to jobbers, garages, and service stations for resale to the purchasing public; by means of statements in periodicals and trade journals, advertising folders, pamphlets, display posters, and other advertising material, directly and by implication—

- (a) Represented falsely that their said products were safe and dependable for use as recommended and had proved themselves to be superior permanent type antifreezes; which protected the entire cooling system of automobile engines against corrosion, rust, and deterioration; that their use would not cause rust or other damage to the hose connections, radiators, finish of automobiles, or engine; and that they would not evaporate or clog the cooling system;

The facts being the products in question had a calcium chloride base and were neither superior nor safe and dependable; use thereof would corrode and rust most metals, and had caused and would cause serious damage to the engines, radiators, ignition wires, spark plugs, hose connections, and to the exterior finish of automobiles, resulted in leakage in the cooling systems, and also in evaporation, giving rise to persistent ignition trouble by virtue of the salt content when any of the solution came in contact with the spark plugs or ignition wires; and

- (b) Failed to disclose to the purchasing public, a substantial portion of which understands and believes, that an "antifreeze" is safe and dependable and will not cause deterioration or injury to the parts of an automotive engine with which it would normally come in contact—any of the injurious and damaging effect which result from the use of the aforesaid product, except the electrolytic action thereof when brought in contact with spark plugs and ignition wires;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such false advertisements were true, and of inducing the public to purchase substantial quantities of their said products as a result:

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

Complaint

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*Mr. Jesse D. Kash* for the Commission.  
*Maddin, Bailey & Powell* and *Mr. John W. Hilldrop*, of Nashville, Tenn., 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 Wheless W. Gambill, Jr., Russell M. Campbell, and M. Yuhas, individuals, trading as Chemicals of the South; Tennessee Valley Associated Marketers, Bond Anti-Freeze Factory, Lo-Temp Chemical Works, and Lo-Zone Chemical Works, 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. The respondents, Wheless W. Gambill, Jr., Russell M. Campbell, and M. Yuhas, are individuals, trading as Chemicals of the South, Tennessee Valley Associated Marketers, Bond Anti-Freeze Factory, Lo-Temp Chemical Works, and Lo-Zone Chemical Works, with their office and principal place of business located at 117-119 Ninth Avenue North, Nashville, Tenn.

PAR. 2. The respondents are now, and since August 1942, have been, engaged in the manufacture, sale, and distribution of so-called anti-freeze solutions designated "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze," recommended for use in the cooling systems of automobiles and other combustion type engines. Said product is sold by the respondents to jobbers, garages, and service stations for resale to the purchasing public. Respondents cause their said products when sold to be transported from their place of business in the State of Tennessee to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondents maintain, and at all times mentioned herein have 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. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products, "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze" and "Bond Top Line Anti-Freeze," the respondents have circulated and are now circulating among prospective purchasers throughout the United States many false advertisements concerning their said products by means of the

## Complaint

United States mails, by advertisements in periodicals and trade journals, and by means of advertising folders, pamphlets, display posters, and other advertising material. Among and typical of such false statements and representations circulated as aforesaid are the following:

Permanent anti-freeze to 90 below freezing.

One filling lasts all winter—does not evaporate or boil away.

Contains rust and corrosion inhibitors to protect metal parts and does not attack rubber hose or gasket material.

Thoroughly tested and highly approved in laboratory tests, made of non-critical materials and available in large quantities.

Full protection to 90 degrees below freezing. Even a reasonable quantity will give protection against cracked blocks and broken radiators.

This anti-rust permanent type anti-freeze is an aqueous solution of calcium, sodium, potassium and magnesium chlorides, treated and processed with phosphates and other stabilizers and corrosion inhibitors. Contains no ethylene glycol, alcohol formation or glycerine.

## GUARANTEE

Bond Top Line Anti-Freeze Division specifically guarantees that BOND-TOP LINE brand anti-freeze, if used according to printed instructions in normal water cooling systems, will protect the cooling system of your car against freezing and clogging from rust formation for a full winter; also that it will not boil away, will not cause damage to car finish, or to the metal or rubber parts of the cooling system, and that it will not leak out of the cooling system, which, after removal of rust formation, and proper servicing, is actually leak-tight.

BOND-TOP LINE ANTI-FREEZE has everything you want; single-shot action—one filling lasts all season. Non-corrosive—will not eat away metal, rubber hose or gasket material; ample supply—made of non-critical materials; top line performance—thoroughly tested and approved.

Non-corrosive. Unlike some anti-freeze compounds, Lo-Zone has that efficient freeze prevention, and yet has no harsh chemicals that corrode the metal of your cooling system. Lo-Zone is made of quality ingredients which are not critically needed by our government. This master anti-freeze is guaranteed not to clog your radiator. This means no draining and refills needed. It mixes smoothly and evenly with the water in your radiator, with ideal distribution of its anti-freeze properties. Invest in Lo-Zone just once, and say good-bye to your radiator worries all winter.

Flash! Lo-Temp permanent anti-freeze holds to 90 degrees below freezing. From all over the country orders are pouring in for this amazing new anti-freeze. Dealers say it's the "hot test" anti-freeze on the market. And no wonder—just look at these exclusive selling points—non-corrosive, one shot lasts the year, non-clogging, will not attack rubber hose, metal or gasket material, non-vaporizing— \* \* \* There is still a supply on hand—get your order in now. Lo-Temp Chemical Works, 117 Ninth Avenue North.

New—Different—Better! Bond Anti-Freeze—guaranteed permanent—safe, non-corrosive, bonded performance—thoroughly tested and highly approved in laboratory tests—Bond Anti-Freeze Factory, 117 Ninth Avenue North.

## Complaint

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Safe protection for the cooling system of your priceless car. Seven years of painstaking research—tested in leading laboratories—no corrosion. Nearly a million gallons sold this fall.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents have represented, directly or by implication, that their products, "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze," furnish protection to the cooling systems of automobiles and other types of combustion engines against freezing to 90° below freezing and prevents other damaging effects; that they are safe and dependable for use as recommended and have proved themselves to be superior permanent type antifreezes; that they protect the entire cooling system of automobile engines against corrosion, rust, and deterioration; that their use will not cause rust or other damage to the hose connections, radiators, finish of automobiles, or the engine, and that they will not evaporate or clog passages in the cooling system.

PAR. 5. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' products Lo-Temp Anti-Freeze, Lo-Zone Anti-Freeze, and Bond Top Line Anti-Freeze are composed of a calcium chloride base and are inferior to antifreeze solutions containing glycerin or alcoholic bases. Said products will not protect the cooling systems of automobiles to 90° below freezing. They are not safe and dependable products for use as recommended and superior types of antifreeze. They do not protect the cooling system of engines against corrosion, rust, or other deterioration. The use of said products causes and has caused rust, corrosion, clogged passages, and other serious damage to the engines, radiators, ignition wires, spark plugs, hose connections, and to the exterior finish of automobiles. Said products evaporate and will clog passages in the cooling system.

For many years there have been on the market and sold to the general public throughout the United States solutions for use in the water in the cooling systems of automobile and other types of internal combustion engines to prevent injury to such engines from the freezing of the water used in the cooling system. These solutions are known as "antifreeze" and have proven dependable both from the standpoint of protecting the cooling system and other parts of the engine from cold and in not damaging any part of the engine or vehicle in which the engine is installed through rust, corrosion, clogging, or any other form of deterioration or injury.

When a product is advertised as an "antifreeze," the public believes that it possesses the attributes found in these long used, dependable

products; that it may be used with safety in such cooling systems; that it will not cause rust, corrosion, clogging, or other deterioration or injury, and that it will protect the cooling system and other parts of the engine from cold.

Respondents' representation that their said products are "antifreeze" leads the public to believe that said products are safe and dependable for use in the cooling systems of internal combustion engines in guarding against damage from low temperatures and without injury to such engines or the vehicle in which installed from rust, corrosion, clogging, or other deleterious or damaging effects. Respondents' failure to inform the general public of the deleterious and damaging effects which result or may result from the use of their products as an "antifreeze" is misleading and deceptive.

PAR. 6. The use by the respondents of the foregoing false and misleading statements and representations disseminated as aforesaid has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and advertisements are true and to induce, and does induce, the public to purchase substantial quantities of respondents' products as a result of such belief.

PAR. 7. 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 July 9, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of an answer by respondents, a stipulation as to the facts was entered into between W. T. Kelley, chief counsel for the Commission, and John W. Hilldrop and Ferniss C. Bailey, counsel for respondents. This stipulation provides that the facts therein set forth shall be taken as the facts in this proceeding and in lieu of testimony in support of or in opposition to the allegations of said complaint. Respondents expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and stipulation as to the facts, said stipulation having been accepted and approved by the Commission; 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. Wheless Gambill, Jr., the individual referred to in the complaint as Wheless W. Gambill, Jr., respondent, F. Russell Campbell, the individual referred to in the complaint as Russell M. Campbell, and respondent, Marie Yugas, the individual referred to in the complaint as M. Yugas, are copartners, trading as Chemicals of the South, Bond Anti-Freeze Factory, Lo-Temp Chemical Works, and Lo-Zone Chemical Works, with their office and principal place of business located at 117-119 Ninth Avenue North, Nashville, Tenn. Respondent, W. Wheless Gambill, Jr., and other individuals not named herein are copartners, trading as Tennessee Valley Associated Marketers, with their place of business located at the above address.

PAR. 2. The respondents, as copartners, for some time prior to January 20, 1943, were engaged in the manufacture, sale, and distribution of products designated "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze," recommended for use in the cooling systems of automobiles and other combustion types of engines. Said products were sold by the respondents, as copartners, to Tennessee Valley Associated Marketers, who in turn sold such products to jobbers, garages, and service stations for resale to members of the purchasing public. Respondents caused their said products, when sold, to be transported from their place of business in the State of Tennessee to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein the respondents 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. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze," the respondents circulated among prospective purchasers throughout the United States advertisements concerning their said products in periodicals and trade journals and by means of advertising folders, pamphlets, display posters, and other advertising material. Among and typical of the statements and representations contained in said advertising literature circulated as aforesaid are the following:



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Findings

Contains rust and corrosion inhibitors to protect metal parts and does not attack rubber hose or gasket material.

\* \* \* \* \*

Thoroughly tested and highly approved in laboratory tests, made of non-critical materials and available in large quantities.

\* \* \* \* \*

Full protection to 90 degrees below freezing. Even a reasonable quantity will give protection against cracked blocks and broken radiators.

\* \* \* \* \*

This anti-rust permanent type anti-freeze is an aqueous solution of calcium, sodium, potassium and magnesium chlorides, treated and processed with phosphates and other stabilizers as corrosion inhibitors. Contains no ethylene glycol, alcohol formation or glycerine.

\* \* \* \* \*

GUARANTEE

Bond Top Line Anti-Freeze Division specifically guarantees that BOND-TOP LINE brand anti-freeze, if used according to printed instructions in normal water cooling systems, will protect the cooling system of your car against freezing and clogging from rust formation for a full winter; also that it will not boil away, will not cause damage to car finish, or to the metal or rubber parts of the cooling system, and that it will not leak out of the cooling system, which, after removal of rust formation, and proper servicing, is actually leak-tight.

\* \* \* \* \*

BOND-TOP LINE ANTI-FREEZE has everything you want; single-shot action—one filling lasts all season. Non-corrosive—will not eat away metal, rubber hose or gasket material; ample supply—made of non-critical materials; top line performance—thoroughly tested and approved.

\* \* \* \* \*

Non-corrosive. Unlike some anti-freeze compounds, Lo-Zone has that efficient freeze prevention, and yet has no harsh chemicals that corrode the metal of your cooling system. Lo-Zone is made of quality ingredients which are not critically needed by our government. This master-anti-freeze is guaranteed not to clog your radiator. This means no draining and refills needed. It mixes smoothly and evenly with the water in your radiator, with ideal distribution of its anti-freeze properties. Invest in Lo-Zone just once, and say good-bye to your radiator worries all winter.

\* \* \* \* \*

Flash! Lo Temp permanent anti-freeze holds to 90 degrees below freezing. From all over the country orders are pouring in for this amazing new anti-freeze. Dealers say it's the "hot test" anti-freeze on the market. And no wonder—just look at these exclusive selling points—non-corrosive, one shot lasts the year, non-clogging, will not attack rubber hose, metal or gasket material, non-vaporizing—  
\* \* \* There is still a supply on hand—get your order in now. Lo-Temp Chemical Works, 117 Ninth Avenue North.

\* \* \* \* \*

New—Different—Better! Bond Anti-Freeze—guaranteed permanent—safe, non-corrosive, bonded performance—thoroughly tested and highly approved in laboratory tests—Bond Anti-Freeze Factory, 117 Ninth Avenue North.

\* \* \* \* \*

## Findings

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Safe protection for the cooling system of your priceless car. Seven years of painstaking research—tested in leading laboratories—no corrosion. Nearly a million gallons sold this fall.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents have represented, directly or by implication, that their products "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze" are safe and dependable for use as recommended and have proved themselves to be superior permanent type antifreezes; that they protect the entire cooling system of automobile engines against corrosion, rust, and deterioration; that their use will not cause rust or other damage to the hose connections, radiators, finish of automobiles, or the engine; and that they will not evaporate or clog passages in the cooling system.

PAR. 5. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' products "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze" are composed of a calcium chloride base, and are not superior types of antifreeze solutions and are not safe and dependable products for use as recommended. They do not protect the cooling system of engines against corrosion, rust, or other deterioration. In fact, the use of said products will bring about corrosion on most metals, including iron, steel, bronze, solder, copper, brass, and aluminum, and causes, and has caused, rust, corrosion, clogged passages, and other serious damage to the engines, radiators, ignition wires, spark plugs, hose connections, and to the exterior finish of automobiles, and results in leakage in the cooling systems of automotive engines. Said products also evaporate in use. The use of any radiator solution which contains calcium chloride will give rise to persistent ignition trouble if any of the solution comes in contact with spark plugs or ignition wires, because the salt deposited when the water evaporates is very difficult to remove completely and when it cools it absorbs water and becomes a good electrical conductor, causing short circuits.

PAR. 6. Substantial and representative numbers of the purchasing public understand and believe that a product advertised and sold as an "antifreeze" for use in the cooling system of automotive engines is safe and dependable for such use and that it will not cause rust, corrosion, clogging of the cooling system, or other deterioration or injury to the parts of an automotive engine with which it would normally come in contact. Respondents have not disclosed to the purchasing public any of the injurious and damaging effects which result from the use of their aforesaid products except the electrolytic

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action thereof when brought in contact with spark plugs and ignition wires.

PAR. 7. The use by the respondents of the foregoing false and misleading statements and representations, disseminated as aforesaid, and the failure to disclose the material damage resulting from the use of their said products as recommended, has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and advertisements are true and that said products are safe and dependable for use as recommended, and to induce, and does induce, the public to purchase substantial quantities of respondents' products as a result of such belief.

## CONCLUSION

The foregoing acts and practices of 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, answer of the respondents, and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondents which provides, among other things, that without further evidence or other intervening procedure the Commission may enter and serve upon respondents 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 its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondents, W. Wheless Gambill, Jr., F. Russell Campbell, and Marie Yuhas, jointly or severally, trading as Chemicals of the South, Bond Anti-Freeze Factory, Lo-Temp Chemical Works, and Lo-Zone Chemical Works, or under any other name, and W. Wheless Gambill, Jr., trading as Tennessee Valley Associated Marketers, or 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 their products designated as "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze," or any other product of substantially similar composition, whether sold under the same

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names or any other name or names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That said products, or any of them, are safe and dependable anti-freeze preparations for use in the cooling systems of automobile engines.

2. That said products, or any of them, are superior types of anti-freeze preparations.

3. That said products, or any of them, will protect the cooling systems of automobile engines against corrosion, rust, or other deterioration.

4. That said products, or any of them, will not cause rust, corrosion, or other damage to the cooling systems of automobile engines, or damage to such engines, or to radiators, or hose connections, or the exterior finish of automobiles.

5. That said products, or any of them, will not evaporate in use or clog passages in the cooling systems of automobile engines.

6. That said products, or any of them, are antifreeze preparations for use in the cooling systems of automobile engines without affirmatively disclosing in a clear and conspicuous manner in immediate connection with such representation that said preparations will rust and corrode the cooling system of an automobile engine and may clog the passages in such system.

*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

GABRIEL H. GLADSTONE AND NEWTON A. GLADSTONE,  
DOING BUSINESS AS GLADSTONE BROTHERS AND AS  
AARON LEONARD COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

*Docket 4969. Complaint, May 27, 1943—Decision, Dec. 8, 1943*

Where two individuals, engaged in designing and cutting fabrics for men's and boys' clothing to be made up for them by others, and in the interstate sale and distribution of said clothing—

- (a) Represented that certain clothing was made entirely of vicuna wool fabric, through distributing it labeled "Valcuna," and bearing a likeness to a vicuna; notwithstanding the fact that said clothing was made of fabric which contained a substantial amount of other fiber; and also
- (b) Sold and distributed men's and boys' suits labeled "London Park Clothes—\$40.00—All Wool," when in fact such suits contained substantial amount of fiber other than wool;

With effect of deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and of thereby inducing it to purchase the said clothing; and

Where said individuals engaged in sale and distribution, as aforesaid, of suits and other wearing apparel, including many which were wool products within the intent and meaning of the Wool Products Labeling Act of 1939—

- (c) Sold and distributed such clothing misbranded in violation of aforesaid act and the rules and regulations promulgated thereunder, in that it did not have on or affixed thereto a stamp, tag, label, or other means of identification showing the percentage of the total fiber weight of wool, reprocessed wool; reused wool, nonwool fiber and aggregate thereof, including filler or adulterating matter, and proper identification of the manufacturer or seller:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

*Mr. DeWitt T. Puckett* for the Commission.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Gabriel H. Gladstone and Newton A.

Gladstone, trading and doing business as Gladstone Bros., and as Aaron Leonard Co., hereinafter referred to as respondents, have violated the provisions of the said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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, Gabriel H. Gladstone and Newton A. Gladstone, are copartners, trading and doing business as Gladstone Bros. and as Aaron Leonard Co. Their principal office and place of business are at 110 Fifth Avenue, New York, N. Y.

PAR. 2. Respondents are now, and during all times mentioned herein, have been engaged in designing and cutting fabrics which are manufactured into clothing for men and boys. The remaining manufacturing operations necessary to the completion of the clothing are performed for respondents by others.

Respondents cause and have caused said clothing when sold by them to be transported from their place of business in the State of New York to various purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business respondents distributed clothing which was labeled "Vicuna," and which labels bore a likeness to a vicuna. Such labels constituted a representation that the clothing was made entirely of vicuna wool fabric, when in truth and in fact said clothing was not made entirely of vicuna wool fabric but was made of fabric which contained a substantial amount of fiber other than vicuna wool.

PAR. 4. There is a demand on the part of a substantial portion of the purchasing public for clothing manufactured of vicuna wool.

PAR. 5. Respondents also sold and distributed men's and boys' suits in commerce as aforesaid which were labeled "London Park Clothes—\$40.00—All Wool." In truth and in fact said suits were not made entirely of wool fabric but were made of fabric which contained a substantial amount of fiber other than wool.

PAR. 6. The use by the respondents of the foregoing false, deceptive and misleading representations with respect to their clothing, 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, representations and advertisements are true, and has induced a portion of the purchasing public because of such erroneous and mistaken belief to purchase the respondents' said clothing.

PAR. 7. Among the suits and other articles of wearing apparel sold and distributed by respondents as aforesaid since July 15, 1941, are many which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939, in that said suits and other articles of wearing apparel were composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in said act. Said wool products are subject to the labeling provisions of said act and said rules and regulations.

Among the said wool products sold and distributed by respondents in commerce as aforesaid were suits and other articles of wearing apparel which were misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated under such act, in that said wool products when introduced in said commerce did not have on or affixed thereto a stamp, tag, label or other means of identification or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of total fiber weight of the wool product exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percent or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of non-fibrous loading, filling or adulterating matter; (c) the name of the manufacturer of the wool product or in lieu thereof a registered number with name of a reseller under the conditions provided in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of the said act with respect to such wool product.

PAR. 8. The aforesaid acts, practices and methods of respondents, 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 and the Wool Products Labeling Act of 1939, the Federal Trade Commission on the 27th day of May 1943, issued and subsequently served its complaint in this proceeding upon respondents, Gabriel H. Gladstone and Newton A. Gladstone, copartners, trading and doing business as Gladstone Bros., and as Aaron Leonard Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said acts. After the issuance of said complaint, the respondents submitted 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, and agreeing that paragraph 3 of the Commission's complaint may be considered as amended by substituting the word "Valcuna" for the word "Vicuna," the second word in the third line of said paragraph, which answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and 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, Gabriel H. Gladstone and Newton A. Gladstone, are copartners, trading and doing business as Gladstone Bros. and as Aaron Leonard Co. Their principal office and place of business are at 110 Fifth Avenue, New York, N. Y.

**PAR. 2.** Respondents are now, and during all times mentioned herein, have been engaged in designing and cutting fabrics which are manufactured into clothing for men and boys. The remaining manufacturing operations necessary to the completion of the clothing are performed for respondents by others.

Respondents cause and have caused said clothing when sold by them to be transported from their place of business in the State of New York to various purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia.

**PAR. 3.** In the course and conduct of their aforesaid business respondents distributed clothing which was labeled "Valcuna," and which labels bore a likeness to a vicuna. Such labels constituted a representation that the clothing was made entirely of vicuna wool fabric, when in truth and in fact said clothing was not made entirely of vicuna wool fabric but was made of fabric which contained a substantial amount of fiber other than vicuna wool.

**PAR. 4.** There is a demand on the part of a substantial portion of the purchasing public for clothing manufactured of vicuna wool.

**PAR. 5.** Respondents also sold and distributed men's and boys' suits in commerce as aforesaid which were labeled "London Park Clothes—\$10.00—All Wool." In truth and in fact said suits were not made entirely of wool fabric but were made of fabric which contained a substantial amount of fiber other than wool.

**PAR. 6.** The use by the respondents of the foregoing false, deceptive and misleading representations with respect to their clothing, dissemi-



nated 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, representations and advertisements are true, and has induced a portion of the purchasing public because of such erroneous and mistaken belief to purchase the respondents' said clothing.

PAR. 7. Among the suits and other articles of wearing apparel sold and distributed by respondents as aforesaid since July 15, 1941, are many which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939, in that said suits and other articles of wearing apparel were composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in said act. Said wool products are subject to the labeling provisions of said act and said rules and regulations.

Among the said wool products sold and distributed by respondents in commerce as aforesaid were suits and other articles of wearing apparel which were misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated under such act, in that said wool products when introduced in said commerce did not have on or affixed thereto a stamp, tag, label or other means of identification or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of the total fiber weight of wool product exclusive of ornamentation not exceeding 5 percent of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percent or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling or adulterating matter; (c) the name of the manufacturer of the wool product or in lieu thereof a registered number with name of a reseller under the conditions provided in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of the said act with respect to such wool product.

#### CONCLUSION

The aforesaid acts, practices and methods of 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 and the Wool Products Labeling Act of 1939.

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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 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 its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act and the provisions of the Wool Products Labeling Act of 1939:

*It is ordered,* That the respondents, Gabriel H. Gladstone and Newton A. Gladstone, copartners, trading and doing business as Gladstone Bros., and as Aaron Leonard Co., jointly or severally, 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 articles of clothing in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Valcuna" to designate, describe, or refer to any garment not composed entirely of vicuna wool; or representing through the use of a pictorial likeness of a vicuna, or in any other manner, directly or indirectly, that any garment containing fibers other than vicuna wool is made entirely of vicuna wool.

2. Representing in any manner, directly or indirectly, that any garment containing fibers other than wool is composed entirely of wool.

*It is further ordered,* That respondents, Gabriel H. Gladstone and Newton A. Gladstone, copartners, trading as Gladstone Bros., or as Aaron Leonard Co., or trading under any other name, jointly or severally, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, do forthwith cease and desist from misbranding men's and boys' clothing or other "wool products" as defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, by failing to securely affix to or place on such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

- (a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 percent of said total fiber

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weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is 5 percent or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter.

(c) The name of the manufacturer of such wool product; or the manufacturer's registered identification number and the name of a seller of such wool product; or the name of one or more persons introducing such wool product into commerce, or engaged in the sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

*Provided*, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939: *And provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

*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  
**BERNARD ENGINEERING COMPANY, LIONEL BERNARD  
AND WILLIAM I. MILLER**

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT 20, 1914

*Docket 4979. Complaint, June 16, 1943—Decision, Dec. 11, 1943*

Where a corporation, owner of a patented formula for a so-called antifreeze solution for use in automobiles, along with its president and a second individual—president of a corporation subsequently dissolved which had been given the exclusive right for 5 years to manufacture and sell throughout the United States and Canada the antifreeze solution made in accordance with the formula owned by the first named concern, and who, after the dissolution of said corporation, continued to carry on the business through statements in advertising folders and circulars and on labels, directly or by implication—

- (a) Represented falsely that their said "Wonder Solv Anti-Freeze" furnished protection to the cooling systems of automobiles and other combustion-type engines against freezing and other damaging effects from low temperature, that it was safe and dependable for use and had proved itself to be a superior permanent type antifreeze; would prevent rust or other damage to hose connections, radiators, or other rubber and metal parts of the cooling system, and to the finish of automobiles; would not evaporate or clog passages in the cooling system; afforded full and complete protection against corrosion, rust, and electrolytic action in all types of water cooled internal combustion engines, and was not harmless to aluminum, brass, copper, zinc, iron, or any combination of metals, paint, and rubber;

The facts being the product in question, having a magnesium chloride base, was inferior to antifreeze solutions with glycerine or alcoholic bases; was not safe and dependable and was not permanent in that, in time, it evaporated; and use thereof would cause rust, corrosion, clogged passages, and other serious damage to the engine and radiator, would injure ignition wires, hose connections, spark plugs, or any other part of the automobile with which it came in contact; and was not harmless as claimed;

With result of placing in the hands of said second concern and individual, means whereby they were enabled to mislead and deceive the purchasing public, and of misleading and deceiving a substantial portion thereof into the mistaken belief that such statements were true, and of thereby inducing it to purchase substantial quantities of their said product:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Randolph Preston*, trial examiner.

*Mr. Jesse D. Kash* for the Commission.

*Mr. Frank M. Lario*, of Camden, N. J., 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 Bernard Engineering Co., a corporation, Lionel Bernard, individually, and as an officer of Bernard Engineering Co., and William I. Miller, an individual, trading under the name of Miller Manufacturing Co., and as an officer of Miller Manufacturing Co., a corporation, 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, Bernard Engineering Co., is a corporation, organized and existing under and by virtue of the laws of New Jersey, with its office and principal place of business located at 709 Market Street, Camden, N. J.

PAR. 2. Respondent, Bernard Engineering Co., is the owner of a patented formula for a so-called antifreeze solution for use in the cooling systems of automobiles. On October 6, 1942, it entered into an agreement with Miller Manufacturing Co., a corporation, under the terms of which Miller Manufacturing Co. was given the exclusive right for a period of 5 years to manufacture and sell throughout the United States and Canada antifreeze solution in accordance with the formula owned by respondent, Bernard Engineering Co. Under the terms of said agreement said Bernard Engineering Co. was to be paid a royalty of 50 percent of the net profit received from the sale of said antifreeze solution. Under said agreement the Miller Manufacturing Co. was required to keep on hand at least 3,000 packages of said solution at all times and was required to advertise the product. The Bernard Engineering Co. assumed the liability for any and all damages, losses or claims, which might be made because of the failure of its product to do and perform its functions as warranted and as represented by the Miller Manufacturing Co. It was further provided in said contract that the said agreement would apply to and bind the Bernard Engineering Co., its representatives and successors, and the Miller Manufacturing Co. and its successors and assigns. The said agreement further provided that upon the sale of every 5,000 packages of antifreeze solution by the said Miller Manufacturing Co. the Bernard Engineering Co. was to grant the said Miller Manufacturing Co. a bonus of one share of the capital stock of the respondent, Bernard Engineering Co. The Bernard Engineering Co. reserved the right to acquire exclusive right and ownership to the trade name given the product by said Miller Manufacturing Co. The

Bernard Engineering Co. reserved the right to sell its patent at any time on the payment to the Miller Manufacturing Co. of an amount equal to one-fifth of such sale price. It further provided that the Miller Manufacturing Co. should have the right of option to purchase the patent and patent rights of the Bernard Engineering Co. for the price of \$50,000.

Respondent, William I. Miller, is an individual, trading under the name Miller Manufacturing Co., with his office and principal place of business located at 1100 Thirty-second Street, Camden, N. J., and was president of Miller Manufacturing Co., a corporation, which had its office and principal place of business located at 1100 Thirty-second Street, Camden, N. J.

Respondent, Lionel Bernard, is an individual, and is president of the corporate respondent, Bernard Engineering Co., with his office and principal place of business located at 709 Market Street, Camden, N. J.

PAR. 3. The Miller Manufacturing Co., a corporation, and respondent, William I. Miller, individually, and as an officer of said corporation and who also trades individually under the name Miller Manufacturing Co., for several months subsequent to October 6, 1942, the date of said agreement, were in accordance with the terms of said agreement, engaged in manufacturing, advertising, selling, and distributing a so-called antifreeze solution designated "Wonder Solv Anti-Freeze" recommended for use in the cooling system of automobiles and other combustion type engines and manufactured in accordance with the formula of said respondent, Bernard Engineering Co. Said product was sold by said Miller Manufacturing Co. and respondent, William I. Miller, trading under the name of Miller Manufacturing Co., to jobbers, garages, and service stations for resale to the purchasing public. Miller Manufacturing Co. and the respondent, William I. Miller, caused said product, when sold, to be transported from their place of business in the State of New Jersey to purchasers located in various other States of the United States and in the District of Columbia. The said Miller Manufacturing Co. and the respondent, William I. Miller, maintained, and at all times mentioned herein have maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia. The Miller Manufacturing Co. was dissolved on or about January 23, 1943, and is no longer in existence.

PAR. 4. The respondent, Bernard Engineering Co. and Lionel Bernard, individually, and as an officer of Bernard Engineering Co., have since October 6, 1942, promoted, encouraged, directed, and assisted Miller Manufacturing Co., a corporation, and the respondent, Wil-

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liam I. Miller, as an officer of Miller Manufacturing Co., and individually, trading as Miller Manufacturing Co., in the manufacture, sale, advertising, and distribution of said so-called antifreeze solution designated "Wonder Solv Anti-Freeze," and have shared and participated in the profits arising from the sale of said product.

The individual respondent, William I. Miller, formulated, directed, and controlled the acts and practices of Miller Manufacturing Co., a corporation, prior to its dissolution about January 23, 1943, and directs, controls, and formulates the acts and practices of Miller Manufacturing Co., a trade name used by him.

The individual respondent, Lionel Bernard, formulates, directs and controls the acts and practices of the respondent, Bernard Engineering Co.

The respondents, Bernard Engineering Co., a corporation, Lionel Bernard, individually, and as an officer of Bernard Engineering Co., a corporation, and William I. Miller, individually, and as an officer of Miller Manufacturing Co. and trading as Miller Manufacturing Co., have acted in conjunction and cooperation each with the other in carrying out the acts and practices hereinafter set forth.

PAR. 5. In the course and conduct of their said business and for the purpose of inducing the purchase of their said product "Wonder Solv Anti-Freeze," the respondents have circulated among prospective purchasers throughout the United States many false statements concerning their said product by means of United States mails, advertising folders, circulars, and labels. Among and typical of such false statements and representations circulated as aforesaid are the following:

Wonder Solv Permanent Anti-Freeze and Anti-Rust.

Wonder Solv Anti-Freeze is a safe and efficient all-winter assurance against freezing.

## GUARANTEE

WONDER SOLV ANTI-FREEZE is guaranteed *harmless* to aluminum, brass, copper, zinc, iron or any combination of metals, also paint and rubber. If used as directed, it will protect normal water cooling system against freezing and clogging from rust or corrosion for a full winter season. It will not boil off or expand in system any more than will water, nor will it leak from any system tight enough to hold water.

WONDER SOLV ANTI-FREEZE has been tested under all modern facilities for corrosion, rust or electrolytical action. The inhibitors used in this modern solution offers full protection against rust, corrosion or electrolytical action in all types of water cooled internal combustion engines. WONDER SOLV ANTI-FREEZE not only protects iron and steel but as in the modern car; copper, brass, solder, aluminum and rubber. These inhibitors have value in removing the already formed rust or corrosion deposits now lodged within the cooling system.

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PAR. 6. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein the respondents have represented directly or by implication that their product Wonder Solv Anti-Freeze furnishes protection to the cooling systems of automobile and other combustion type engines against freezing and other damaging effects; that it is safe and dependable for use and has proved itself to be a superior permanent type antifreeze; that its use will prevent rust or other damage to the hose connections, radiator and other metal and rubber parts of the cooling system and finish of automobiles; that it will not evaporate or clog passages in the cooling system; that said product affords full and complete protection against corrosion, rust, and electrolytical action in all types of water cooled internal combustion engines, and that said product is harmless to aluminum, brass, copper, zinc, iron or any combination of metals, paint, and rubber.

PAR. 7. The foregoing claims, statements, and representations are grossly exaggerated, false and misleading. In truth and in fact respondent's product is composed of a magnesium chloride base and is inferior to antifreeze solutions containing glycerine or alcoholic bases. It is not a safe and dependable product for use in the cooling systems of automobiles and has not proven itself to be a superior type of antifreeze. Said product is not permanent in that in the course of time it evaporates. It does not afford full and complete protection or any protection to the cooling systems of engines against corrosion, rust, or other deterioration. Said product is not harmless to aluminum, brass, copper, zinc, iron, or other metals or to paint and rubber. The use of said product as an antifreeze will cause rust, corrosion, clogged passages, and other serious damage to the engines and radiators, and said product will injure ignition wires, hose connections, spark plugs or any other part of the automobile with which it comes in contact.

PAR. 8. Respondents' representations that said product is safe and dependable for use as an antifreeze in the cooling system of automobile and other combustion type engines lead purchasers to believe that said product may be used without injury to the cooling systems of such engines and without danger to metals, paint or rubber with which said product may come in contact when used as an antifreeze solution. In truth and in fact said preparation is harmful to such cooling systems and metals, paint or rubber with which said product may come in contact. Respondents' failure to reveal the fact that it is harmful is misleading and deceptive.

PAR. 9. The acts and practices of the respondent, Bernard Engineering Co., a corporation, and the respondent, Lionel Bernard,



placed in the hands of Miller Manufacturing Co., a corporation, and William I. Miller, a means or instrumentality whereby such respondents were enabled to mislead and deceive the purchasing public.

PAR. 10. The use by the respondent of the foregoing false and misleading statements and representations disseminated as aforesaid, had, and now has, the tendency and capacity 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 to induce the public to purchase substantial quantities of respondents' product as a result of such belief.

PAR. 11. 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 June 16, 1943, issued and subsequently served its complaint in this proceeding upon the respondents Bernard Engineering Co., a corporation, Lionel Bernard, individually, and as an officer of Bernard Engineering Co., a corporation, and William I. Miller, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. An answer was filed by the respondents on July 19, 1943. A hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing a stipulation as to the facts was entered into between the attorney for the Commission and the attorneys for respondents and read into the record. This stipulation provides that the facts therein set forth shall be taken as the facts in this proceeding and in lieu of testimony in support of the allegations of the complaint or in opposition thereto. Respondents expressly waived the filing of the trial examiner's report upon the evidence. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and stipulation as to the facts (such stipulation having been accepted and approved by the Commission), 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. Respondent, Bernard Engineering Co., is a corporation, organized and existing under and by virtue of the laws of

New Jersey, with its office and principal place of business located at 709 Market Street, Camden, N. J.

PAR. 2. Bernard Engineering Co. is the owner of a patented formula for a so-called antifreeze solution for use in the cooling systems of automobiles. On October 6, 1942, it entered into an agreement with Miller Manufacturing Co., a corporation, under the terms of which Miller Manufacturing Co. was given the exclusive right for a period of 5 years to manufacture and sell throughout the United States and Canada antifreeze solution in accordance with the formula owned by respondent, Bernard Engineering Co. Under the terms of said agreement said Bernard Engineering Co. was to be paid a royalty of 50 percent of the net profit received from the sale of said antifreeze solution. Under said agreement the Miller Manufacturing Co. was required to keep on hand at least 3,000 packages of said solution at all times and was required to advertise the product. The Bernard Engineering Co. assumed the liability for any and all damages, losses, or claims which might be made because of the failure of its product to do and perform its functions as warranted and as represented by the Miller Manufacturing Co. It was further provided in said contract that the said agreement would apply to and bind the Bernard Engineering Co., its representatives and successors, and the Miller Manufacturing Co. and its successors and assigns. The said agreement further provided that upon the sale of every 5,000 packages of antifreeze solution by the said Miller Manufacturing Co. the Bernard Engineering Co. was to grant the said Miller Manufacturing Co. a bonus of one share of the capital stock of the respondent, Bernard Engineering Co. The Bernard Engineering Co. reserved the right to acquire exclusive right and ownership to the trade name given the product by said Miller Manufacturing Co. The Bernard Engineering Co. reserved the right to sell its patent at any time on the payment to the Miller Manufacturing Co. of an amount equal to one-fifth of such sale price. It further provided that the Miller Manufacturing Co. should have the right of option to purchase the patent and patent rights of the Bernard Engineering Company for the price of \$50,000.

Respondent, William I. Miller, is an individual, trading under the name Miller Manufacturing Co., with his office and principal place of business located at 1100 North Thirty-second Street, Camden, N. J., and was president of Miller Manufacturing Co., a corporation, which had its office and principal place of business located at 1100 North Thirty-second Street, Camden, N. J.

Respondent, Lionel Bernard, is an individual, and is president of the corporate respondent, Bernard Engineering Co., with his office

and principal place of business located at 709 Market Street, Camden, N. J.

PAR. 3. In accordance with the terms of the agreement hereinabove described and for several months subsequent to the date thereof, the respondents, Miller Manufacturing Co., a corporation, and William I. Miller, individually, as officer of said corporation and trading as Miller Manufacturing Co., were engaged in manufacturing, advertising, selling, and distributing a so-called antifreeze solution designated "Wonder Solv Anti-Freeze," which was recommended by the respondents for use in the cooling systems of automobiles and other combustion-type engines and which was manufactured in accordance with the formula of said respondent, Bernard Engineering Co. Said product was sold by said Miller Manufacturing Co. and respondent, William I. Miller, trading under the name of Miller Manufacturing Co., to jobbers, for resale to the purchasing public. Miller Manufacturing Co. and the respondent, William I. Miller, caused said product, when sold, to be transported from their place of business in the State of New Jersey to purchasers located in various other States of the United States and in the District of Columbia. The said Miller Manufacturing Co. and the respondent, William I. Miller, maintained, and at all times mentioned herein have maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia. The Miller Manufacturing Co. was dissolved on or about February 28, 1943, and is no longer in existence. William I. Miller, trading as Miller Manufacturing Co., is now operating said business, which business was commenced on or about March 1, 1943.

PAR. 4. The respondents, Bernard Engineering Co., and Lionel Bernard, individually, and as an officer of Bernard Engineering Co., have since October 6, 1942, promoted and encouraged the sale of said solution, and have directed and assisted Miller Manufacturing Co., a corporation, and the respondent, William I. Miller, as an officer of Miller Manufacturing Co., and individually, trading as Miller Manufacturing Co., in the manufacture, sale, advertising, and distribution of said so-called antifreeze solution designated "Wonder Solv Anti-Freeze."

Under the terms of said agreement, the respondent, Bernard Engineering Co., was to share the profits arising from the sale of said product.

The respondent, William I. Miller, formulated, directed and controlled the acts and practices of Miller Manufacturing Co., a corporation, prior to its dissolution about February 28, 1943.

The individual respondent, Lionel Bernard, formulates, directs, and controls the acts and practices of the respondent, Bernard Engineering Co.

The respondents, Bernard Engineering Co., a corporation, Lionel Bernard, William I. Miller, individually, and as an officer of Miller Manufacturing Co. and trading as Miller Manufacturing Co., have acted in conjunction and cooperation each with the other in carrying out the acts and practices hereinafter set forth.

PAR. 5. In the course and conduct of their said business and for the purpose of inducing the purchase of their said product "Wonder Solv Anti-Freeze," the respondents have circulated among prospective purchasers throughout the United States many statements concerning their said product by means of United States mails, advertising folders, circulars, and labels. Among and typical of such statements and representations circulated as aforesaid are the following:

Wonder Solv Permanent Anti-Freeze and Anti-Rust.

Wonder Solv Anti-Freeze is a safe and efficient all-winter assurance against freezing.

#### GUARANTEE

WONDER SOLV ANTI-FREEZE is guaranteed harmless to aluminum, brass, copper, zinc, iron or any combination of metals, also paint and rubber. If used as directed, it will protect normal water cooling system against freezing and clogging from rust or corrosion for a full winter season. It will not boil off or expand in system any more than will water, nor will it leak from any system tight enough to hold water.

WONDER SOLV ANTI-FREEZE has been tested under all modern facilities for corrosion, rust or electrolytical action. The inhibitors used in this modern solution offers full protection against rust, corrosion or electrolytical action in all types of water cooled internal combustion engines. WONDER SOLV ANTI-FREEZE not only protects iron and steel but as in the modern car; copper, brass, solder, aluminum and rubber. These inhibitors have value in removing the already formed rust or corrosion deposits now lodged within the cooling system.

PAR. 6. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein the respondents have represented directly or by implication that their product Wonder Solv Anti-Freeze furnishes protection to the cooling systems of automobile and other combustion type engines against freezing and other damaging effects from low temperature, that it is safe and dependable for use and has proved itself to be a superior permanent type antifreeze; that its use will prevent rust or other damage to hose connections, radiators or other rubber and metal parts of the cooling system, and to the finish of automobiles; that it will not evaporate or clog passages in the cooling system; that said product affords full and complete protection against corrosion, rust, and electrolytical action in all types of water cooled internal-

combustion engines, and that said product is harmless to aluminum, brass, copper, zinc, iron, or any combination of metals, paint and rubber.

PAR. 7. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's product is composed of a magnesium chloride base and is inferior to antifreeze solutions containing glycerine or alcoholic bases. It is not a safe and dependable product for use in the cooling systems of automobiles and has not proven itself to be a superior type of antifreeze. Said product is not permanent in that in the course of time it evaporates. It does not afford full and complete protection or any protection to the cooling systems of engines against corrosion, rust, or other deterioration. Said product is not harmless to aluminum, brass, copper, zinc, iron, or other metals or to paint and rubber. The use of said product as an antifreeze will cause rust, corrosion, clogged passages and other serious damage to the engine and radiator, and said product will injure ignition wires, hose connections, spark plugs, or any other part of the automobile with which it comes in contact.

PAR. 8. The acts and practices of the respondent, Bernard Engineering Co., a corporation, and the respondent, Lionel Bernard, placed in the hands of Miller Manufacturing Co., a corporation, and William I. Miller, a means or instrumentality whereby such respondents were enabled to mislead and deceive the purchasing public.

PAR. 9. The use by the respondents of the foregoing false and misleading statements and representations disseminated as aforesaid, had the tendency and capacity to, and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and induced the public to purchase substantial quantities of respondents' products as a result of such belief.

#### CONCLUSION

The foregoing acts and practices of 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 a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondents upon the record; and the Commission having made its findings as to the facts and its conclusion that

the respondents have violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondents, Bernard Engineering Co., a corporation; Lionel Bernard, individually, and as an officer of Bernard Engineering Co.; William I. Miller, an individual, trading under the name of Miller Manufacturing Co. and as an officer of Miller Manufacturing Co., a corporation, and their respective agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of their antifreeze preparation designated "Wonder-Solv," or any other antifreeze solution of substantially similar composition or possessing substantially similar chemicals or ingredients, whether sold under the same 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 implication:

1. That said product is a safe or dependable antifreeze preparation for use in the cooling systems of automobile engines.

2. That said product is a superior type of antifreeze preparation.

3. That said product will protect the cooling systems of automobile engines against corrosion, rust, or other deterioration.

4. That said product will not cause rust, corrosion, or other damage to the cooling systems of automobile engines or damage to such engines or to radiators or hose connections or the exterior finish of automobiles.

5. That said product will not evaporate in use or clog passages in the cooling systems of automobile engines.

6. That said product will not injure, rust, or corrode aluminum, brass, copper, zinc, iron, or other metals, or injure the rubber parts of the cooling systems of automobile engines.

7. That said product is an antifreeze preparation for use in the cooling systems of automobile engines, without affirmatively disclosing, in a clear and conspicuous manner in immediate connection with such representation, that said preparation will rust and corrode the cooling systems of automobile engines and may clog the passages in such systems.

*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 are complying with this order.

## ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

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THE BEST FOODS, INC. Complaint, August 20, 1938. Order dismissing in part and closing in part, July 12, 1943. (Docket 3545.)

Charge: Advertising falsely or misleadingly as to nature, composition, manufacture or preparation, and properties of product; in connection with sale and distribution of oleomargarine.

COMPLAINT:<sup>1</sup> 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 Best Foods, 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, The Best Foods, Inc., is a New Jersey corporation, which has its principal office and place of business at 88 Lexington Avenue, New York City, N. Y. Respondent is now, and has been for some time, engaged in the business of making, and selling and distributing in commerce as herein set out, a certain product known as "Nucoa Oleomargarine."

Par. 2. Said respondent, being engaged in business as aforesaid, causes said product, when sold, to be transported from its office and places of business in the State of New York to purchasers thereof

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<sup>1</sup> The complaint was amended on March 17, 1942 by "Order Granting Motion to Amend Complaint and Directing Further Proceedings Thereunder," as follows:

This matter coming on to be heard by the Commission upon the motion of counsel for the Commission to amend the complaint, brief in support of said motion, filed November 26, 1941, and brief in opposition thereto, filed December 11, 1941, and the oral arguments made before the Commission upon said motion on January 20, 1942, by counsel for the Commission and for the respondent, and the Commission having duly considered said motion and briefs, the oral arguments thereon and the record herein, and being now fully advised in the premises;

*It is ordered*, That the motion to amend the complaint herein be, and the same hereby is, granted, and the complaint is hereby amended by striking from the last subparagraph of paragraph 4 the following words: "unless Vitamin 'A' is added to said product in sufficient quantity."

*It is further ordered*, That the taking of evidence in support of, and in opposition to, the allegation of subparagraphs 2 and 4 of paragraph 3 and of the last subparagraph of paragraph 4 of the complaint, as amended, be, and the same hereby is, suspended pending further order of the Commission.

*It is further ordered*, That the taking of further evidence with respect to all matters except those herein suspended be resumed and concluded.

## [The Best Foods, Inc.—Continued]

located at various points in States of the United States other than the State from which said shipments are made. Respondent now maintains a course of trade in said product so distributed and sold 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 is now, and has been, in substantial competition with other corporations and with firms and individuals engaged in the business of selling and distributing oleomargarines and butter in commerce among and between the various States of the United States and in the District of Columbia.

In the course and operation of said business, and for the purpose of inducing the purchase of its said oleomargarine, respondent has made use of advertisements in newspapers, magazines, and periodicals having a general circulation throughout the various States of the United States and has also made use of other types of advertising generally circulated to purchasers and prospective purchasers located in all of the States. All of said advertisements and advertising literature contain misleading and deceptive statements regarding the process of manufacture and content of respondent's oleomargarine.

As a portion of such statements so made and used by the respondent as to its said product and its method of manufacture appear the following representations, together with other representations of similar import and meaning:

1. Published illustrations in color, showing, among other things, NUCOA OLEOMARGARINE colored yellow in imitation of butter.
2. Representations that OLEOMARGARINE "is a fit food for children".
3. Representations that said product is "churned in' fresh, pasteurized milk."
4. Representations to the following effect—"as a spread for bread and as a fat for cooking, wholesome margarine and butter are equally delicious and nutritious (both yield 3,400 calories—food-energy units—to the pound)."

Par. 4. By the means and in the manner aforesaid, the respondent represents that its said product is yellow in color and in part, is made from whole milk; that is, milk from which no part of the cream or butterfat content has been removed. Respondent's said product is not made at all from whole milk but in part from skim or skimmed milk, that is, milk from which the cream or butterfat content has been removed.



The expression "churned in fresh pasteurized milk" used by the respondent as aforesaid implies and is understood and interpreted by a substantial portion of the purchasing public to mean that said oleomargarine is made from whole milk as that term is hereinabove described.

The word "churned" has long been associated by the general public with the process by which butterfat is extracted from cream taken from whole milk in the process of butter making. In truth and fact respondent's said product does not contain butterfat extracted from whole milk or cream by "churning" as "churning" is done in the process of making butter, nor is said product "churned" in the sense that the term "churned" is understood by the public.

The representations that oleomargarine "is a fit food for children" and that "wholesome margarine and butter are equally delicious and nutritious" are not true.

Par. 5. There are among respondent's competitors many who make, distribute, and sell oleomargarine, who do not in any way misrepresent the content of their product, or the methods by which it is made.

Par. 6. Said representations so made by the respondent, as hereinbefore set out, in its advertising, in connection with the selling and distributing of its product are false and deceptive and have had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that said representations are true and that said product is made by the process represented and has the content represented. Further as a true consequence of the mistaken and erroneous beliefs, induced by the acts and practices of respondent, as hereinbefore set out, a substantial number of the consuming public purchased a substantial volume of respondent's product with the result that trade in said commerce has been diverted unfairly to the respondent from competitors engaged in the business of making, selling, and distributing similar products or butter who truthfully advertise their respective 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.

## [The Best Foods, Inc.—Continued]

Par. 7. The above and foregoing 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 within the meaning and intent of the Federal Trade Commission Act.

Order dismissing in part and closing in part, after answer and trial:

This matter coming on to be heard by the Commission upon the record, and it appearing that respondent had previously abandoned the practices charged in subparagraphs 1 and 3 of paragraph 3 of the complaint, involving, respectively, misrepresentation of the color of its product and misrepresentation that its product was churned in milk; and it further appearing that by order issued April 30, 1943, the case based upon the charges contained in subparagraphs 2 and 4 of paragraph 3, and the last subparagraph of paragraph 4, of the complaint was closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure,<sup>2</sup> and the Commission having duly considered the matter and being now fully advised in the premises.

*It is ordered*, That the case based upon subparagraphs 1 and 3 of paragraph 3 of the complaint be, and the same hereby is, dismissed because of the abandonment by respondent of the practices in question;

*It is further ordered*, That the order of April 30, 1943, be and remain in full force and effect.

Before *Mr. Edward E. Reardon*, trial examiner.

*Mr. Charles S. Cox* and *Mr. Robt. N. McMillen* for the Commission.

*Mr. A. M. Gilbert*, *Mr. A. M. Davis*, and *Sullivan & Cromwell*, of New York City, for respondent.

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<sup>2</sup> Said "Order Closing Case Based Upon the Charges in Subparagraphs (2) and (4) of Paragraph Three and the Last Subparagraph of Paragraph Four of the Complaint Without Prejudice" follows:

This matter coming on to be heard by the Commission upon motion of counsel for the respondent to dismiss the charges contained in subparagraphs 2 and 4 of paragraph 3 and the last subparagraph of paragraph 4 of the complaint; and

The Commission having duly considered said motion and briefs filed in support thereof and in opposition thereto and the record herein, and being now fully advised in the premises:

*It is ordered*, That the portion of this case based upon the charges contained in subparagraphs 2 and 4 of paragraph 3 and the last subparagraph of paragraph 4 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 trial thereof in accordance with its regular procedure.

JUDD A. BROWN AND BARRY A. BROWN, TRADING AS EUREKA FIBRE Co., AND CHARLES H. BROWN. Complaint, July 8, 1941. Order, July 30, 1943. (Docket 4534.)

Charge: Advertising falsely or misleadingly as to economy, qualities, properties or results and comparative merits and prices of product; in connection with the manufacture and sale of "Shredded Redwood Bark" manufactured from the bark of the redwood tree, loose fill insulating material which is used as a low temperature, fill type insulation in cold storage plants and as thermal fill in dwellings.

Dismissed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that respondent, Charles H. Brown, is now deceased and it further appearing that there is a failure of proof with respect to respondents, Barry A. Brown and Judd A. Brown, 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.

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

*Mr. S. F. Rose* for the Commission.

*Hill & Hill*, of Eureka, Calif., for Judd A. Brown.

*Mr. Frank Thompson*, of Eureka, Calif., for Barry A. Brown.

*Mr. John W. O'Leary*, of Neenah, Wis., for Charles H. Brown.

DAVEGO CITY RADIO, INC. Complaint, August 5, 1938. Order, July 31, 1943. (Docket 3527.)

Charge: Advertising falsely or misleadingly as to special or reduced prices, value, and terms and conditions of sale; in connection with the sale of radio sets, radio parts, and like products.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the complaint and respondent's motion to close the case and the record herein, and it appearing that the practice complained of has been discontinued by respondent, 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 trial thereof in accordance with its regular procedure.

*Mr. Carrel F. Rhodes* for the Commission.

*Scandrett, Tuttle & Chalaire*, of New York City, for respondent.

NESTLE'S MILK PRODUCTS, INC. Complaint, December 29, 1941. Order, August 6, 1943. (Docket 4661.)

Charge: Advertising falsely or misleadingly as to nature of product; in connection with the preparation and sale of food product "Nescafé."

Record closed by the following order:

This proceeding having been heard by the Federal Trade Commission, answer of the respondent, testimony, and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, briefs in support of the complaint, and in opposition thereto, and oral argument of counsel; and

It appearing to the Commission that the respondent is engaged in the manufacture, sale, and distribution of a powdered coffee extract designated "Nescafé," which is manufactured by extracting the coffee soluble solids from roasted coffee and adding thereto an equal amount of carbohydrates consisting of dextrans, maltose, and dextrose; and

It further appearing that the respondent in its current advertising is disclosing the proportion of the added carbohydrates used with the coffee soluble solids; 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 same and resume trial thereof in accordance with its regular procedure.

Before *Mr. John P. Bramhall*, trial examiner.

*Mr. DeWitt T. Puckett* for the Commission.

*Cravath, DeGersdorff, Swaine & Wood*, of New York City, for respondent.

THE CUMMER PRODUCTS Co. Complaint, January 9, 1942. Order, August 7, 1943. (Docket 4667.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to qualities, properties, or results of products; in connection with the manufacture and sale of a white shoe cleaner designated "Energine Shoe White."

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 the respondent, the Cummer Products Co., a corporation, has been dissolved as of December 31, 1942, and

is no longer a corporate entity, and that its business has been taken over by Sterling Drug, Inc., and that the advertising practices complained of in the complaint herein have been discontinued by Sterling Drug, Inc., 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 trial thereof in accordance with its regular procedure.

Before *Mr. John P. Bramhall* and *Mr. W. W. Sheppard*, trial examiners.

*Mr. Merle P. Lyon* for the Commission.

*Rogers, Hoge & Hills*, of New York City, for respondent.

CALLAWAY MILLS. Complaint, May 17, 1941. Order, September 10, 1943. (Docket 4506.)

Charge: Discriminating in price by selling its tufted bedspread, bath mats, rugs, and allied products to certain purchasers at lower prices than the prices at which it sells products of the same grade and quality to other of its purchasers, and by giving and allowing certain of its purchasers adjustments, rebates, or discounts not given or allowed to other of respondent's said purchasers; in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon motion of counsel for the respondent herein to withdraw answer dated June 9, 1941, and to substitute an answer dated August 6, 1943, and the Commission having duly considered said motion and being now fully advised in the premises.

*It is ordered*, That the motion of counsel for respondent herein be, and the same hereby is, denied.

*It is further 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 trial thereon in accordance with its regular procedure.

*Mr. John T. Haslett* for the Commission.

*Lovejoy & Mayer*, *Mr. Hatton Lovejoy*, and *Mr. Charles W. Allen*, of La Grange, Ga., for respondent.

TENNESSEE TUFTING Co. Complaint, April 8, 1942. Order, September 10, 1943. (Docket 4744.)

Charge: Discriminating in price by selling its tufted bedspreads, bath mats, rugs and allied products to some purchasers at lower prices than the prices at which it sells products of the same grade and quality to other of its purchasers, and by giving and allowing certain of its purchasers adjustments, rebates, or discounts not given or allowed to others of respondent's said purchasers; in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon motion of counsel for the respondent herein to withdraw answer dated May 4, 1942, and to substitute an answer dated August 10, 1943, and the Commission having duly considered said motion and being now fully advised in the premises.

*It is ordered*, That the motion of counsel for respondent herein be, and the same hereby is, denied.

*It is further 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 trial thereof in accordance with its regular procedure.

*Mr. John T. Haslett* for the Commission.

*Bass, Berry & Sims*, of Nashville, Tenn., for respondent.

CONTINENTAL BAKING Co. Complaint, May 31, 1940. Order, October 18, 1943. (Docket 4149.)

Charge: Pursuing in various trade areas policies which involve the use of certain unfair methods of competition, and involve and have been characterized and effectuated by unfair or deceptive and oppressive and monopolistic acts and practices, in connection with distribution and sale of bread and allied products; in violation of the provisions of section 5 of the Federal Trade Commission Act; and discriminating in price between different purchasers buying such products of like grade and quality, by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers, many of whom are competitively engaged one with the other in the resale of said products within the United States; in violation of the provisions of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

Complaint: The Federal Trade Commission having reason to believe that the Continental Baking Co., a corporation, has been and is using unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of section 5 of the

Federal Trade Commission Act (U. S. C. title 15, sec. 45) and is violating the provisions of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C. title 15, sec. 13), and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission hereby issues its complaint, stating its charges as follows:

### Charge I

Paragraph 1. The respondent, Continental Baking Co., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 630 Fifth Avenue, New York, N. Y.

Par. 2. Respondent corporation is now and has been engaged in the business of processing, manufacturing, offering for sale, selling, and distributing bread and allied products in all parts of the United States. The respondent is one of the largest producers and distributors of bread and allied products in the United States and occupies a dominating position in said industry. The production of respondent's products is carried on at some 82 factories or plants owned and operated by it and located in some 28 States of the United States and in the District of Columbia. Respondent sells its products to retailers, to the institutional trade, and to restaurants. Such products are resold by retailers to the consuming public. The term "trade area" as used in this complaint refers to the area surrounding each individual plant of the respondent, within which the products manufactured at such plant are marketed and distributed.

The respondent, through a wholly owned subsidiary, the Paniplus Co., having the same officers and directors as those of the respondent corporation Continental Baking Co., and which has the same general office as that of the respondent, Continental Baking Co., operates a plant for the manufacture of yeast foods and whole wheat flour in Kansas City, Mo. The products manufactured by the Paniplus Co. are distributed by the respondent to its various plants located in the various States of the United States and in the District of Columbia.

The respondent, through a wholly owned subsidiary, the Hall Baking Co., having the same officers and directors as those of the respondent corporation, Continental Baking Co., and which has the same general office as that of the respondent, Continental Baking Co., operates various plants in Buffalo, N. Y.; Cleveland, Ohio; Detroit, Mich.; Boston, Mass., and Denver, Colo., for the manufacture of bread and allied products, which products are sold in competition with the respondent's nationally advertised products and in competition with similar products manufactured by other competitors.

## [Continental Baking Co.—Continued]

The respondent maintains and operates two testing laboratories, one located in Kansas City, Mo., and the other in Jamaica, Long Island, N. Y., where all ingredients used in the manufacture of the respondent's products are tested and where approvals are given for such ingredients to be used by all plants operated by respondent.

Par. 3. All commodities and ingredients used in connection with the manufacture of bread and allied products in each plant operated by the respondent are purchased through the respondent's main office at 630 Fifth Avenue, New York, N. Y. Orders for various ingredients to be used in the manufacturing of bread and allied products are transmitted by the plant managers under the general supervision of the main office in New York to the respondent's main office and there such orders are placed with various sellers for such commodities, and as a result of such orders, commodities are shipped and transported from the State of origin of such products across State lines to the various plants of the respondent.

Such ingredients and commodities essential to the manufacture of the respondent's products are generally of a perishable nature, and upon the arrival at the various plants operated by the respondent are converted into bread and allied products, which in turn are shipped and transported by the respondent to customers located within the trade area of each such plant so operated by the respondent. Some customers of the respondent are located in States other than the State in which such plant is located, and in such cases the products sold by respondent are transported across State lines from the plant to the customer.

In some places respondent maintains and operates depots for the distribution of its products and ships its products from one or more of its plants to such depots, from which they are distributed as hereinafter stated. Some of said depots are located in States other than the States in which the plants serving them are located, and in such cases respondent's goods are transported across State lines from plant to depot.

In the various trade areas, respondent distributes its products from its plants or depots, or both, by trucks owned by respondent, and operated by employed salesmen who are paid for such employment on a salary and commission basis. Such salesmen operate trucks from the various plants or depots over certain specified routes, some of which cross State lines. Each salesman is employed to solicit, take orders for, and sell respondent's products to customers and prospective customers located along his route, as well as to transport and deliver such products to such customers. Such salesmen, in the ordinary course of their employment, receive and accept from



customers orders for respondent's products to be delivered later, and as a result of such orders do at a subsequent time transport and deliver such products to such customers and receive payment for the same. Such salesmen ordinarily furnish their superiors with an estimate sheet each day showing the amount of bread that they will require to fill the following day's orders. Such estimates are based ordinarily upon the standing requirements of the respondent's various customers, which are known on the day previous to the actual transportation and delivery of such products.

Par. 4. There is and has been a continuous current of trade and commerce in the commodities so purchased by respondent for use in the manufacture of bread and allied products, across State lines, between the point of origin of such commodities and the respondent's plants located in the several States of the United States and in the District of Columbia, thence through respondent's plants, in which such commodities are converted into bread and allied products, and thence in the converted form from the plants, directly to their destination, respondent's customers, or indirectly to such destination through respondent's depots.

Respondent's enterprise is one which is managed, controlled, and directed from its principal office in New York, N. Y., and which is operated with the single objective of marketing its products to the consuming public in all parts of the United States. In furtherance of this objective and as a requisite to its achievement, respondent makes constantly recurring and continuous use of interstate channels and facilities of transportation, communication, and commerce. The plan of operation of respondent from the purchase or manufacture of raw materials, to the transportation of such materials to its various plants, to the conversion of such materials into bread and allied products and the sale and distribution of such products to retailers and institutions depends upon the use of the facilities and instrumentalities of interstate commerce, and is effectuated through the means and channels of traffic and commerce between and among the several States. Such plan of operation is an integrated whole, and the commerce involved cannot be separated into constituent parts without destroying the flow of such commerce from its origin, in the form of raw material moving across State lines, to respondent's customers, to whom it is delivered in the form of bread and allied products. Respondent is engaged in interstate commerce, and the transactions affected by or involved in the practices charged in this complaint as being unlawful are transactions in the course of such commerce.

Par. 5. In the course and conduct of its business, as aforesaid respondent is now and has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged

## [Continental Baking Co.—Continued]

in the business of manufacturing, offering for sale, selling and distributing bread, and allied products in the United States.

Par. 6. In the course and conduct of its said business and in connection with the distribution and sale of its said bread and allied products, respondent is and has been pursuing policies in various trade areas which involve the use of certain unfair methods of competition and unfair or deceptive acts or practices. Said policies have been characterized and effectuated by various oppressive, monopolistic, and deceptive acts and practices, among which are the following:

1. In some trade areas respondent has taken the lead in setting and maintaining the current wholesale prices at which bread and allied products are distributed and sold by all manufacturers marketing said products in the area involved, has informed competing manufacturers, particularly those selling in said trade area exclusively, of the prices at which it was selling such products and of the prices at which it intended to sell same, including contemplated price changes, and has stated or implied by its statements that reprisals in the form of price cutting or valuable preferences to customers, common to it and to such competitors, would follow, in the event of a deviation from respondent's said schedule of prices by any competing manufacturer. In some cases the failure of competitors to follow the lead of respondent in its pricing policies has resulted in such reprisals, to the detriment and injury of such competing manufacturers. By the means above described, respondent has instilled into the minds of its competitors and made it generally understood in the trade that it would not and does not tolerate, without reprisals, sales of bread and allied products at wholesale in any trade area at lower prices than those at which respondent sells its products. The practice above described has had the tendency and effect of preventing any reduction in the wholesale price of bread or allied products in given trade areas and of eliminating price competition in the sale of such products. Such practices, used in connection with respondent's policy of widely advertising its bakery products, particularly bread, has and has had the effect of prejudicing and injuring the competitive position of competing bakeries and of restraining trade in the products mentioned.

2. In many trade areas respondent has placed upon the wrappers of bread sold by it to retail stores the price of such bread to the consumer customer of said store, said retail price so printed on said wrappers being based upon the wholesale price made effective by respondent in the manner set forth in the preceding paragraph. It is impossible for the retailer to resell such bread at a price which is either less or more than that so displayed on said wrappers. Such retail price so advertised and displayed is usually designated without

the approval or consent of respondent's retailer customers and results in the arbitrary fixing by respondent of such customers' margin of profit in the resale of such bread and in fixing not only the minimum but the maximum prices at which said bread is so resold to the consuming public.

3. In some trade areas or with some customers in a certain trade area, respondent has promoted the resale of its bread by the retailers to the consuming public by the use of a lottery device, whereby respondent places in some loaves of bread lucky numbers redeemable in a substantial sum in cash or in valuable commodities by the consumer purchaser who purchases the particular loaves containing such lucky numbers. Respondent advertises to the consuming public that among the loaves of bread being sold by its retailers to consumers are lucky numbers with valuable prizes in an amount specified. Respondent uses such lottery device to stimulate and promote the sale of its bread and it effectively accomplishes this purpose, thus prejudicing competing bakeries who do not use lotteries in connection with the sale of bread produced by them.

4. In some trade areas, or with some customers in a certain trade area, respondent has pursued a practice of secretly giving away to some customers operating retail stores certain free goods, such as cup cakes, with bread purchased by such retailer from respondent to the detriment of competing bakeries who are forced to meet such competition without knowledge of its true character and without the means of obtaining such knowledge.

5. In some trade areas, or with some customers in a certain trade area, respondent has secretly made allowances in money or gifts of bakery products to certain retailer customers in return for the use of a preferred display position on the customer's bread rack or other facilities, which stimulate the sale of respondent's products and which result in a denial to competitors of the use of such preferred position or such advantageous facilities.

6. In some trade areas, or with some customers in a certain trade area, respondent has given away to some of its retailer customers free of charge valuable facilities or articles of equipment, such as bread racks and trays, useful for and used by such retailers in promoting the resale of respondent's products. As a condition to such gifts, respondent reserves the most advantageous shelves or places for the display of the products sold by it and requires that the retailer use such racks and trays in a manner which will stimulate the resale of respondent's products and minimize the resale of competitors' products. The cost of such bread racks and trays and equipment is substantial. Many competing bakeries are unable, on account of the limited volume of their sales, to profitably acquire and give away comparable sales facilities and equipment to their retail customers

## [Continental Baking Co.—Continued]

also selling respondent's bread. As a result of respondent's practice of giving away the valuable facilities referred to, many of its competitors are unable to have their bread adequately displayed for resale to consumers in the retail stores which have been so favored by respondent by gifts of the facilities or equipment mentioned.

7. In many trade areas and among many of its customers in certain trade areas respondent has unfairly and deceptively restrained trade in bread and allied products with the purpose and effect of injuring, destroying, or preventing competition between it and competing bakeries and with a tendency toward creating a monopoly in the sale and distribution of said products in the various trade areas in which it markets the same.

PAR. 7. The capacity, tendency, and effect of said policies, practices, and acts are and have been to control prices under which bread and allied products are sold in the various trade areas hereinabove described; to determine, at least in part, the prices at which such products are sold and distributed in the said trade areas; to tend to monopolize in the respondent the business of selling and distributing said products in the various trade areas referred to; and to unreasonably lessen, restrain, hinder, and suppress competition in the sale and distribution of bread and allied products in the United States.

Par. 8. The policies, acts, and practices above alleged are all to the prejudice of the public, and constitute unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act.

## Charge II

Paragraph 1. The allegations of paragraphs 1 to 5, inclusive, of charge I are hereby incorporated herein by reference as though fully set forth verbatim, and repeated in this charge.

Par. 2. In the course and conduct of its business, as aforesaid, the respondent has been and is now discriminating in price between different purchasers buying such products of like grade and quality, by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers many of whom are competitively engaged one with the other in the resale of said products within the United States.

Among the general practices pursued by the respondent in discriminating in price, it is alleged that:

1. The respondent, in certain trade areas or localities, sells its bread of like grade and quality and of a definite weight at one price, while at the same time in another trade area served from the same plant the same type of bread and of the same weight is sold at a lower price.

The respondent in certain trade areas or localities sells bread of the same grade and quality and of a definite weight at one price while at the same time in another trade area served from the same plant or factory, bread of the same grade and quality, but greater in weight, is sold for the same price as bread of less weight.

The respondent, in certain trade areas or localities, sells bread of the same grade and quality and of a definite weight on a specified route at one price, while at the same time on the same route served from the same plant or factory bread of the same grade and quality, but greater in weight, is sold for the same price as bread of less weight.

2. The respondent manufactures and distributes its bread products under various brand names and has sold and is selling bread of the same grade and quality under a particular brand name of a definite weight at one price while selling bread of the same grade and quality under another brand name and of a greater weight in the same area at the same price.

3. In certain trade areas and localities, the respondent grants to certain of its customers, who are competitively engaged with other of the respondent's customers, certain varying discounts which are deducted from the customer's account and which effect a selling price which is lower to such customer than prices paid by other customers.

4. The respondent causes to be inserted in the wrappers of bread manufactured by the respondent in some of its trade areas coupons of a certain face value, which are redeemable through retailers selling the respondent's products for merchandise handled by such retailers, and the face value of which is paid or granted by respondent to the retailer redeeming the same. The use of such coupons results in sales of bread at lower prices to some customers than to other competing customers.

5. In certain trade areas the respondent furnishes the retailer with twice the amount of bread that such retailer has ordered, charging said customer for the amount so ordered only. This is done to enable the retailer to give away, free of charge, a loaf of respondent's bread with every loaf sold by him which is the practice followed by such retailer in such cases.

PAR. 3. The effect of the discriminations in price, generally and specifically mentioned in paragraph 2 hereof, has been and may be substantially to lessen competition in the line of commerce in which respondent is engaged and to injure, destroy and prevent competition between the respondent and its competitors in the sale and distribution of bread and allied products, and has been and may be to tend to create a monopoly in respondent in said line of commerce

## [Continental Baking Co.—Continued]

in the various localities or trade areas in the United States in which respondent and its competitors are engaged in business.

PAR. 4. The foregoing acts and practices of said respondent are violations of subsection 2 (a) of section 1 of the said act of Congress approved June 19, 1936, entitled "An Act to amend section 2 of an 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."

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the record, including briefs and oral argument of counsel, and it appearing that the allegations of the complaint have not been sustained by the evidence, 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 the same hereby is, dismissed.

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

*Mr. John T. Haslett* and *Mr. Allen C. Phelps* for the Commission.  
*Mudge, Stern, Williams & Tucker* and *Mr. George Fawcett, Jr.*, of New York City, for respondent.

PAKULA AND CO., TRADING AS L. W. RING CO. Complaint, January 23, 1942. Order, November 2, 1943. (Docket 4676.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to nature, quality, composition, and guarantee of product; in connection with the wholesaling of jewelry and novelties to dealers.

Dismissed by the following order:

This matter coming on to be considered by the Commission upon the complaint and the answer, and it appearing to the Commission that the respondent, Pakula & Co., a corporation was dissolved on November 26, 1941.

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should conditions warrant.

*Mr. B. G. Wilson* for the Commission.

*Mr. Henry Junge* and *Mr. Edward Graff*, of Chicago, Ill., for respondent.

WILLIAM I. MILLER, TRADING AS MILLER MANUFACTURING CO. Complaint, July 10, 1943. Order, November 16, 1943. (Docket 5001.)

Charge: Using misleading product name, and advertising falsely or misleadingly as to qualities, properties or results, and comparative merits of product; in connection with the manufacture and sale of a certain compound designated "Wonder Weld" or "Wonderweld," for use in repairing water jackets, cylinders, or other metal parts of machinery.

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 it hereby is, closed without prejudice to the right of the Commission, should the future facts so warrant, to reopen the case and resume trial thereof in accordance with the Commission's regular procedure.

Before *Mr. Randolph Preston*, trial examiner.

*Mr. John M. Russell* for the Commission.

*Mr. Morris A. Rabkin*, of Camden, N. J., for respondent.

MONTE CARLO HATS, INC. Complaint, April 6, 1942. Order, November 20, 1943. (Docket 4742.)

Charge: Neglecting, unfairly or deceptively, to make material disclosure as to new appearing product being made in part from old, worn, or previously used fur materials; in connection with the manufacture and sale of women's hats.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that respondent went out of business over a year prior to the issuance of the complaint, with no indication that said business will be resumed, 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 trial thereof in accordance with its regular procedure.

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

*Mr. L. E. Creel, Jr.*, and *Mr. William L. Pencke* for the Commission.

RETONGA MEDICINE Co. Complaint, November 14, 1939. Original findings and order, June 25, 1940. 31 F. T. C. 225. (Docket 3949.) Order setting aside, vacating, etc., November 26, 1943.

Charge: Advertising falsely or misleadingly as to qualities, properties, or results of product; in connection with sale of a medicinal preparation, composed of drugs and known as "Retonga."

Order setting aside order of May 25, 1943, and vacating and setting aside stipulation as to the facts, findings as to the facts and conclusion, order to cease and desist and closing case without prejudice, follows:

This matter coming on to be heard by the Commission upon respondent's motion to vacate and set aside the order issued on May 25, 1943, denying the petition filed by respondent on March 22, 1943, wherein it was prayed that the order to cease and desist issued in this matter on June 25, 1940, be set aside and the case reopened for the purpose of taking testimony, 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 order of May 25, 1943, denying respondent's petition be, and the same hereby is, set aside.

*It is further ordered*, That the stipulation as to the facts approved by the Commission on June 20, 1940, the findings as to the facts and the order to cease and desist both issued on June 25, 1940, be, and the same hereby are, vacated and set aside.

*It is further ordered*, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice.

*Mr. J. W. Brookfield, Jr.*, for the Commission.

*Mr. R. J. Reynolds, Jr.*, of Atlanta, Ga., for respondent.

REED DRUG Co., INC. Complaint, May 22, 1941. Order, December 14, 1943. (Docket 4507.)

Charge: Advertising falsely or misleadingly as to qualities, properties or results, and safety of product, and neglecting to make material disclosure; in connection with the sale of a medicinal preparation designated "Mrs. Bee's Femo Capsules," "Femo-Caps," and "Bee Caps."

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 trial thereof in accordance with its regular procedure.

Before *Mr. James A. Purcell*, trial examiner.

*Mr. William L. Taggart*, for the Commission.

*Mr. Frank E. Trobaugh*, of West Frankfort, Ill., for respondent.

THE NACOR MEDICINE Co. Complaint, February 16, 1939. Order, December 24, 1943. (Docket 3715).

Charge: Advertising falsely or misleadingly as to qualities, properties or results, testimonials and safety, and neglecting to make material disclosure; in connection with the sale of medicinal preparations known as "Nacor" and "Nacor Kaps," an alleged remedy for asthma.

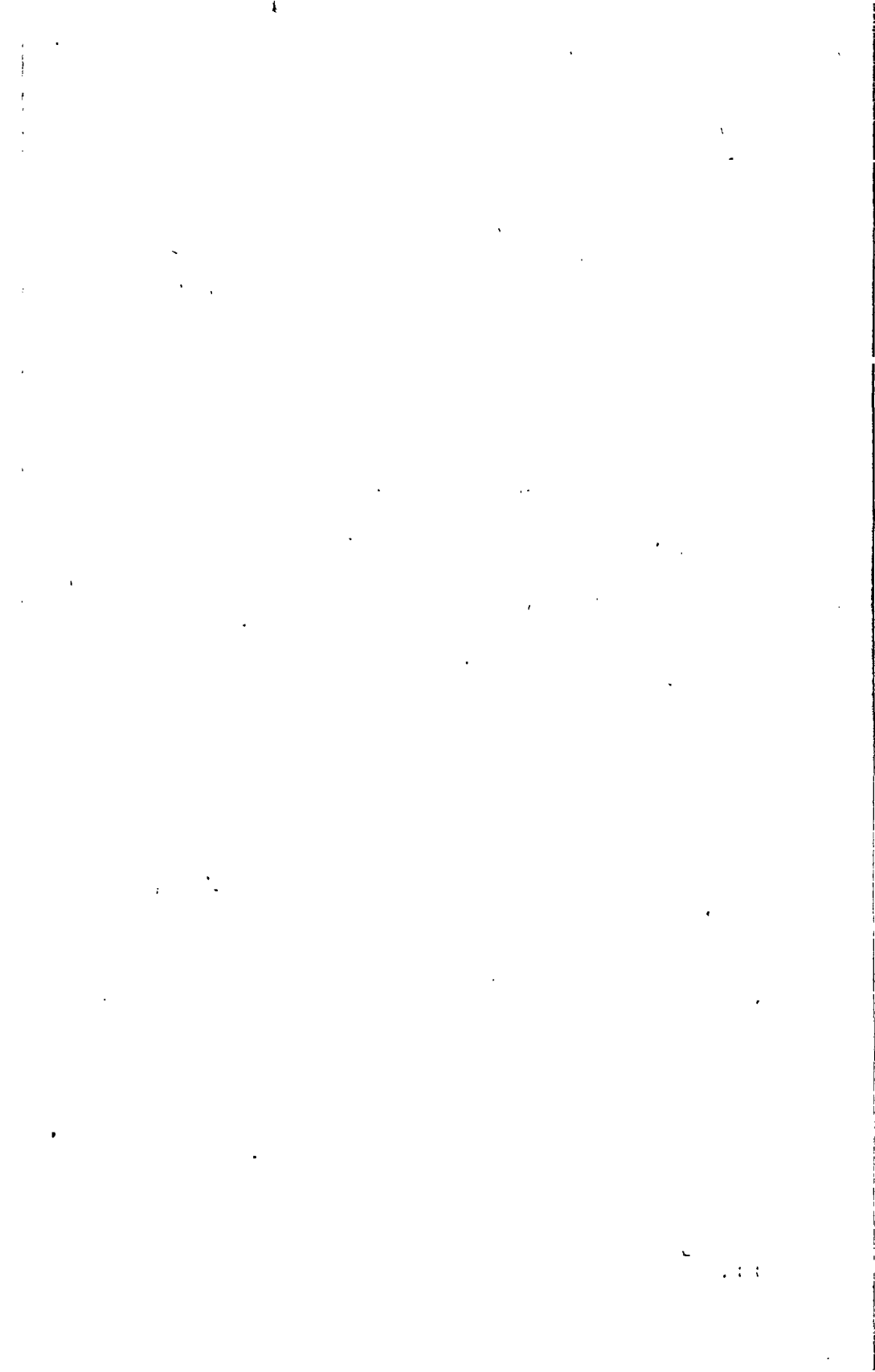
Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record and the Commission having duly considered the 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 further facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

*Mr. William L. Pencke* for the Commission.

*Bright, Thompson & Mast*, of Washington, D. C., for respondent.



## STIPULATIONS<sup>1</sup>

### DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST<sup>2</sup>

3681. **Knitting Yarns—Source or Origin.**—James Lees & Sons Co., engaged in the sale and distribution of knitting yarns in interstate commerce in competition with other corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

James Lees & Sons Co., in connection with the sale and distribution of yarns in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from the use of the words "Spanish," "Scotch," "Persian," "Shetland," "Saxony," or other word or words connoting foreign geographical origin as designations for or as descriptive of a product or products which are not made of materials grown or produced in the country or locality indicated by such geographical designation or term.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said James Lees & Sons Co., in any respect, of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. (July 5, 1943.)

3682. **Photographs, Etc.—"Studio", Introductory or Special Offer and Prices.**—Kermit R. Sanders, engaged in the sale and distribution of photographs or enlargements of photographs in interstate commerce, in competition with other individuals, firms, or corporations likewise

<sup>1</sup> For false and misleading advertising stipulations effected through the Commission's radio and periodical division, see p. 763 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely July 1, 1943, to December 31, 1943, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols. 10 to 36 of the Commission's decisions.

<sup>2</sup> In the interest of brevity there are omitted from the published digests of the published stipulations agreements under which the stipulating respondent or respondents, as the case may be, agree that, should such stipulating respondent or respondents ever resume or indulge in any of the practices, methods, or acts in question, or in event 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.

engaged in the sale and distribution of similar products, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Kermit R. Sanders, in connection with the sale and distribution of his photographs or enlargements of photographs in commerce as defined by the Federal Trade Commission Act, agreed to forthwith cease and desist from

(a) Use of the words "Art Studio" or "Studio" as part of his trade name; and from the use of said word or words or other word or words of like meaning in any manner so as to import or imply that he actually owns and operates or directly and absolutely controls a studio or photographic establishment.

(b) Representing, directly or inferentially, that an offer of photographs or photographic enlargements is an introductory or special offer when, in fact, it is a regular offer; or that the usual or customary price of any photograph or photographic enlargement is an introductory or special price.

(c) The use of fictitious price figures on advertising cards or circulars used in connection with the sale of such products; and from otherwise representing as the customary or usual prices thereof, prices which in fact are fictitious and in excess of the prices that he regularly and customarily charges for said products. (July 5, 1943.)

3683. Cigars—Size of Business and Qualities, Properties, or Results.—Rossi Cigar Co., Inc., engaged in the sale and distribution of cigars in interstate commerce, in competition with other corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Rossi Cigar Co., Inc., in connection with the sale and distribution of cigars in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from representing, directly or inferentially:

(a) That it is the largest manufacturer on the Pacific coast, that is, the western coastal States of the United States, of "Toscani" cigars or cigars simulating Italian cigars, or of cigars generally.

(b) That the smoking of Rossi brand cigars or any other cigars is harmless, easy on the throat, or will not cause dryness of the mouth. (July 5, 1943.)

3684. Medicinal Preparations—Safety.—Albert G. Groblewski & Co., engaged in the sale and distribution in interstate commerce of medicinal preparations, including products designated "Groblewski's Headache Powders," "Groblewski's Nasal Jelly," "Groblewski's Jadol," "Nervoteine," "Groblewski's Preparation 'C,'" "Groblewski's Powders for Round Worms," "Oohotin," "Groblewski's Revila Powders," and

"Egiuterro," in competition with other corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Albert G. Groblewski & Co., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed to forthwith cease and desist from disseminating any advertisement pertaining to the preparations designated "Groblewski's Headache Powders," "Groblewski's Nasal Jelly," "Groblewski's Jadol," "Nervoteine," "Groblewski's Preparation 'C,'" "Groblewski's Powders for Round Worms," "Oohotin," "Groblewski's Revila Powders," "Egiuterro," or any other preparations of substantially the same properties, whether sold under such names or any other names, which fail clearly to reveal:

(a) That the use of "Groblewski's Headache Powders" may cause collapse and/or that repeated doses thereof may cause dependence upon the drug; that not to exceed 2 powders should be taken within 24 hours; that if conditions persist or recur frequently a physician should be consulted; and that the preparation should not be given to children.

(b) That the repeated or excessive use of "Groblewski's Nasal Jelly" by aged or debilitated persons or by infants may produce oil injury in the lungs; that said preparation should not be used by persons afflicted with heart disease or high blood pressure; that it should not be used in excess of the dosage indicated in the directions for the use thereof; and that if nasal congestion persists or recurs frequently a physician should be consulted.

(c) That "Groblewski's Jadol" is a laxative and should not be taken in the presence of nausea, vomiting, abdominal pains, or other symptoms of appendicitis; that in cases of lung disease or chronic cough, goiter, or thyroid disease, a physician should be consulted before using such preparation; and that if a skin rash appears the use thereof should be discontinued.

(d) That the frequent or continued use of "Nervoteine" may result in mental derangement and/or cause a rash or skin eruptions; and that said preparation should not be used continuously or in excess of the dosage indicated in the directions for the use thereof.

(e) That the frequent or continued use of "Groblewski's Preparation 'C'" may result in mental derangement and/or cause a rash or skin eruptions; that not more than 3 doses thereof should be taken in any 24-hour period; and that if pain persists or recurs frequently a physician should be consulted.

(f) That "Groblewski's Powders for Round Worms" contain a laxative and should not be taken in the presence of nausea, vomiting, abdominal pains, or other symptoms of appendicitis; that said prepa-

ration should not be used in excess of the dosage indicated in the directions for the use thereof; that castor oil or foods or other preparations containing oil or fat should not be used while such powders are being taken; and that the prescribed dose should not be repeated within 7 days.

(g) That "Oohotin" should not be used if there is discharge from the ear or if the ear drum is punctured or perforated.

(h) That "Grobleski's Revila Powders" and "Egiuterro" are laxatives and should not be taken in the presence of nausea, vomiting, abdominal pain, or other symptoms of appendicitis: *Provided, however,* That if the directions for the use of each of said preparations, whether appearing on the label, in the labeling or in both label and labeling contain adequate and specific warnings of its potential danger to health as aforesaid, said advertisement need contain only the cautionary statement: "CAUTION, Use only as Directed." (July 5, 1943.)

3685. Pamphlet—"Federal," "Institute," Qualities, Properties or Results, Success, Use, or Standing, Etc.—Herbert W. Knopp and Edgar W. Mong, copartners, trading as Federal Victory Garden Research Institute, engaged in the publication of a pamphlet entitled "Introduction to Chemiculture" and in the sale and distribution thereof in interstate commerce, in competition with other firms, individuals, 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.

Herbert W. Knopp and Edgar W. Mong, and each of them, in connection with the offering for sale, sale, and distribution of their pamphlet "Introduction to Chemiculture," or similar publications, in commerce as defined by the Federal Trade Commission Act, agreed forthwith to cease and desist from—

(a) The use of the trade designation "Federal Victory Garden Research Institute" for their business, or of the words "Federal," "Victory Garden," "Research," or "Institute," either alone or in combination with other words, in any manner which imports, implies, or may lead to the impression or belief that said concern is connected with a Federal agency, is or may be a coordinate province of the Federal Victory Garden program, is a research undertaking, or is an organization for the promotion of learning, philosophy, art, or science.

(b) The use of the word "director" or reference to their "organization" in any manner connoting that said concern is an extensive business structure.

(c) The use of statements, slogans, or legends such as "Don't Go Hungry," "Win the War On Your Own Back Porch," "Solve Your Vegetable Rationing Problems in the Chemiculture Way," "A Victory Garden the Chemiculture Way," or presentations of like import having

the capacity or tendency to cause the impression or belief that through chemiculture, or by the instructions in their pamphlet, the ordinary house dweller may have his own ample food supply, eliminate the need of food ration coupons, grow a victory garden, or help win the war.

(d) Designating as a "Victory Garden" any such set-up of growing facilities as fruit jars, window boxes, sand trays, tanks, or the like.

(e) Citing the experience of large commercial growers or scientific expeditions in any way as an example or suggestion of what the amateur chemiculturist can or may reasonably expect to accomplish.

(f) Pictorial representations that large, healthy garden plants abundantly laden with ripe, succulent vegetables can be grown in a glass fruit jar or similar container.

Representations in form letters, folders, circulars, or by any other advertising means—

(g) That chemiculture, soil-less culture, the hydroponic or any other method for growing plants or vegetables in a nutrient solution is a practical means for growing garden produce by the layman, average home owner, inexperienced gardener, or victory gardener.

(h) That food can be grown by chemiculture "nearly anywhere," "practically all year round," in one's attic, garage, basement, back porch, or "most any other available space."

(i) That no weeds, bugs, worms, or other pests or parasites need hinder the growth of plants grown by chemiculture; or otherwise, that such plants are not subject to the same general hazards and molestation as those grown in soil.

(j) That the quality of vegetables grown by chemiculture can be controlled with respect to mineral contents.

(k) That chemiculture is the "way to lick the problem of stale, vitamin-drained vegetables," or provides vitamin-laden vegetables in a "year round garden" without soil or dirt, on one's back porch, in his basement or elsewhere.

(l) That with chemiculture it is possible to produce several crops at once in the same container and under the same conditions.

(m) That the chemicals for a chemiculture garden are not expensive or by inference are readily available at the present time; that the cost of growing enough vegetables for a year by chemiculture is less than 1 month's purchasing at the market; or that the buyer of their "book" will save 10 times its cost in the first 6 months of use.

(n) That the reduction in the price of their pamphlet was due to the tremendous demand therefor, enabling them to reduce its cost; or otherwise, that said publication has been widely and favorably received by the public. (July 5, 1943.)

3686. Filtering Elements—Comparative Merits.—Charles A. Winslow, Catherine B. Winslow, Lawrence L. Moore, and William G.

Nostrand, copartners, trading as Winslow Engineering Co., engaged in the business of manufacturing filtering elements designed for use as replaceable inserts in the various alleged standard makes of filters customarily employed in connection with motor engines sell said elements, called "Winslow Oil Conditioning Element," in interstate commerce; H. G. Makelim, an individual, engaged as a distributor, under the trade name "Magneto Repair Company," in the sale from his place of business of the filtering elements supplied him by the named copartners, in interstate commerce. Said copartners and individual, in competition with other partnerships and with individuals and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Charles A. Winslow, Catherine B. Winslow, Lawrence L. Moore, and William G. Nostrand, copartners, trading as Winslow Engineering Co., and H. G. Makelim, an individual, trading as Magneto Repair Co., and each of them, in connection with the advertisement, offering for sale, sale, or distribution of the so-called Winslow Oil Conditioning Element in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of any statement or representation, with respect to the said element, the effect of which conveys or tends or may tend to convey the impression or belief to customers or prospective purchasers that the said element will consistently pass and filter more oil than, or assure superior performance to, any other type of filtering element, when used in connection with any of the alleged standard makes of oil filters; or that it will perform as represented, when used in any type of oil filter, or is capable of performing in excess of what is actually the fact. (July 6, 1943.)

3687. Furniture—Business Connections and Reproductions.—Tomlinson of High Point, trading also as The Williamsburg Galleries, engaged in the manufacture of furniture and in the sale and distribution thereof in interstate commerce, in competition with other corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Tomlinson of High Point, in connection with the sale and distribution of its furniture in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) The use of the trade or corporate name "The Williamsburg Galleries" and the legend or motto "That the Future may Learn from the Past"; and from the use of the word "Williamsburg" or any other word, term, expression, legend, or motto in any manner



the effect of which tends or may tend to convey the belief or impression that Tomlinson of High Point or any subsidiary or agency thereof has a working agreement with, is a subsidiary of or is connected with Colonial Williamsburg, Inc.

(b) The use of or placing in the hands of others the means to use, any statement, depiction, or representation the effect of which tends or may tend to convey the belief or impression that its furniture or any thereof is a reproduction, that is, a true counterpart or reconstruction, of the original and/or reproduced eighteenth century furniture with which the reconstructed homes at Williamsburg, Va., are furnished. (July 9, 1943.)

3688. **Ticking Cloth—Qualities, Properties, or Results.**—McC Campbell & Co., Inc., a corporation, engaged in the sale and distribution of textile fabrics, including ticking cloth, in interstate commerce, in competition with other corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

McC Campbell & Co., Inc., in connection with the sale and distribution of its said ticking cloth in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing, directly or inferentially, that said cloth is anti-septic, sanitary, germ repellent, or mildew resistant; or that it has been so treated as to be rendered antiseptic, sanitary germ repellent, or mildew resistant. (July 9, 1943.)

3689. **Ticking Fabrics—Qualities, Properties, or Results.**—M. Binkovitz & Sons, Inc., engaged in the sale and distribution of ticking fabrics, or mattress coverings in interstate commerce, in competition with other corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

M. Binkovitz & Sons, Inc., in connection with the sale and distribution of its said ticking fabrics, or mattress coverings, in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) The use of the words, "Sanotick," "Sanibed," or other word or words simulating or connoting the word "sanitary" as trade names or designations thereof.

(b) Representing, directly or inferentially, that said products are sanitary, antiseptic, germ repellent, bacteriostatic, or mildew resistant; or that such products inhibit or prevent the growth of bacterial life.

(c) The use of the words "Health Tick" or "Health" as descriptive of such products; and the use of the word "health" either alone or in connection with any other word or words so as to import or imply

that said product or products is or are of therapeutic value in the cure or prevention of disease or will assure health to the user thereof. (July 19, 1943.)

3690. Furniture—Source or Origin and Factory to You.—H. Bogin & Son, Inc., engaged in the sale and distribution of furniture in interstate commerce, in competition with other corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

H. Bogin & Son, Inc., in connection with the sale and distribution of furniture in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. The use of the words "Grand Rapids Furniture Company" as a trade name; and from the use of the words "Grand Rapids" or any simulation of such words in any manner the effect of which tends or may tend to convey the belief or impression that any furniture not actually produced in Grand Rapids, Mich., is manufactured or produced in such city.

2. The use of the phrases "From Factory to You" or "From Factory Direct to You" in promoting the sale of such furniture; and from any representation the effect of which tends or may tend to convey the belief or impression that it manufactures or produces its merchandise or that it actually owns and operates or directly and absolutely controls a plant or factory in which such merchandise is made or manufactured. (July 19, 1943.)

3691. Vacuum Cleaners—Rebuilt and Value.—Fair Store, a corporation, engaged in the business of conducting a department store from which it sells a general line of merchandise 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.

Fair Store, in connection with the advertisement, offering for sale, sale, or distribution of its so-called rebuilt Eureka cleaners in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist—

1. From the use of the term "Completely rebuilt at the factory," or of any other term of similar import, in connection with the word "Eureka," or with any other word or words, so as to import or imply, or the effect of which tends or may tend to cause or convey the belief or impression that the device in question has been rebuilt or reconstructed at the factory of the Eureka Vacuum Cleaner Co. of Detroit, Mich.

2. From representing that the said device offered for sale by the said corporation for \$14.95, is a \$29.95 value; and from representing,

in any way, that the value of said device is of any indicated amount in excess of the sum for which said device is customarily sold to purchasers by the said corporation in the usual course of its business. (July 19, 1943.)

3693.<sup>1</sup> **Clothing—Second-hand or Used as New and Composition.**—Anna Miller, engaged in the sale and distribution of worn, second-hand, or previously used clothing in interstate commerce, in competition with other individuals and with corporations and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Anna Miller, in connection with the sale and distribution of merchandise in commerce as defined by the Federal Trade Commission Act, agreed that she will forthwith cease and desist from:

(a) Advertising, labeling, invoicing, selling, or offering for sale any worn, second-hand, or previously used article of clothing unless there be securely attached to the exposed surface thereof with sufficient permanency to remain thereon in a conspicuous, clear, distinct, and plainly legible condition throughout the sale, resale, distribution, and handling incident thereto, a tag or label bearing the conspicuous statement that such article of clothing is second-hand or has been previously used or worn, and also without clearly and conspicuously disclosing in or on any and all advertisements or sales promotional literature pertaining thereto the fact that such article of clothing is second-hand or has been previously used or worn.

(b) The use of any fiber designation in connection with the advertising, labeling, invoicing, selling, or offering for sale of any of their merchandise unless such designation truthfully discloses each constituent fiber thereof in the order of predominance by weight, beginning with the largest single constituent, and also unless tags or labels bearing in conspicuous and legible terms such correct and specific fiber content designation be securely attached or affixed to the exposed surface of the article so offered for sale.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Anna Miller in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. (July 26, 1943.)

3694. **Publications and Home Study Courses—University, Nature, Scope, Etc.**—Milton University, Inc., and William James Heaps who personally controls and manages the business of said corporation, engaged in the sale and distribution, in interstate commerce, of publications for use in connection with a home study course of instruction and of

<sup>1</sup> Stipulation 3692, approved May 14, 1943, is reported in 36 F. T. C. 1079.

so-called diplomas or documents purporting to represent the attainment of academic degrees, in competition with educational institutions likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Milton University, Inc., and William James Heaps, individually and as president of said corporation, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of publications and/or home study courses of instruction, agreed that they, and each of them, will forthwith cease and desist from:

(a) Offering for sale, selling, conferring, distributing, delivering, or otherwise disposing of any document or writing purporting to represent any academic degrees as, for example, bachelor's degree, master's degree, or doctor's degree, or any diploma or other document purporting to have been issued by a duly qualified educational institution of higher learning authorized to confer academic or scientific degrees.

(b) The use of the word "University" as part of or in connection with the corporate or trade names under which they carry on their business; and from the use of such word or any simulation thereof or any other word or words of like meaning in any manner the effect of which tends or may tend to convey the belief or impression that they maintain, operate, or conduct a university.

(c) Representing in any manner, either directly or inferentially, that they conduct an accredited educational institution having a faculty of trained directors, or that they issue diplomas, degrees, or any similar certificates or documents that are recognized or accepted in the field of education generally or by any reputable college or university.

(d) Making any other material misleading or deceptive statement or representation, by way of oral presentation, advertisement or other means, concerning the character, nature, quality, value, or scope of their said course of instruction in any manner the effect of which tends or may tend to mislead or deceive students, prospective students, or the public. (July 22, 1943.)

3695. Mineralized Water—Qualities, Properties or Results, Composition and Indorsement or Approval.—Michel Manteris and George Aristotle, copartners trading as Bio-Mineral Products Co., engaged in the sale and distribution of a mineralized water called "Bio-Mineral" in interstate commerce, in competition with other partnerships and with individuals, 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.

Michael Manteris and George Aristotle agreed that, in connection with the sale and distribution in commerce, as commerce is defined

by the Federal Trade Commission Act, or the advertising, by the means and in the manner hereinabove set forth, of the product designated "Bio-Mineral," or of any other preparation composed of substantially the same properties, whether sold under such name or any other name or names, they, and each of them, will cease and desist forthwith from representing, directly or inferentially:

1. That the use of said product would constitute an adequate or dependable remedy, treatment, or relief for or a preventative of any of the following ailments, symptoms, or conditions:

Occasional constipation, indigestion or acid indigestion, bloating, sourness, bad breath, indisposition, common headaches, frequent colds, lazy tired feeling, weak kidneys, stomach disorders, decaying teeth, weak eyes, nervousness, poor vision, lumbago, acids or acid in the stomach, tuberculosis, cancer, nephritis, heart disease, appendicitis, piles, asthma, goitre, rheumatism or rheumatism pains, neuralgia, infantile paralysis, gallstones, stomach and kidney ailments, toxins or intestinal toxins, weak back, paleness, circles under the eyes, bladder trouble, getting up nights, arthritis, neuritis, backache, sciatica, leg pains, stiff or swollen joints.

2. That the said product contains a therapeutically significant or effective amount of any mineral which is recommended by Medical Science as a preventative of or as a remedy, treatment, or relief for any of the aforementioned ailments, or that the said product, "Bio-Mineral" would neutralize or cause the expulsion of waste material, gases or toxins from the intestines or relieve bloating.

3. That the said product is drugless, or that its use would insure health.

4. That the black color imparted to the stools of users of said product is indicative of the elimination of accumulated waste material, or that the use of the product would cause the elimination of such waste material or insure freedom from the effects of constipation or the accumulation of gases in the bowels.

5. That the use of said product would aid in the restoration of a ruined, weak, or sick human body, or would supply the user thereof with energy, good appetite, rosy color, a desire to work, or add years to the user's life.

6. That said product would be of benefit as a treatment for anemic conditions, except such as are the result of uncomplicated iron deficiency.

7. That said product would effectively prevent, alleviate, or correct diseased bowel conditions, or would cause the elimination of accumulated poisonous matter and/or maintain the colon in a cleanly and healthy state.

8. That the said product would exert a general tonic effect on the body, or could be depended upon to act as a tonic for all individuals, that it would be effective as a body builder, correct a run-down condition, or restore or produce strength or vitality, or that it is rich in minerals, or that it contains a significant amount of any mineral other than iron. (July 28, 1943.)•

3696. Dry Cleaner Compound—Qualities, Properties or Results.—Plough, Inc., engaged in the manufacture of various preparations, including a cleaning compound, and in the sale thereof, through controlled subsidiaries, namely, Plough Sales Corporation, and Plough Sales Corporation, Wholesale Division, in interstate commerce, in competition with other corporations and with individuals, partnerships and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Plough, Inc., in connection with the advertisement, offering for sale, sale or distribution of its dry-cleaner compound called "Mufti," or by any other name, in commerce, as commerce is defined by the Federal Trade Commission Act, either under its own corporate or trade name or through its controlled subsidiaries, or any thereof, agreed to cease and desist forthwith from the use of the statements "Removes Spots Instantly or Quickly," "remove spots from anything," "spots disappear almost instantly," "The Perfect Dry Cleaner," or of any other statement or representation of similar implication, so as to import or imply that use of said product will have the effect of removing spots or stains regardless of kind, either instantly, quickly, effectively, or completely, from fabrics generally, or that the application of said product to the spot or stain to be removed from various fabrics would not [sic] prevent the formation of a ring. (July 28, 1943.)

3697. Candy and Peanuts—Lottery Scheme.—Paul G. Whitson, an individual, trading as Wonder Peanut Co., engaged in the sale and distribution of candy and peanuts in interstate commerce, in competition with other individuals, firms, 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.

Paul G. Whitson, in connection with the sale and distribution of his said merchandise in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

1. Selling or distributing any merchandise so packed and assembled that sales of said merchandise to the public are to be made or, due to the manner in which such merchandise is packed and assembled

at the time it is sold by him, may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying or placing in the hands of others push cards or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means 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. (July 30, 1943.)

3698. Medicinal Preparation—Qualities, Properties or Results and Safety.—Cloren Richard Wade, engaged in the sale and distribution in interstate commerce of a medicinal preparation designated "Wade's Wonder Worker," in competition with other individuals, corporations, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Cloren Richard Wade, in connection with the sale and distribution in commerce, as defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth of the product designated "Wade's Wonder Worker" or any other preparation of substantially the same properties, whether sold under such name or any other name or names, has agreed that he will forthwith cease and desist from:

1. Representing that such preparation will remove corns or callouses instantly or afford immediate relief for such conditions; or that it contains ingredients not found in other preparations.

2. Representing, directly or inferentially, that said preparation is an effective treatment for bunions, chilblains, ingrowing nails, warts, old sores, boils, rusty nail wounds, tetter, eczema, poison oak, or all skin diseases.

3. The use of any statement or representation the effect of which tends or may tend to convey the belief or impression that said preparation is an adequate treatment for all deep-seated cases of athlete's foot or ringworm; that it is an effective treatment for bites or stings of poisonous insects; or that it can be depended upon to relieve all types of toothache or be of permanent benefit when used in the treatment of aching carious teeth.

4. Disseminating any advertisement pertaining to such preparation which fails clearly to reveal the potential danger incident to its use, and that, when used for the treatment of corns and callouses, it should be applied only to the corn or callous and not to the surrounding normal skin and, when applied to the skin, such application should be discontinued promptly if irritation develops in order to avoid serious damage to the skin: *Provided, however,* That if the directions for the use thereof, whether appearing on the label, in the labeling,

or in both label and labeling, contain adequate and specific warnings of its potential danger to health as aforesaid, said advertisement need contain only the cautionary statement: "CAUTION, Use only as Directed. (July 30, 1943.)

3699. **Cosmetic Preparations—Qualities, Properties or Results, Comparative Merits, Composition, Competitive Products and Research.**—Donald H. Miller and Matilda Miller, engaged in the manufacture of certain cosmetic preparations and in the sale and distribution thereof in interstate commerce, in competition with other individuals, firms, 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.

Donald H. Miller and Matilda Miller, individually, and as partners, in connection with the offering for sale, sale and distribution of their products in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, they and each of them, whether operating by their own names or under a trade name, agreed that they will forthwith cease and desist from representing, directly or by implication:

(a) That Vita-Fluff adds natural sheen, or any sheen or luster, to the hair.

(b) That Lovili is not similar to Vita-Fluff or that there is no similarity between these products "in any way"; or otherwise, that they are not identical except for a small content of synthetic oil added to Lovili.

(c) That Lovili creates a true sheen which will last indefinitely, or for any longer time than that produced by ordinary oil shampoos; or that such other sheen is false by comparison.

(d) That Glamour is made from actual lemon; or directly or inferentially that, as an acid-free production, it may be relied or depended upon to accomplish results equivalent to those from a lemon rinse.

Donald H. Miller and Matilda Miller also agreed to cease and desist from—

(e) Publishing statements to the effect that nonlathering oil shampoos do not rinse out of the hair, have little if any cleansing action, will not clean the hair or will alter the natural stretch of human hair; and from the use of any other unwarranted statement or representation which tends or may tend to disparage or discredit competitors or their products.

(f) Use of the trade designation "Northern Research Industries" for their business, or of the word "Research" either alone or in combination with other words in any manner which imports, implies,



or may lead to the impression or belief that said concern is, in point of fact, a research undertaking. (Aug. 9, 1943.)

**3700. Dental Gold Specialties—Composition.**—Williams Gold Refining Co., Inc., engaged in the manufacture of dental gold specialties and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Williams Gold Refining Co., Inc., in connection with the offering for sale, sale, and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the figures 585 or 650 to describe or designate gold solder products not containing, respectively, 585/1,000ths or 650/1,000ths of fine gold content; and from the use of such figures or of other indicia or symbols in any way which may have the capacity or tendency to confuse, mislead, or deceive purchasers respecting the quantity or quality of the gold content of these or its other products. (Aug. 9, 1943.)

**3701. Furs and Fur Garments—Nature.**—Miller's Furs, Inc., a corporation, engaged in the sale and distribution of furs and fur garments in interstate commerce, in competition with other corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Miller's Furs, Inc., in connection with the sale and distribution of its furs or fur garments in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Using the words "Civet Cat" or other words or term of like meaning, either alone or in connection or combination with any other word or words, to designate, describe, or refer to furs or fur garments made from the peltries of little spotted skunks or any peltries other than civet cat peltries, unless such words or term are compounded with the word "dyed" and, when so compounded, are immediately followed in equally conspicuous type by the true name of the fur.

2. Using the word "Mink" or other word or term of like meaning, either alone or in connection or combination with any other word or words, to designate, describe, or refer to furs or fur garments made from rabbit peltries, muskrat peltries, or any peltries other than mink peltries, unless such word or term is compounded with the word "dyed"; and, when so combined, is immediately followed in equally conspicuous type by the true name of the fur.

3. Using the word "Sable" or other word or term of like meaning, either alone or in connection or combination with any other word or words, to designate, describe, or refer to furs or fur garments made from rabbit peltries, muskrat peltries, or any peltries other than sable peltries, unless such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

4. Using the word "Beaver" or other word or term of like meaning, either alone or in connection or combination with any other word or words, to designate, describe, or refer to furs or fur garments made from rabbit peltries or any peltries other than beaver peltries, unless such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

5. Using the word or term "Caracul" or other word or term of like meaning, either alone or in connection or combination with any other word or words, to designate, describe, or refer to furs or fur garments made from kid peltries, unless such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

6. Using the coined word or term "Marmink" or other word or term connoting mink, either alone or in connection or combination with any other word or words to designate, describe, or refer to furs or fur garments made from marmot peltries or any peltries other than mink peltries, unless such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

7. Using the word "Seal" or other word or term of like meaning, either alone or in connection or combination with any other word or words to designate, describe, or refer to furs or fur garments made from rabbit peltries or any peltries other than seal peltries, unless such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur; and

8. Designating or describing furs or fur garments in any manner other than by the use of the true name of the fur as the last word of the designation or description thereof; and, when any dye or process is used in simulating any other fur, the true name of the fur appearing as the last word of the description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed" compounded with the name of the simulated fur as, for example, "Seal-dyed Muskrat." (Aug. 9, 1943.)

3702. Gelatine—Manufacturer.—Thomas W. Dunn Co., engaged in the sale and distribution of various products, including gelatine, in

interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Thomas W. Dunn Co., in connection with the sale and distribution of food gelatine, or gelatine, or any other product or products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing, directly or by implication, that it makes or manufactures any such product or products, unless and until it actually owns and operates, or directly and absolutely controls a plant or factory wherein is made any and all products sold or offered for sale by it under such representation. (Aug. 9, 1943.)

3703. Correspondence Courses—"Institute," Corporation, Results, Government Connection, Terms, and Conditions, Etc.—Willard B. Wright and Beulah L. Wright, trading as Plato Training Service and formerly as Plato Institute, are copartners engaged in the sale and distribution, in interstate commerce, of correspondence school courses for home study intended to assist students thereof to pass Civil Service examinations, in competition with other partnerships, corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Willard B. Wright and Beulah L. Wright, either individually, or as copartners, whether trading as Plato Training Service or under any other name or names, in connection with the sale and distribution of said correspondence course of instruction in commerce as defined by the Federal Trade Commission Act, agreed that they and each of them will forthwith cease and desist from:

1. The use of the word "institute" as a part of or in connection with the trade name under which they carry on their business; and from the use of the word "institute" or other word of like meaning either alone or in connection with any other word or words in any manner so as to import or imply that the business conducted by them is an organization for the promotion of learning such as philosophy, art or science and has equipment and faculty such as to entitle it to be designated an institute.

2. Designating or referring to any persons as "President" and "Secy. Treas." of Plato Training Service; and from any other representation the effect of which tends or may tend to convey the belief or impression that said business is incorporated.

3. Representing, directly or inferentially, by means of statements by the said Donald E. Smith or other sales agent or representative or by any other means:

(a) That a course of instruction or enrollment in the correspondence school conducted by the said Willard B. Wright and Beulah L. Wright necessarily is a condition precedent to qualifying for a Civil Service position; or that the subscribing to or completion of such course or any other home study course of instruction is a prerequisite for success in passing Civil Service examinations.

(b) That the said Donald E. Smith is connected with or is an employee of the United States Civil Service Commission or of any other agency of the United States Government, or that either the said Donald E. Smith or the aforesaid correspondence school has any connection with the United States Civil Service Commission or other agency of the United States Government.

(c) That the said Donald E. Smith or the said correspondence school or any agent or representative thereof receives advance notice of tests or examinations to be conducted by the United States Civil Service Commission or has knowledge of the particular kind or nature of Civil Service examinations to be announced.

(d) That 97 percent or any appreciable percentage of the persons passing Civil Service examinations were "Plato" students or have studied such course of instruction.

(e) That students or graduates of said course of instruction are assured of Civil Service appointments or of receiving employment by the United States Government, or that such students can depend upon receiving employment within 6 months, 3 months, or any other period of time.

(f) That payments due on said course of instruction will be held in abeyance until a Government position is obtained; that such payments will be deducted from Governmental salary checks; that a student failing to pass an examination will not be called upon to complete payments for said course; or that if a student fails to pass a Civil Service examination payments previously made by him will be refunded.

(g) That if a student passes a Civil Service examination he will not be called upon for military service.

4. Making any other misleading or deceptive statements or representations, by way of oral presentation, advertisements, or other means, concerning the character, nature, quality, value, or scope of said course of instruction in any other material respect, with the tendency or capacity to mislead or deceive students, prospective students, or the public. (Aug. 10, 1943.)

3704. Cereal—Qualities, Properties or Results, and Composition.—Dwarfies Corporation, engaged in the sale and distribution, in interstate commerce, of a breakfast cereal designated "Dwarfies Wheatmix," in competition with other corporations, individuals, and firms like-

wise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Dwarfies Corporation, in connection with the sale and distribution in commerce, as defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth of the product designated Dwarfies Wheatmix or any other product composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such name or any other name or names, agreed that it will forthwith cease and desist from:

1. The use of any statement or representation the effect of which tends or may tend to convey the belief or impression that such product can be depended upon to:

(a) Provide increased energy, vigor, or "pep."

(b) Supply children with vim, vigor, or vitality, or put color in their cheeks.

(c) Promote growth or energy or benefit the nervous system; or to improve the appetite.

(d) Result in strong nerves or nerve strength.

2. Representing, directly or inferentially, that said product, due to the iron and/or copper content thereof, makes "red blood" or is a blood builder; or that it contains iron and/or copper in such significant or substantial amount as to render such product of therapeutic value in the treatment of any type of anemia. (Aug. 16, 1943.)

3705. **Furs or Fur Products—Nature.**—Morris Schwartz Fur Corporation, engaged in the sale and distribution of furs or peltries, in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Morris Schwartz Fur Corporation, in connection with the sale and distribution of its furs or peltries or any fur products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Using the words "Menton Beaver," "Beaver," or other words or terms of like meaning, either alone or in connection or combination with any other word or words to designate, describe, or refer to furs or fur products made of any peltries other than beaver peltries, unless such words or terms are compounded with the word "dyed" and, when so compounded, are immediately followed in equally conspicuous type by the true name of the fur.

2. Using the words "Hudseal Sealine," "Norm. Sealines," or other words or terms connoting seal, either alone or in connection or combination with any other word or words to designate, describe, or

refer to furs or fur products made of any peltries other than seal peltries, unless such words or terms are compounded with the word "dyed" and, when so compounded, are immediately followed in equally conspicuous type by the true name of the fur.

3. Using the word "Persian" or any other word or term of like meaning, either alone or in connection or combination with any other word or words to designate, describe, or refer to furs or fur products made of any peltries other than true or pure bred Persian lamb peltries, unless such word or term is compounded with the word "dyed" or the word "processed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

4. Designating or describing furs or fur products in any manner other than by the use of the true name of the fur as the last word of the designation or description thereof; and, when any dye or process is used in simulating any other fur, the true name of the fur appearing as the last word of the description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed" compounded with the name of the simulated fur, as, for example, "Seal-dyed Muskrat." (Aug. 16, 1943.)

3706. Solder Products—Composition.—Harold R. Williams, an individual, trading as Fusion Engineering, engaged in conducting an experimental and research laboratory for the development of formulae for solders to meet specific needs of industrials, and which products, after manufacture thereof in accordance with such formulae, have been sold by him in interstate commerce, in competition with other individuals, corporations, and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harold R. Williams, in connection with the advertisement, offering for sale, sale, or distribution of his solder products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that he will cease and desist forthwith from the use of the words "Silver Fuse" as a brand name for said products; and from the use of the word "silver" in any way as descriptive of said products, so as to import or imply that said products are composed of silver. If said products are composed of silver in substantial part, and the word "silver" is used to designate such silver content, then in that case, the word "silver," whenever used, shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "silver" is printed so as to indicate clearly that the product is not composed of silver or of silver in excess of the quantity actually contained therein. (Aug. 18, 1943.)

3707. Roto-Shavers—Value and Reduced Price.—Pharmal Products Co., Inc., engaged in the sale and distribution of electrically operated shaving devices, called Roto-Shavers, in interstate commerce, in competition with other corporations and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Pharmal Products Co., in connection with the advertisement, offering for sale, sale, or distribution of its so-called Roto-Shavers in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from:

1. The use of the statement "Thousands have been sold for \$18.75"; and from the use of any statement or representation, the effect of which tends or may tend to cause or convey the impression or belief that the said Roto-Shaver is of an indicated value in excess of what is actually the fact, or that the said device has been regularly sold for a stated amount which is fictitious or in excess of the amount for which said device has been customarily sold in the usual course of business.

2. The use of the statement or phrase "now \$12.50," or of the word "now," or any other word or term of similar implication, in connection with a purported price representation, the effect of which tends to or may tend to convey the belief or impression that the price of the device referred to has been recently reduced and/or is other than the regular price for which said device is customarily offered for sale and sold in the usual course of business. (Aug. 19, 1943.)

3708. Therapeutic Lamps—Nature, Qualities, Properties or Results, Comparative Merits, Endorsements, and Safety.—Hanovia Chemical & Manufacturing Co., engaged in the manufacture of therapeutic equipment and quartz ware and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Hanovia Chemical & Manufacturing Co., in connection with the sale and distribution of its therapeutic lamps heretofore designated "Hanovia Alpine Sun Lamps," or any other lamp of substantially similar construction sold under whatever name, in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, agreed it will forthwith cease and desist from representing, directly or by implication:

(a) That said lamps or others of like construction are "sun lamps"; or otherwise, by statement or inference, that their rays

closely resemble or are equal or equivalent to those of the sun in physical or therapeutic properties, either at an altitude high in the mountains or elsewhere.

(b) That said lamps bring into your home the sun, the equivalent of pure mountain sunshine, or summer sun all the year around or at all; or otherwise, that by the use thereof one may enjoy all the health giving benefits of sunshine or of a complete sun bath.

(c) That the quartz burner is the only type of lamp which can honestly be called a sun lamp, or the only type which produces the healing and tonic qualities of ultraviolet; directly or by implication, that the Hanovia models for home use, because of their quartz burners or otherwise, produce all such healing and purportedly tonic qualities, or that the Hanovia for more than 30 years has furnished the standard or now furnishes the standard by which ultraviolet lamps have been judged.

(d) That only the Hanovia Alpine Sun Lamp can effectively actuate vitamin D; or by implication, that lamps equipped with other types of burners cannot do so.

(e) That the rays emitted by said lamp have energy, vitality, zest, or pep giving properties; tone or rejuvenate muscles, tone up the system generally; restore, renew or increase strength, energy, or vigor either physical or mental; instill vigor or buoyancy in the body; stimulate the blood-building power of the human body; bring relief from strain and exhaustion; are a tonic for men of all ages, or produce a highly beneficial or any significant tonic effect whatsoever.

(f) That the use of said lamp will tone the skin, give the user a clear, radiant, or glowing skin; clear the complexion, eliminate practically all blemishes; build resistance against colds, free children from colds, fortify one against winter weather (by implication, the diseases associated with winter); enable one to feel his best throughout the entire year; or, without regard to the user's physical condition, is an indispensable means to enhance beauty or health.

(g) That the use of said lamp will assure sound teeth; may be depended upon always to make strong, straight, sturdy bones; fine, even, strong teeth, and robust bodies for children; free children's teeth from a tendency to decay, or prevent tooth decay for expectant and nursing mothers.

(h) That irradiation by said lamp builds up resistance against disease in either children or adults, against bronchial asthmatic coughs, against common ailments; is a substantial resistance-building factor against colds and associated children's diseases, a very effective means for maintaining the health of children; or will keep the businessman fit for his consuming and difficult tasks.



(i) That the use of said lamp will stabilize the nerves; induce deeper, sounder, or better sleep; successfully treat difficult children of a nervous disposition; relieve physical or mental strain, cause better elimination; provides health the year around for the entire family; is a distinct asset for the well-being of all men; has a general beneficial systemic effect; or that entire well-being is a definite result conferred upon the user.

(j) By general statement or otherwise, that under the recommended conditions of use the ultraviolet rays emitted by said lamp kill germs and bacteria in the air or on the skin or prevent infection; or that without exposure to sunshine one would lose his resistance against disease and be doomed regardless of his food intake.

(k) That the rays of said lamp, or ultraviolet rays generally, will be an absolute safeguard against rickets; or that they have specific action, or any significant effect, in preventing or correcting dropped arches, flabby figure, or loss of hair following childbirth.

(l) That the use of said lamp will help convalescents more speedily back to health or otherwise shorten the period of convalescence; or that its rays give "summer holiday benefits" at home all the year around or at all, in the sense that they would provide an adequate and satisfactory substitute for the benefits of a summer vacation.

(m) That everyone needs said lamp if he would keep physically fit, that it should be in every home without regard to occupation or environment, that every woman can benefit from the use of its rays as a vitalizing factor; or that said lamp recaptures a form of natural energy with effects, for the user, of better appetite, steady nerves, restful sleep, freedom from fatigue, or other tonicity.

(n) Without regard to one's physical condition, that said lamp is "safe"; or otherwise, by statement or implication, that it would be harmless for indiscriminate use by the layman; that artificially administered sun baths by exposure to lamps such as this would be safer than exposure to natural sun, or that such is the claim of medical authority.

(o) That the ultraviolet afforded by the use of said lamp is a "sun bath," or by assertion or connotation that it is equal or equivalent to what is generally understood by such term or expression.

(p) That said lamp or any lamp of similar construction has the widest endorsement of the medical profession the world over or is endorsed by the medical profession all over the world for the conditions of use—unsupervised home treatment—for which it is advertised and sold.

Hanovia Chemical & Manufacturing Co. also agreed to cease and desist from:

(q) The use of illustrations depicting persons exposed to the rays of said lamps without goggles to protect their eyes; or of any repre-

sentation, pictorial or otherwise, which has or may have the capacity or tendency to cause the belief that such lamps may be safely used without injury to unshielded eyes.

(r) Disseminating any advertisement or trade literature pertaining to its ultraviolet lamps for home use which fails clearly to reveal that excessive exposure to said lamp either with respect to proximity or length of time may result in injury to user; that said lamp should not be used in the case of pellagra, lupus erythematosus, or certain types of eczema; and that said lamp should never be used unless goggles are worn to protect the eyes: *Provided, however,* That such advertisement need contain only the statement, "CAUTION: Use only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or both on the label and labeling, contain a warning to the above effect. (Aug. 19, 1943.)

3709. Furs and Fur Products—Nature.—Hy-Grade Fur Corporation, engaged in the sale and distribution of fur garments in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Hy-Grade Fur Corporation, in connection with the sale and distribution of its fur garments or other fur products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Using the word "Sealine" or any word or term connoting seal, either alone or in connection or combination with any other word or words to designate, describe, or refer to furs or fur products made of rabbit or any peltries other than seal peltries, unless such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

2. Using the word "Beaverette," or other word or term connoting beaver, either alone or in connection or combination with any other word or words to designate, describe, or refer to furs or fur products made of rabbit or any peltries other than beaver peltries, unless such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

3. Using the words "Silvered Fox Chubby," "Silver Fox," or other words or terms connoting silver fox, either alone or in connection or combination with any other word or words to designate, describe, or refer to furs or fur products made of any peltries other than silver fox peltries, unless such words or terms are compounded with the word "dyed" and, when so compounded, are immediately followed in equally conspicuous type by the true name of the fur.

4. Designating or describing furs or fur products in any manner other than by the use of the true name of the fur as the last word of the designation or description thereof; and, when any dye or process is used in simulating any other fur, the true name of the fur appearing as the last word of the description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed" compounded with the name of the simulated fur as, for example, "Seal-dyed Muskrat." (Aug. 19, 1943.)

3710. Sanitary Napkins—Comparative Merits.—San-Nap-Pak Manufacturing Co., Inc., engaged in the manufacture of cleansing tissues and sanitary napkins, and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

San-Nap-Pak Manufacturing Co., in connection with the offering for sale, sale, and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from representing by means of statements, picturizations, or otherwise, that the absorbency of its sanitary napkins exceeds that of other reputable makes or brands, by an apparent 50 percent or in any degree whatsoever not established by competent scientific evidence; and from the use of any other unwarranted statement or representation which tends or may tend to disparage or discredit competitors or their products. (Aug. 19, 1943.)

3711. Sales Promotional Plan—Success, Use or Standing, and Price.—Ganter-Williams, Inc., engaged in the sale and distribution in interstate commerce of tissue-dispensing devices designated "Auto-Serv Kleenex Dispenser," in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Gantner-Williams, Inc., in connection with the sale and distribution of its tissue-dispensing devices heretofore designated "Auto-Serv Kleenex Dispenser," in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. Representing, directly or inferentially, that its coupon books have been used successfully for the purpose of raising funds for civilian defense, unless or until they have been used as indicated; and from any representation the effect of which tends or may tend to convey the belief or impression that their sales-promotional plan has been adopted by civilian defense agencies or any other agencies, unless or until such plan has been adopted as represented.

2. Representing as the customary or usual retail price of said device any price which, in fact, is fictitious and in excess of the price at

which such product regularly and customarily has been sold or offered for sale in the usual and normal course of business. (Aug. 19, 1943.)

3712. Knitting Yarns—Composition and Source or Origin.—Moris Weisgrow, engaged in the sale and distribution of knitting yarns in interstate commerce, in competition with individuals, firms, 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.

Moris Weisgrow, in connection with the sale and distribution of yarns in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

1. The use of the word "Shetland" or any other word of similar import as a designation for or as descriptive of any product which is not composed entirely of fibers from the fleece of Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland: *Provided, however,* That in the case of a product composed in substantial part of such fiber and in part of other fibers or materials, the word "Shetland" may be used as descriptive of the Shetland fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

2. The use of the words "Scotch," "Spanish," "Saxony," or other word or words connoting any foreign geographical origin as designations for or as descriptive of a product or products which are not imported from or made of materials imported from the country or locality indicated by the use of such geographical designation or term.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Moris Weisgrow in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. (Aug. 19, 1943.)

3713. Knitting Yarns—Source or Origin.—William K. Caldwell, an individual, trading as Crescent Yarns, engaged in the sale and distribution of knitting yarns in interstate commerce, in competition with other individuals, corporations, and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

William K. Caldwell, in connection with the sale and distribution of yarns in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from the use of the word "Saxony" or other word or words connoting any foreign geographical origin as a designation for or as descriptive of a product or as descriptive of a product or products which are not imported from or made of materials imported from the country or locality indicated by the use of such geographical designation or term.

It was further understood and agreed that no provision of this agreement shall be construed as relieving the said William K. Caldwell in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. (Aug. 23, 1943.)

3714. Refrigerating Units—Qualities, Properties, or Results.—Albert Fogel, David Fogel, Frank Fogel, Harry Fogel, Israel Fogel, and William Fogel, copartners, trading as Fogel Refrigerator Co., engaged in the sale and distribution of refrigerators and/or refrigerating units in interstate commerce, in competition with other partnerships, corporations, firms, or individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Albert Fogel, David Fogel, Frank Fogel, Harry Fogel, Israel Fogel, and William Fogel, both individually, and as copartners, whether trading as Fogel Refrigerator Co., or under any other trade name or style, agreed in connection with the sale and distribution of refrigerating units in commerce as defined by the Federal Trade Commission Act, that they and each of them will forthwith cease and desist from the use of the words "Lifetime Vision" or other word or words of like meaning as descriptive of said refrigerator cases and from representing, directly or inferentially, that purchasers of said refrigerating units are afforded unlimited protection, or any protection in excess of that actually provided, against display case worries such as fogging or sweating of glass fronts or other factors deterrent to clear vision; and from the use of the words "Insurance Policy" or other word or words of like meaning as a designation for or as descriptive of an undertaking under the terms of which they agree to replace glass or other parts of such refrigerators for a consideration. (Aug. 23, 1943.)

3716.<sup>1</sup> Calendars, Etc.—Sample Conformance.—Alice E. Barnes, an individual, trading as Barnes Advertising Agency, engaged in the sale and distribution of advertising calendars in interstate commerce, in competition with individuals, firms, 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.

Alice E. Barnes, either individually, or trading as Barnes Advertising Agency, or under any other trade name or style, in soliciting the sale of or selling calendars or other printed, mimeographed, or multigraphed matter in commerce as defined by the Federal Trade Commission Act, agreed that she will forthwith cease and desist from making use of any alleged samples of calendars or other material in any manner the effect of which tends or may tend to convey the belief

<sup>1</sup> Stipulation 3715 not released.

or impression that such so-called samples are representative of or actually are samples of the calendars or other material to be delivered to purchasers when, in fact, the calendars or other articles of merchandise as delivered are not comparable with such alleged samples in quality, workmanship, material, design, appearance, or other feature. (Aug. 31, 1943.)

3717. "Nestle Down" Garments—Composition.—Adolph Warshal and William Warshal, copartners trading as J. Warshal & Sons, engaged in the purchase and resale of "Nestle Down" garments in interstate commerce, in competition with other individuals, corporations, or firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Adolph Warshal and William Warshal, individually or trading as J. Warshal & Sons or under any other trade name and style, in connection with the sale and distribution of merchandise in commerce as defined by the Federal Trade Commission Act, agreed they and each of them will forthwith cease and desist from the use of the words "Nestle Down" or the word "Down" as a trade name or designation for, as descriptive of, or in connection with a garment or other product the filling of which does not consist wholly of down; and from the use of the word "Down" or other word or words of like meaning in any manner the effect of which tends or may tend to convey the belief or impression that a product is composed of or filled with down, unless the product consists wholly of or is filled wholly with down. (Sept. 1, 1943.)

3718. Upholstery Fabrics—Composition.—Artloom Corporation, engaged in the sale and distribution in interstate commerce of upholstery fabrics including a fabric designated "Artwist," in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Artloom Corporation, in connection with the sale and distribution of its said fabrics in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from the use of the word "mohair" or other word or words of like meaning as a designation for or as descriptive of any upholstery fabric the face or pile of which does not consist wholly of mohair; that is, the hair of the Angora goat: *Provided, however,* That in the case of an upholstery fabric the face or pile of which is composed in substantial part of mohair and in part of other fibers or materials, such word may be used as descriptive of the mohair content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials. (Sept. 2, 1943.)

3719. Knitting Yarns—Composition.—Simon E. Woods, an individual trading as Universal Trading House, engaged in the sale and distribution of knitting yarns in interstate commerce, in competition with 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.

Simon E. Woods, either individually or trading as Universal Trading House, in connection with the sale and distribution of yarns in interstate commerce as defined by the Federal Trade Commission Act, agreed he will forthwith cease and desist from the use of the word "Angora" or any other word of similar import, as a designation for or as descriptive of a product which is not composed entirely of the hair of the Angora goat: *Provided, however,* That in the case of a product composed in substantial part of the hair of the Angora goat and in part of other fibers or materials, the word "Angora" may be used as descriptive of the Angora fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers and materials: *And further provided,* That in the case of a product composed wholly or in substantial part of Angora rabbit hair, the words "Angora rabbit hair" may be used as descriptive of the product if composed wholly of Angora rabbit hair or as descriptive of such portion of the product as is composed of Angora rabbit hair.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Simon E. Woods in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. (Sept. 2, 1943.)

3720. Knitting Yarns—Source or Origin.—Bernhard Ulmann Co., Inc., engaged in the sale and distribution of knitting yarns in interstate commerce, in competition with other corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Bernhard Ulmann Co., Inc., in connection with the sale and distribution of yarns in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from the use of the word "Saxony" or other word or words connoting any foreign geographical origin as a designation for or as descriptive of a product or products which are not imported from or made of materials imported from the country or locality indicated by the use of such geographical designation or term.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Bernhard Ulmann Co., Inc., in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. (Sept. 2, 1943.)

3721. **Women's Hats—Old, Used, or Secondhand as New and Composition.**—Nathan A. Levine, an individual, trading as Clare-Ann Hat Co. and as Clare-Ann Hat Co., Inc., engaged in the manufacture of women's hats and in the sale and distribution thereof in interstate commerce, in competition with individuals, firms, 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.

Nathan A. Levine, either individually, or trading as Clare-Ann Hat Co., or under any other trade name or style, in connection with the sale and distribution of his hats in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

1. Representing that hats composed in whole or in part of used or secondhand materials are new or are composed of new materials by failure to stamp in some conspicuous place on the exposed surface of the inside of the hat in conspicuous and legible terms which cannot be removed or obliterated without mutilating the hat itself, a statement that said products are composed of secondhand or used materials: *Provided, That* if substantial bands, placed similarly to sweat bands in men's hats, are attached to said hats in such manner that they cannot be removed without rendering the hats unserviceable, then and in that case such statement may be stamped upon the exposed surface of such bands in conspicuous and legible terms which cannot be removed or obliterated without mutilating the bands.

2. Representing in any manner that hats made in whole or in part from old, used, or secondhand materials are new or are composed of new materials.

3. The use of the abbreviation "Inc." or of any abbreviation or word connoting the words Incorporated or Incorporation as part of his trade name; and the use of any abbreviation or word connoting the words Incorporated or Incorporation in any manner the effect of which tends or may tend to convey the belief or impression that his business is conducted by a duly accredited and authorized corporate entity.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Nathan A. Levine in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. (Sept. 6, 1943.)



3722. **First Aid Kits—Indorsement or Approval, Quality, Quantity, Special Price, Limited Offer, and Government Connection.**—Harold Udkoff and Harold A. Haytin, engaged in the business of assembling so-called First Aid Kits and in the sale thereof as copartners, trading under the name "U. S. Enterprises," in interstate commerce. Stephen P. Shoemaker, is an individual, engaged in business as a radio advertiser, and in cooperation with the aforesaid Harold Udkoff and Harold A. Haytin, prepared and aided in the preparation of advertising script to be used and which was used in radio broadcasts for the purpose of inducing and which was likely to, and did, induce the purchase of the so-called First Aid Kits assembled and offered for sale by the aforesaid copartners. The aforesaid respondents, engaged in competition with other partnerships, 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.

Harold Udkoff and Harold A. Haytin, copartners, trading under the firm name "U. S. Enterprises," and Stephen P. Shoemaker, in connection with the radio, or other, advertising, offering for sale, sale, or distribution of the aforesaid "First Aid Kits" in commerce as defined by the Federal Trade Commission Act, agreed, and each of them agreed, under whatever trade name they, or any of them, may conduct business, they will cease and desist forthwith from the use of any statement or representation which either directly asserts, imports or implies, or the effect of which tends or may tend to cause or convey the impression or belief:

1. That the said "First Aid Kits" meet with the suggestions of the Office of Civilian Defense, that the said kits are adequate for the requirements of homes generally, or that the said kits have been recommended or approved by the Office of Civilian Defense.

2. That the items included in said kits are of such quality, quantity, and kind as to comprise an adequate supply of the medical and surgical aids needed in the home or for civilian defense, or that such aids would meet the needs in the event of a major catastrophe that might befall a community.

3. That the price for which the said kit is offered for sale is a special price, that is to say, other than the price customarily charged for the kit in the usual course of business, that the said kit can be purchased at the offered price only by those who avail themselves of the opportunity to buy during a specified limited period of time, or that the offered price is less than that for which the items comprising the kit can be purchased separately at retail.

The said copartners also agreed to cease and desist from the use of the initials "U. S.," either alone or in connection with any word or words, as a trade name, or otherwise, in connection with the offering

for sale or sale of their "First Aid Kits," the effect of which tends or may tend to cause or convey the impression or belief that the business conducted by them is in any manner associated with the United States Government, or any agency thereof. (Sept. 6, 1943.)

3723. Jewelry and Books—Free, Special, or Limited Offer, Value, Composition, Nature, Price, Refund, Guarantee, Etc.—Bill Adams Co., a corporation, and James Acuff, Richard Mockler, Willard Hoffman, and Wayne Hoffman, individually, and as officers of said company, engaged in the mail-order distribution of imitation jewelry and books in interstate commerce under the trade names of Bill the Diamond Man and the Bible Study Club, in competition with other corporations, individuals, and concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Bill Adams Co., a corporation, and James Acuff, Richard Mockler, Willard Hoffman, and Wayne Hoffman, individually, and as officers of said corporation, and each of them, in connection with the offering for sale, sale, or distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, agreed they will forthwith cease and desist from:

(a) The use of the word "free," the term "absolutely free" or other expression of like import as descriptive of or with reference to an article not actually given as a gratuity, the recipient thereof being required either to pay the whole or a part of its purchase price, to purchase some other article or to render some service in order to obtain the same.

(b) Representing that an offer of the regular price charged for an article is because of an "anniversary sale," a "special" club offer or plan, a "rare" bargain that comes "once in a blue moon," or limited as to time; or in any other manner, that the advertised offer is unusual or special so long as no price reduction or other trade concession is made therewith.

(c) Stating or representing that merchandise offered for sale or sold by them, either alone or in connection with an alleged free gift or gratuity, is or has a designated sales value when in fact such alleged valuation is fictitious or is in excess of the price for which such merchandise, or merchandise of similar quality or character, is customarily sold in the usual course of business.

(d) Describing or designating their rings as "rolled gold finish," or by words or terms of like import, representing that such rings have a final coating or shell of gold affixed to the base metal by mechanical means, as thereby implied.

(e) Denoting or referring to the insets used in their imitation jewelry as diamonds or simulated diamonds.

(f) The use of a trade name or designation such as "Bill the Diamond Man" in connection with a business not engaged in the selling of diamonds.

(g) Exaggerated representations as to the size of a book or its type; the use of figures misstating its dimensions; or description of a small abridged dictionary as "almost an encyclopedia."

(h) The use of the word "leather" to represent, designate, or refer to the binding of the books sold by them. If the binding is so constructed as to imitate leather in appearance or texture and the word "leather" is used in connection therewith, then in such case the word "leather," whenever used, shall be immediately accompanied by some other word or words printed in type of equal size and prominence so as to indicate clearly to the purchaser that the product is not composed of leather but merely finished in a manner imitating or having the appearance of leather.

(i) The use of a trade name or designation such as "Bible Study Class" for the conduct of their business or in the sale of their merchandise; or representing in any way that their Bibles are procured from, through or sponsored by an association of Bible students "vitaly interested in getting the Holy Bible into more and more homes," that the price charged is made possible only because thereof, or that "this offer" is made for any purpose but to sell books at a profit.

(j) The use of the words or phrases "\$1.59 postpaid," "pay postman \$1.59 including postage," "simply deposit with the postman \$1.59" or other representations of like meaning in connection with an offer the delivered cost of which exceeds \$1.59; and from any representation the effect of which tends or may tend to convey the impression or belief that the total delivered price of any commodity is less than the actual cost thereof to the purchaser. If an article is mailed with additional items to be collected before delivery, then in such case clear and unequivocal disclosure shall be made, in immediate connection with the published price, that the buyer will also be required to pay certain designated amounts named for postage, tax, c. o. d. charge and money-order fee, as the case may be, so that, before acceptance of the offer, he will be fully informed of the total cost to him.

(k) The use of the statements "we will refund your full purchase price," "I will refund your money," "you get your money back," "your money will be refunded"—if dissatisfied or representations of like import, where the full amount paid by the purchaser for the delivered merchandise is not returned. If the refund agreement is to be for an amount less than the total cost of the delivered article, then in such case, the correct amount of such refund shall be clearly specified in any reference thereto.

(l) Representing that a mail-order buyer of their merchandise does "not risk one single penny in the mails"; or otherwise, by like asser-

tion or implication, that no financial risk or venture is involved where in fact the full delivery price must be paid to the mailman before opportunity to inspect said merchandise, or where more money than contemplated must be paid such mailman before the purchase will be delivered.

(*m*) Representing that in thousands of cases, or in any case, purchasers of said rings have saved money at the prices charged.

(*n*) The use of the word "guaranteed" or any other word or words of like meaning in connection with the advertising, offering for sale, or sale of their merchandise unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security. (Sept. 6, 1943.)

**3724. Printed Material—"Printer," "Publisher," and Size of Business.**—Modern Printing & Calendar Publishers, Inc., engaged in the sale and distribution of printed material and/or other merchandise in interstate commerce, in competition with other corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Modern Printing & Calendar Publishers, Inc., in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. The use of the words "printing" or "publishers" as part of or in connection with its corporate or trade name; representing, directly or inferentially, that it publishes calendars or any other products or is engaged in the publishing business; and representing, directly or inferentially, that it prints any material sold or offered for sale by it, unless or until it actually owns and operates or directly and absolutely controls a plant or establishment wherein is printed any and all products sold or offered for sale under such representation.

2. The use of the statement "The Most Complete Line of PRINTING, PROCESS EMBOSSEMENT AND ADVERTISING NOVELTIES in the Field"; and the use of any other statement or representation of like meaning in any manner the effect of which tends or may tend to mislead or deceive purchasers, prospective purchasers, or the public in any material respect concerning the character or extent of its stock or supply of merchandise or the nature of its business. (Sept. 13, 1943.)

**3725. Billfolds—Composition, Special Offer and Price and Free.**—Neal Advertising Agency, trading also as Illinois Merchandise Mart, engaged in the sale and distribution of billfolds and other merchandise in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Neal Advertising Agency, in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

1. The use of the words "genuine highest quality leather" or the words "genuine leather" as a designation for, as descriptive of or in connection with a product not composed wholly of top grain leather; from the use of the word "calfskin" or other word or words of like meaning as a designation for, as descriptive of or in connection with a product not composed wholly of the leather so designated; and from the use of the words "leather," "calfskin," or other word or words of like meaning in any manner the effect of which tends or may tend to convey the belief or impression that such product is made of top grain leather.

2. Representing, directly or inferentially, that the usual or customary price charged for its merchandise, or an assortment thereof is a "special introductory offer" or is a special advertising, or introductory price.

3. Representing as the customary or usual retail price of said merchandise, any price which in fact is fictitious and in excess of the price at which such merchandise regularly and customarily is sold or offered for sale in the usual and normal course of business.

4. The use of the word "free" or other word or term of like meaning as descriptive of or in reference to a product when, in fact, such product is not given as a gratuity, but the recipient thereof is required to pay, either in whole or in part, the purchase price thereof, to purchase some other article, or to render some service in order to obtain the same. (Sept. 13, 1943.)

3726. Knitting Yarns—Source or Origin.—Emanuel Flock, Manfred J. Flock, Sol M. Flock, Jr., and Della B. Flock, copartners, trading as The Flock Co., engaged in the sale and distribution of knitting yarns in interstate commerce, in competition with individuals, firms, 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.

Emanuel Flock, Manfred J. Flock, Sol M. Flock, Jr., and Della B. Flock, and each of them, either individually or trading as The Flock Co. or under any other trade name or style, in connection with the sale and distribution of yarns in commerce as defined by the Federal Trade Commission Act, agreed that they will forthwith cease and desist from the use of the word "Saxony" or other word or words connoting any foreign geographical origin as a designation for or as descriptive of a product or products which are not imported from or made of

materials imported from the country or locality indicated by the use of such geographical designation or term.

It was further understood and agreed that no provision of this agreement shall be construed as relieving the said Emanuel Flock, Manfred J. Flock, Sol M. Flock, Jr., and Della B. Flock in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. (Sept. 13, 1943.)

3727. Knitting Yarns—Composition and Source or Origin.—Ida C. McCook and William C. McCook, copartners, trading as Cliveden Yarn Co., engaged in the sale and distribution of knitting yarns in interstate commerce, in competition with individuals, firms, 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.

Ida C. McCook and William C. McCook, and each of them, either individually, or as copartners, trading as Cliveden Yarn Co. or under any other trade name or style, in connection with the sale and distribution of yarns in commerce as defined by the Federal Trade Commission Act, agreed that they will forthwith cease and desist from:

1. The use of the word "Angora" or any other word of similar import, as a designation for or as descriptive of a product which is not composed entirely of the hair of the Angora goat: *Provided, however,* That in the case of a product composed in substantial part of the hair of the Angora goat and in part of other fibers or materials, the word "Angora" may be used as descriptive of the Angora fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers and materials: *And further provided,* That in the case of a product composed wholly or in substantial part of Angora rabbit hair, the words "Angora rabbit hair" may be used as descriptive of the product if composed wholly of Angora rabbit hair or as descriptive of such portion of the product as is composed of Angora rabbit hair.

2. The use of the word "Shetland" or any other word of similar import as a designation for or as descriptive of any product which is not composed entirely of fibers from the fleece of Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland: *Provided, however,* That in the case of a product composed in substantial part of such fiber and in part of other fibers or materials, the word "Shetland" may be used as descriptive of the Shetland fiber content if there are used in immediate connection or conjunction therewith, in letters of equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

3. The use of the word "Saxony" or other word or words connoting any foreign geographical origin as a description for or as descriptive of a product or products which are not imported from or made of materials imported from the country or locality indicated by the use of such geographical designation or term.

It is further understood and agreed that no provision of this agreement shall be construed as relieving the said Ida C. McCook and William C. McCook in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. (Sept. 13, 1943.)

3728. **Cooking or Edible Oil—Composition.**—Murray Mester and Meyer Mester, copartners, trading as Balbo Oil Co., engaged in the sale and distribution of edible oil designated "Balbo Oil" in interstate commerce, in competition with individuals, firms, 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.

Murray Mester and Meyer Mester, individually, or trading as Balbo Oil Co., or under any other trade name or style, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, or the advertising by means and in the manner above set forth of their cooking or edible oil, agreed that they and each of them will forthwith cease and desist from representing that 20 percent of the content thereof consists of olive oil unless or until 20 percent does consist of olive oil; and from any representation the effect of which tends or may tend to convey the belief or impression that the olive oil content of said cooking or edible oil is greater than or in excess of the actual olive oil content thereof. (Sept. 16, 1943.)

3729. **Furs or Fur Products—Nature.**—George Damman and Henry Damman, copartners, trading as Damman Bros., engaged in the sale and distribution of furs or peltries in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

George Damman and Henry Damman, individually, and as copartners, whether trading as Damman Bros., or under any other firm name or style, in connection with the sale and distribution of furs in commerce as defined by the Federal Trade Commission Act, agreed that they will forthwith cease and desist from:

1. Using the word "Seal," "Sealine," or other word or term of like meaning, either alone or in connection or combination with any other word or words to designate, describe, or refer to furs or fur products made from rabbit or any peltries other than seal peltries, unless such word or term is compounded with the word "dyed" and, when so com-

pounded, is immediately followed in equally conspicuous type by the true name of the fur.

2. Using the word "Beaver" or other word or term of like meaning, either alone or in connection or combination with any other word or words to designate, describe, or refer to furs or fur products made from rabbit or any peltries other than beaver peltries, unless such word or term is compounded with the word "dyed" and, when so compounded, is immediately followed in equally conspicuous type by the true name of the fur.

3. Designating or describing furs or fur products in any manner other than by the use of the true name of the fur as the last word of the designation or description thereof; and, when any dye or process is used in simulating any other fur, the true name of the fur appearing as the last word of the description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed" compounded with the name of the simulated fur as, for example, "Seal-dyed Muskrat." (Sept. 16, 1943.)

3730. Corrugated and Cardboard Containers—Manufacturers.—Dan Gould and Benjamin Gould, copartners, operating under the firm names of Standard Container Co. and Standard Manufacturing Co., engaged in the wholesale distribution of corrugated and cardboard containers and other merchandise in interstate commerce in competition with other 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.

Dan Gould and Benjamin Gould, and each of them, in connection with the offering for sale, sale and distribution of their merchandise, in commerce as defined by the Federal Trade Commission Act, agreed they will forthwith cease and desist from the use of the words "manufacturers," "manufacturing," "mfg.," "factory," or terms of like meaning in their trade name, advertising, trade literature, delivery trucks, or in any other manner so as to import or imply that they are manufacturers of boxes, containers, or any other product not made by them, or that they actually own and operate or directly and absolutely control an establishment in which the same are produced or manufactured. (Sept. 16, 1943.)

3731. Food Products and Mixing Device—Qualities, Properties or Results, and Composition.—Martin W. Pretorius and Marie Pretorius, copartners, trading under the firm name and style "Pretorius Approved Products," engaged in the sale of various products, including a food called "Alfamint," for use as a tea or in tablet form, a food called "Minrich," and an electric mixing device, known as "Pretorius Liquefier," and in the shipment of such products and device in interstate commerce, in competition with other partnerships and with individ-



uals, corporations, and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Martin W. Pretorius and Marie Pretorius, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, or with the advertising, by the means and in the manner above set forth, of the aforesaid food products or mixing device, agreed that they, the said copartners, and each of them, will cease and desist forthwith from the use of any statement or representation, the effect of which tends or may tend to cause or convey the impression or belief:

1. That either the said Alfamint or the said Minrich food products could be depended upon to endow the user thereof with renewed vitality within 3 days or within any other period of time; that either of said food products would purge the tissues of accumulated wastes and thus, or otherwise, establish within the tissues a revitalized blood flow, or remove congestion, charge each cell with electrifying energy, cause the hair to grow or take on luster, clear up dull lifeless blood-shot eyes, improve vision, erase or help to erase wrinkles, or impart a healthy tint to the user's cheeks.

2. That the said Alfamint product, either in tea or tablet form, per se, would have any diuretic action or properties which would cause it to have beneficial effect upon the kidneys or upon such conditions as swollen feet or ankles; that it would be effective in increasing the alkalinity of the blood or in neutralizing acids in the body; or that it could be depended upon to add needed minerals to the body or to meet the daily mineral needs of the body.

3. That the use of the product called Minrich would be an effective means to improve digestion or enable one to enjoy food without fear of indigestion; that the said product called Minrich would furnish all minerals lacking in the diet, or so supplement the diet with minerals as to balance the same and thereby, or in any way, help, aid or assist in preventing or lessening the tendency or likelihood of such conditions as loss of teeth, cavities in the teeth, irregular heart action, rickets, excessive bleeding, muscular soreness or weakness, nervousness, over or underweight, indigestion, scaly skin, anemia, cold hands and feet, infections, thyroid disturbances, coarseness of the hair, mental dullness, low vitality, pallid complexion, minor skin diseases, lusterless hair, and dullness of the eyes. The said copartners also agreed to cease and desist from the use of the word "Minrich" as a trade name for said product and from the use of the said word, or of any simulation thereof, or any word or words of like implication, in any way, so as to import or imply, or which may cause or tend to cause the belief that said product is rich in minerals.

4. That the use of liquid foods prepared by means of the Pretorius Liquefier would enable one suffering from nutritional deficiencies, which are caused by an impaired digestive system, to obtain the necessary minerals and vitamins from raw vegetables, fruit, and other foods with resultant regeneration of sick parts of the body, or that the use of such liquid foods, so prepared, would eliminate the possibility of nutritional deficiencies or act as a safeguard against such deficiencies. (Sept. 20, 1943.)

3732. **Furs and Fur Garments—Source or Origin.**—L. M. Kupersmith Co., Inc., engaged in the manufacture and sale of furs and fur garments and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

L. M. Kupersmith Co., Inc., in connection with the offering for sale, sale or distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from the use of the words "Asiatic Mink" or "Asiatic" as a designation for or as descriptive of coats or garments made of or manufactured from the peltries of Japanese mink, and from offering for sale, selling, invoicing, or branding any fur product in any manner which is or may be deceptive or misleading as to the geographical origin of the animal from which the peltry has been obtained. (Sept. 20, 1943.)

3733. **Furs and Fur Garments—Source or Origin.**—Samuel Kanik and Moe Greenberg, copartners, trading as Kanik & Greenberg, engaged in the sale and distribution of furs and fur garments in interstate commerce, in competition with other individuals, firms, 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.

Samuel Kanik and Moe Greenberg, individually, and as copartners, in connection with the offering for sale, sale or distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, agreed that they will forthwith cease and desist from the use of the words "Asiatic Mink" or "Asiatic" as a designation for or as descriptive of coats or garments made of or manufactured from the peltries of Japanese mink, and from offering for sale, selling, invoicing, or branding any fur merchandise in any manner which is or may be deceptive or misleading as to the geographical origin of the animal from which the peltry has been obtained. (Sept. 20, 1943.)

3734. **Monolithic Floor Surfacing—Qualities, Properties, or Results.**—H. H. Robertson Co., engaged in the manufacture of building prod-

ucts, including a monolithic floor surfacing designated "Robertson Hubbellite," and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

H. H. Robertson Co., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing directly or inferentially that "Robertson Hubbellite," or any product of similar composition:

(a) Is inherently sanigenic or provides self-sanitizing floor surfaces without regard to conditions of use; is continuously self-disinfecting, continuously disinfects the surface, or insures continuous regenerative sanitizing efficiency.

(b) Has the ability, under conditions of ordinary use, to destroy microorganisms generally; or otherwise, may be relied upon or depended upon to prevent the spread of disease.

(c) Prevents, to any effective degree, the growth on its surface of such microorganisms as—

Tricophyton interdigitale, Athlete's Foot.

Staphylococcus albus, Wounds and Abscesses.

Bacillus subtilis, Soil.

Bacillus mesentericus, Soil.

Micrococcus ureae, Stale Urine.

Salmonella aertrycke, Meat Poisoning.

Eberthella typhosa, Typhoid Fever.

Bacillus paratyphi-B, Paratyphoid Fever.

Salmonella suipestifer, Hog Cholera. (Sept. 24, 1943.)

3735. Trophies, Emblems, Etc.—Prices.—F. H. Noble & Co., engaged in the manufacture of trophies, emblems, and similar merchandise, and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

F. H. Noble & Co., in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will cease and desist forthwith from—

(a) The use on or in connection with its merchandise of any false, fictitious, or misleading price representation which purports to be the retail sales price thereof but which in fact is in excess of the price for which said merchandise is customarily sold in the usual course of retail trade.

(b) Directly or inferentially representing, through the use of a fictitious or marked-up price, that the price for which such merchandise is actually offered for sale to a prospective purchaser is an exceptional price, a low price, or a discounted price when in fact the price offered the purchaser is that for which said merchandise is customarily sold in the usual course of retail trade. (Sept. 24, 1943.)

3736. **Trophies, Cups, Plaques, Sport Figures, and Medals—Prices.**—Presidential Silver Co., engaged in the manufacture of trophies, cups, plaques, sport figures, and medals and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Presidential Silver Co., in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will cease and desist forthwith from—

(a) The use on or in connection with its merchandise of any false, fictitious, or misleading price representation which purports to be the retail sales price thereof but which in fact is in excess of the price for which said merchandise is customarily sold in the usual course of retail trade.

(b) Directly or inferentially representing, through the use of a fictitious or marked-up price, that the price for which such merchandise is actually offered for sale to a prospective purchaser is an exceptional price, a low price or a discounted price when in fact the price offered the purchaser is that for which said merchandise is customarily sold in the usual course of retail trade. (Sept. 24, 1943.)

3737. **Floor Waxes, Finishes, and Shoe Dubbing—Army Specifications or Formula Conformance.**—Helen M. Thompson, sole trader, operating as By-Chemical Products Co., engaged in the manufacture of floor waxes, finishes, and shoe dubbing and in the sale and distribution thereof in interstate commerce, in competition with individuals, firms, 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.

Helen M. Thompson, in connection with the offering for sale, sale and distribution of her products in commerce as defined by the Federal Trade Commission Act, agreed that she will forthwith cease and desist from branding, labeling, or otherwise representing a product as having been made in accordance with Army specifications or according to any other indicated specification or formula when in fact such product was not actually so compounded or prepared. (Sept. 24, 1943.)

3738. **Luggage—Composition.**—American Hardware Co., Inc., and Totty Truck & Bag Co., engaged in the manufacture of luggage and

in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

American Hardware Co., Inc., and Totty Trunk & Bag Co., and each of them, agreed that, in connection with the offering for sale, sale, and distribution of their luggage or other products in commerce as defined by the Federal Trade Commission Act, they will forthwith cease and desist from—

(a) Using the words "Tweed," "Flextweed," "Tweedcraft," "Cordurette," or similar terms, as trade names, brands, stamps, or labels for products which are not in fact composed of cloth or textile or corded fabric.

(b) Using the words "Flexhyde," "Black Polar Shark Grain Flexhyde," or similar terms, as trade names, brands, stamps, or labels for products which are not in fact composed of leather or of sharkskin, as the case may be.

(c) Using such terms in trade literature or advertising matter to designate or describe said product. (Sept. 29, 1943.)

3739. Spectacles or Eyeglasses—Prices.—Ideal Optical Service, Inc., a District of Columbia corporation, engaged in the service of examining eyes of customers and in fitting and furnishing lenses and frames of eyeglasses which it sells and distributes in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ideal Optical Service, Inc., in connection with the sale and distribution of its spectacles or eyeglasses in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing that the eyeglasses or spectacles offered for sale and sold by it are One Price Only; that the one price covers everything; that the price is \$7.50 and no more, whether single or double vision glasses of any style; that the price of any glasses complete is \$7.50, no more; that \$7.50 is all you pay—no more; or in any other way, by assertion or by implication, representing that no more than \$7.50, or any other fictitious maximum price, will be charged for the complete sets of spectacles or eyeglasses which it offers for sale. (Oct. 14, 1943.)

3740. Knitting Yarns—Composition and Source or Origin.—Herman Rosenberg, an individual, trading as Jeri Yarn Co., engaged in the sale and distribution of knitting yarns in interstate commerce, in competition with individuals, firms, 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.

Herman Rosenberg, either individually, or trading as Jeri Yarn Co., or under any other trade name or style, in connection with the sale and distribution of yarns in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from—

1. The use of the word "Shetland" or any other word of similar import as a designation for or as descriptive of any product which is not composed entirely of fibers from the fleece of Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland: *Provided, however,* That in the case of a product composed in substantial part of such fiber and in part of other fibers or materials, the word "Shetland" may be used as descriptive of the Shetland fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

2. The use of the word "Angora" or any other word of similar import, as a designation for or as descriptive of a product which is not composed entirely of the hair of the Angora goat: *Provided, however,* That in the case of a product composed in substantial part of the hair of the Angora goat and in part of other fibers or materials, the word "Angora" may be used as descriptive of the Angora fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers and materials: *And further provided,* That in the case of a product composed wholly or in substantial part of Angora rabbit hair, the words "Angora rabbit hair" may be used as descriptive of the product if composed wholly of Angora rabbit hair or as descriptive of such portion of the product as is composed of Angora rabbit hair.

3. The use of the words "Scotch," "Persian," "Saxony," or other word or words connoting any foreign geographical origin as a designation for or as descriptive of a product or products which are not imported from or made of materials imported from the country or locality indicated by the use of such geographical designation or term.

It was further understood and agreed that no provision of this agreement should be construed as relieving the said Herman Rosenberg in any respect of the necessity of complying with the requirement of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. (Oct. 14, 1943.)

3741. Blanket and Quilt Covers—Size and Thread Count of Product and Manufacturer.—Edward Losch, sole trader operating as Utica Textile Co., engaged in the wholesale distribution of dry goods and

piece goods in interstate commerce, in competition with individuals, firms, 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.

Edward Losch, in connection with the offering for sale, sale or distribution of his blanket and quilt covers or similar merchandise in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from the use of—

(a) The term "full size" as descriptive of a blanket or quilt cover the finished size of which is less than 72 by 84 inches, the figures "80 80" as applied to such a product the finished size of which is less than 80 inches square, or any other terms or expressions which do not accurately indicate the true dimensions of the finished articles.

(b) The terms "80 square" or "80 80" as descriptive of the fabric of which such products are made, when in fact the thread count either way per square inch is other than 80; or of any other expressions or representations indicative of the thread count which do not accurately inform purchasers with respect thereto.

(c) The terms or words "Mfr. by," "Manufacturers of Quilt Covers," or any other statements or expressions which represent, directly or by implication, that he makes or manufactures any such products, unless and until he actually owns and operates, or directly and absolutely controls a plant or factory wherein are made any and all products sold or offered for sale by him under such representation. (Oct. 15, 1943.)

3742. Plated Silverware, Including Trophies and Medals—Prices.—Benedict Manufacturing Co., engaged in the manufacture of plated silverware, including trophies and medals, and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Benedict Manufacturing Co., in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will cease and desist forthwith from:

(a) The use on or in connection with its merchandise of any false, fictitious, or misleading price representation which purports to be the retail sales price thereof but which in fact is in excess of the price for which said merchandise is customarily sold in the usual course of retail trade.

(b) Directly or inferentially representing, through the use of a fictitious or marked-up price, that the price for which such merchandise is actually offered for sale to a prospective purchaser is an ex-

ceptional price, a low price, or a discounted price when in fact the price offered the purchaser is that for which said merchandise is customarily sold in the usual course of retail trade. (Oct. 15, 1943.)

3743. **Knitting Yarns—Source or Origin.**—Louis Glasser, an individual, trading as Paramount Yarn Co., engaged in the sale and distribution of knitting yarns in interstate commerce, in competition with individuals, firms, 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.

Louis Glasser, either individually, or trading as Paramount Yarn Co., or under any other trade name or style, in connection with the sale and distribution of his yarns in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from the use of the words "Scotch," "Saxony," or other word or words connoting any foreign geographical origin as designations for or as descriptive of a product or products which are not imported from or made of materials imported from the country or locality indicated by the use of such geographical designation or term.

Louis Glasser further agreed that no provision of this agreement shall be construed as relieving him in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. (Oct. 15, 1943.)

3744. **Men's Shirts—Qualities, Properties or Results, and Guarantee.**—Superior Shirt Co., engaged in the sale and distribution of men's shirts in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Superior Shirt Co., in connection with the offering for sale, sale, and distribution of its shirts and shirt collars in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing:

(a) By the use of brands or labels such as "U. S. Pat. No. 2,156,704," "Miracle Weave," or "Guaranteed Miracle Weave," by advertising, or in any other way, that collars not actually constructed in accord with the specifications of said patent are made thereunder, are of the quality thereby indicated, are rightly or truthfully designated as "Miracle Weave"; or otherwise, either directly or inferentially, that such collars have, are guaranteed to have, or may be relied upon to have, the same attributes and features as those previously sold under such labels and brands.

(b) That a collar made of the same or similar material or of the same threads or ply as the body of the shirt is "Guaranteed for life of



the shirt," or otherwise by statement or by implication, that such collar equals in wearing quality or will outwear the rest of the shirt.

(c) By means of words such as "Guaranteed not to Shrink," or by term or expression of like effect or similar import, that the shirts or other articles so described are shrinkproof or nonshrinkable when the same have not in fact been fully shrunk or preshrunk to the extent that no residual shrinkage is left remaining therein; or representing in any way, by word, term, mark, label, or otherwise, that such goods have been shrunk to a greater degree than is in fact true or that the residual shrinkage of such goods is less than is in fact true. (Oct. 22, 1943.)

3745. Cough Drops—Endorsement or Approval, Composition and Qualities, Properties or Results.—C. A. Briggs Co., engaged in the business of manufacturing a preparation in the form of cough drops designated "H-B," and which it has sold and now sells, under the adopted trade name "H. B. Sales Co.," in interstate commerce, in competition with other corporations and with 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.

C. A. Briggs Co., whether trading as H. B. Sales Co., or under any other name, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, or with the advertising, by the means and in the manner above set forth, of the preparation designated H-B Cough Drops, or by any other name, agreed it will cease and desist forthwith from:

1. The use of the term "Hospital Brand," or of any other term of similar import, as descriptive of, or in referring to, said preparation, the effect of which tends or may tend to cause or convey the belief or impression that the said preparation is made in accordance with a formula prescribed, endorsed, or approved by a hospital, or that it has received the sanction of such an institution.

2. Representing, directly or inferentially, that said preparation contains Vitamin "A" and/or that the use of said preparation will impart the benefits normally derived from the consumption of Vitamin "A," or that the use of said preparation would serve to purify and soften all hardened places in the throat. (Oct. 22, 1943.)

3746. Neckties—Manufacturer, Composition, Nature of Manufacture, "Hand-Made," Etc.—Harry Klapper, trading also as National Neckwear Manufacturing Co., an individual, engaged in the sale and distribution of neckties in interstate commerce, in competition with individuals, firms, 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.

Harry Klapper, whether trading under such name, or under any other trade name or style, in connection with the sale and distribution of his said merchandise in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

1. The use of the word "Manufacturing" or other word or term of like meaning as part of or in connection with his trade name, and from the use of such word or term in any manner so as to import or imply or the effect of which tends or may tend to convey the belief or impression that he owns, operates, or controls the mill or factory in which such merchandise is produced, unless and until he actually owns and operates, or directly and absolutely controls a factory or mill wherein is made any and all merchandise by him sold or offered for sale under such title or name, or by or through any such representation.

2. The use of the word "silk" or any word or words connoting silk to designate or describe a product which is not composed of silk. If the product is composed in substantial part of silk and in part of a fabric or material other than silk, and the word "silk" or other silk-connoting word is used properly to describe such silk content, then the word "silk" or other silk-connoting word, whenever used, shall be immediately accompanied in equally conspicuous type by some other word or words so as to accurately designate such constituent fiber or material in the order of its predominance by weight, beginning with the largest single constituent.

3. Advertising, branding, labeling, invoicing, selling, or offering for sale products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or material other than rayon, from failing to disclose, in immediate connection or conjunction with the word "rayon," and in equally conspicuous type, each constituent fiber of said product in the order of its predominance by weight, beginning with the largest single constituent.

4. The use of the word "lined" or other word or words of like meaning as descriptive of or with reference to neckties that are not lined throughout and the linings of which do not extend the full length of the ties.

5. The use of the words "Hand-made," "Tailor made," "Custom-made," "Hand sewed," or other words or phrases of like meaning as descriptive of or with reference to neckties that are made or constructed wholly or partially by machines or by the use of machinery. (Oct. 25, 1943.)

3747. *Fabrics or Garments—Composition.*—Joseph Kravitz and Louis Duboff, copartners, trading under the firm name of Paramount Dress

Co., engaged in the manufacture of ladies' rayon dresses and in the sale and distribution thereof in interstate commerce, in competition with firms, individuals, 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.

Joseph Kravitz and Louis Duboff, and each of them, whether operating by their own names, or under a trade name, in connection with the offering for sale, sale, and distribution of their products in commerce as defined by the Federal Trade Commission Act, agreed that they will forthwith cease and desist from advertising, offering for sale, or selling, fabrics, garments, or other products composed in whole or in part of rayon without clearly disclosing by the use of the word "Rayon" 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 fabrics or materials, such fabrics or materials shall be designated in immediate connection or conjunction with the word "Rayon" in letters of at least equal size and prominence which shall truthfully describe and designate such constituent fiber or material thereof.

It is further understood and agreed that no provision of this agreement should be construed as relieving the said Joseph Kravitz and Louis Duboff in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. (Oct. 25, 1943.)

3748. Furs or Fur Products—Composition.—Zimmerman-Scher, Inc., a corporation engaged in the sale and distribution of fur garments in interstate commerce, in competition with other corporations, firms, and individuals likewise engaged; entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Zimmerman-Scher, Inc., in connection with the sale and distribution of its fur garments or fur products in interstate commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from:

1. Using the words "Camel's Hair" or any other words or terms of similar import or meaning either alone or in connection, combination, or conjunction with any other word or words to designate, describe, or refer to products not composed or made of camel's hair.

2. Using the word "Lapin," or any simulation thereof, either alone or in connection, combination, or conjunction with any other word or words, to designate, describe or refer to products made from rabbit or other peltries, unless such word or term is compounded with the word "dyed" or the word "processed" and when so compounded is immediately followed by the true common English name of the fur.

3. Designating or describing furs or fur products in any manner other than by the use of the true name of the fur as the last name of the designation or description thereof; and, when any dye or process is used in simulating any other fur, the true name of the fur appearing as the last word of the designation or description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed" compounded with the name of the simulated fur, as for example, "Seal-dyed Muskrat." (Oct. 25, 1943.)

3749. Stationery—Unique Nature or Situation.—Merrells, Inc., engaged in the sale and distribution of stationery in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Merrells, Inc., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing, directly or inferentially, that it is the only manufacturing engraver in West Virginia, (Nov. 11, 1943.)

3750. Photographs—Nature of Manufacture.—Olan Mills, Mary Mills, and T. H. Dry, copartners, trading under the firm name of Olan Mills Portrait Studios, engaged in the making of photographic portraits and in the sale and distribution thereof in interstate commerce, in competition with firms, individuals, 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.

Olan Mills, Mary Mills, and T. H. Dry, individually, as copartners, trading as Olan Mills Portrait Studios, or operating under any other name or style, agreed that in connection with the offering for sale, sale, and distribution of their photographs in commerce as defined by the Federal Trade Commission Act, they, and each of them, will forthwith cease and desist from the use of the terms "photo etching," "photo (etching) portrait," or the word "etching" or words of like import, as a designation for, as descriptive of, or with reference to a portrait or other picture where an etching process is limited to the background and/or not used on the portrait or other subject matter of such photograph. (Nov. 11, 1943.)

3751. Edible or Cooking Oils—Composition.—C. F. Simonin's Sons, Inc., engaged in the sale and distribution in interstate commerce of edible or cooking oils, including a preparation designated "Olio Simonini" or "Simonini Oil," in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

C. F. Simonin's Sons, Inc., in connection with the sale and distribution in commerce, as commerce is defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth, of its edible or cooking oils, agreed that it will forthwith cease and desist from representing that 20 percent of the content of any of said oils consists of virgin olive oil unless or until 20 percent thereof does consist of virgin olive oil; and from any representation the effect of which tends or may tend to convey the belief or impression that the olive oil content of its edible or cooking oils is greater than, in excess of, or other than the actual olive oil content thereof. (Nov. 11, 1943.)

3752. Ultraviolet Ray Lamps—Scientific or Relevant Facts, Qualities, Properties or Results, and Safety.—Science Laboratories, Inc., and Sperti Electric Co., Inc., are Ohio corporations, with their principal places of business in the city of Cincinnati, State of Ohio. The offices and officers of both corporations are the same. Sperti Electric Co., Inc., now and for some time past has been, and Science Laboratories, Inc., has heretofore been engaged in the manufacture of electric lamps, including ultraviolet ray lamps, and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Science Laboratories, Inc., and Sperti Electric Co., Inc., and each of them, agreed, in connection with the sale and distribution of their models IC-77 and HI-41 lamps, or of any other lamp of substantially similar construction sold under whatever name, in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, they will forthwith cease and desist from representing, directly or by implication:

(a) That the prevalent condition of this modern age is such that we are deprived of most of the benefits of sunlight; or by inference or suggestion, that it is essential for health to obtain such radiation by artificial means.

(b) That the low death rate in summer as compared to the high death rate in winter reflects or is an index to the deficiency of ultraviolet light in wintertime or demonstrates the value of ultraviolet light in the preservation of health and life.

(c) That the lamps offered for sale without adequate filter equipment produce ultraviolet rays "as in the sun," that said radiation is comparable to sunshine, or that by using such a lamp one may "live in the sun" or have sunshine available in the home.

(d) That the lamps offered for sale are essential, that is to say, indispensable, for expectant and nursing mothers; or inferentially or

otherwise, that exposure to ultraviolet radiation is the only way to obtain vitamin D.

(e) That vitamin D helps build up the general system or results in sound body tissue generally; or that it results in sound bone tissue, unless in direct connection with such representation it be clearly specified that an intake of vitamin D is beneficial in cases only of vitamin D deficiency and also only where adequate amounts of calcium and phosphorus are present.

(f) That rickets is, without qualification, due to lack of the beneficial rays of the sun; or by statement or implication, that the vitamin D essential to prevent rickets can be obtained only by exposure to sunlight or other sources of ultraviolet rays.

(g) That the lamps offered for sale are an aid to skin health or to a clear, unblemished complexion in general; or otherwise by statement or by inference, that radiation by such lamps constitutes a competent treatment or an effective remedy for all types of skin disorders or blemishes.

(h) That the infrared emanations from said lamps relieve aches and pains other than those of a minor nature; that such rays are invaluable, or otherwise beyond estimation, for congestions or soreness; and from the use of any presentation which imports or implies that such irradiation relieves all types of pains and aches or constitutes a competent treatment or an effective remedy for, or may be properly used for all types and conditions of soreness and congestion.

Science Laboratories, Inc., and Sperti Electric Co., Inc., also agreed to cease and desist from:

(i) Describing or referring to a lamp with the limited power of the model IC-77, thus advertised, as an ultraviolet lamp of the type used in doctors' offices for therapeutic purposes.

(j) Disseminating any advertisement or trade literature pertaining to its ultraviolet lamps for home use which fails clearly to reveal that said lamp should not be used in the case of pellagra, lupus erythematosus, or certain types of eczema: *Provided, however,* That such advertisement need contain only the statement, "CAUTION: Use Only as Directed," if and when the directions for use, whether they appear on the label, in the labeling, or both on the label and labeling, contain a warning to the above effect. (Nov. 11, 1943.)

3753. Furs or Fur Garments—Composition and Source or Origin.—Feshbach & Ackerman Fur Corporation, engaged in the manufacture of ladies' fur garments and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Feshbach & Ackerman Fur Corporation, in connection with the offering for sale, sale, and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed it will forthwith cease and desist from:

(a) Using the word "mink" or other word or term of like meaning, either alone or in connection or combination with any other word or words, to designate, describe, or refer to furs or fur garments made from muskrat peltries, or any peltries other than those of mink, unless such word or term is compounded with the word "dyed," and when so compounded is immediately followed in equally conspicuous type by the true name of the fur.

(b) Using the words "Persian Lamb," "Persian Paw," or "Persian" as designation for or as descriptive of coats or garments made of or manufactured from peltries other than those of true- or pure-breed Persian Lamb.

(c) Using the word "Polar" or other words or terms connoting origin characteristic of a particular geographic region as designation for or as descriptive of a fur or a garment material which has not come from the locality indicated by such geographical designation or term.

(d) Designating or describing furs or fur garments in any manner other than by the use of the true name of the fur as the last word of the designation or description thereof; and, when any dye or process is used in simulating any other fur, the true name of the fur appearing as the last word of the description shall be immediately preceded in equally conspicuous type by the word "dyed" or the word "processed" compounded with the name of the simulated fur as, for example, "Mink-dyed Muskrat." (Nov. 11, 1943.)

3754. Men's Clothing—Plant or Equipment.—Harry Myers & Co., Inc., trading also as Styleplus Factory Salesroom, a Maryland corporation, with its principal place of business in the city of Baltimore, State of Maryland, and with a retail sales outlet in the District of Columbia, engaged in the sale and distribution of men's clothing in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harry Myers & Co., Inc., whether trading under such name, under the name of Styleplus Factory Salesroom, or under any other trade name or style, in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing by pictorial delineation or otherwise that its factory and/or sales or showroom or rooms occupy an entire building or buildings, or any

portion or portions of a building or buildings in excess of or other than what it actually occupies. (Nov. 12, 1943.)

3755. Jewelry—Composition, Value, Free, and Savings.—Joseph Perel and William P. Lowenstein, copartners, trading under the firm name of Perel & Lowenstein with places of business in the cities of Memphis and Jackson, State of Tennessee, engaged in the sale and distribution of jewelry and associated commodities in interstate commerce, in competition with firms, individuals, 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.

Joseph Perel and William P. Lowenstein, and each of them, agreed that, in connection with the offering for sale, sale, and distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, they will forthwith cease and desist from:

(a) Use of the words "natural yellow gold," "yellow or rose gold," or similar terms as a description of or designation for watch cases not made wholly of gold, or of watch cases which are gold filled, gold plated, or have backings of steel or other metals not gold.

(b) Designating or referring to rings or other merchandise of less than 24 karat quality as "solid gold," "solid natural gold," or "solid yellow or white gold"; or by words or expressions of like import, representing that any such article is composed throughout of fine gold.

(c) Describing or referring to their premium dolls of the type advertised, as a "\$7.50 doll"; or by similar words or terms, representing that such dolls are equal in value or quality to those ordinarily sold in the retail trade for \$7.50 or have any worth in excess of their real market value; or in any other way, misrepresenting the value or quality of premium goods offered in connection with the sale of their merchandise.

(d) Use of the words "free," "gift," or terms of like import to describe merchandise when such merchandise is not given free or as a gratuity but the recipient is required, as a consideration, either to pay in whole or in part the price thereof, to purchase some other article or articles, or to render some service in order to obtain the same.

(e) Representing that purchasers of their diamonds always save 25 to 40 percent, or make any savings which are in excess of the average savings heretofore consistently made by all such customers in the usual and normal course of their dealings with said firm; or that their customers make any such savings because said firm buys from diamond importers or make any savings whatsoever on second-hand diamonds which have in fact been reset and sold to them at the prices of new stones.

(f) By the use of such words as "up to," "as much as," or other words or terms of like import, representing that prospective customers can



make savings of any percentage, proportion or ratio in excess of the average savings made by a substantial number of the firm's customers in the ordinary or usual course of business and under normal conditions and circumstances. (Nov. 12, 1943.)

**3756. Shirts, Etc.—Shrinkproof, Competitive Products, and Comparative Merits.**—Cluett, Peabody & Co., Inc., a New York corporation, engaged in the manufacture of shirts, collars, ties, underwear, and handkerchiefs and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Cluett, Peabody & Co., Inc., in connection with the offering for sale, sale, and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) Branding, labeling, or advertising Sanforset treated rayon garments or fabrics as "Sanforized-Shrunk," as "Sanforized-Shrunk Sanforset," or in any other way so as to indicate, import, or imply that such goods have been treated by the Sanforized shrinkage process; and from any presentation having the capacity or tendency to convey the impression or cause the belief by purchasers that the residual shrinkage remaining therein is no more than the public has been educated to understand by the legend or expression "Sanforized-Shrunk."

(b) Representing that Sanforset treated rayons will not shrink or stretch; that such process kills, kicks out, or banishes shrinkage and stretchage; or by term or expression of like effect or similar import, that the shirts or other articles so described are shrinkproof or non-shrinkable when the same have not in fact been fully shrunk or pre-shrunk to the extent that no residual shrinkage is left remaining therein; or representing in any way, by word, term, mark, label, or otherwise, that such goods have been shrunk to a greater degree than is in fact true or that the residual shrinkage of such goods is less than is in fact true.

(c) Representing that preshrunk shirts cannot be depended upon, are bad enough for a ground for divorce, fool people; that most preshrunk shirts shrink; that a preshrunk shirt is not sure to fit after laundering; that prior to the Sanforset process, rayons smelled like dead mice, stunk, caused elevated noses, and arched eyebrows; or from the use of any other unwarranted statement or representation which tends or may tend to disparage or discredit competitors or their products. (Nov. 12, 1943.)

**3757. Wearing Apparel, Bedding, Piece Goods, Etc.—"Mills."**—William H. Heaney and William E. Charette, copartners, trading under the

firm name of Columbia River Woolen Mills, engaged as jobbers in the sale and distribution of wearing apparel, bedding, piece goods, and similar merchandise in interstate commerce, in competition with firms, individuals 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.

William H. Heaney and William E. Charette, and each of them, agreed that, in connection with the sale and distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, they will forthwith cease and desist from the use of the word "mills" as part of their firm or trade name, and from the use of such word or any other word or term of similar implication or meaning in any manner so as to import or imply, or the effect of which may be to convey the belief or impression, that they make or manufacture the merchandise sold by them or that they actually own and operate or directly and absolutely control a plant or factory wherein is made any and all merchandise sold or offered for sale under such representations. (Nov. 12, 1943.)

3758. Photographic Prints—"News Service," Press Use, Special or Reduced Prices, Unordered Product, Etc.—Conway Studios, Inc., is a New York corporation with its principal place of business in the city and State of New York. William E. Singer, Ben Sirlin, and Paul Adelman, also of New York City, are the officers and stockholders of said corporation and, acting together and in cooperation with each other, have dominant control of the advertising policies and business activities thereof; and in connection therewith, trade under the name of Affiliated Photo News Service. Said corporation and individuals, engaged in the making of photographic prints and in the sale and distribution thereof in interstate commerce, in competition with corporations, individuals, and firms, likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Conway Studios, Inc., William E. Singer, Ben Sirlin, and Paul Adelman, and each of them, agreed that, in connection with the offering for sale, sale and distribution of their photographic products in commerce as defined by the Federal Trade Commission Act, they will forthwith cease and desist from:

(a) Using the words "Affiliated Photo News Service" to designate, describe or refer to their business; or using the term "News Service" or the word "News," or any other word or term of similar import or meaning, as a part of any trade or corporate name, to designate or describe a business which is principally that of selling photographic prints to persons photographed.

(b) Represent or implying in any manner to prospective customers, that said parties, or any of their sales representatives or agents, are

news or press photographers, or that any photograph solicited by them is for press or publicity purposes, unless such photograph actually is for immediate news or press use.

(c) Designating, describing or referring to Conway Studios, Inc., as the portrait division of Affiliated Photo News Service or of any other news service or agency.

(d) Representing, directly or inferentially, that any miniature or photograph which has not in fact been prepared for display at an exhibition, as such word generally is understood and recognized, has been prepared for exhibition purposes.

(e) Representing, directly or inferentially, that the miniatures or photographs offered for sale to prospective customers are made from negatives found by their artist to be so attractive and unusual that he selected them for exhibition purposes; or in any other way, representing that said pictures were especially suitable for gold tone miniatures or were printed for any purpose but for sale to the person photographed.

(f) Representing that the price at which their miniatures are offered for sale is a reduced or special price, when in fact it is the usual and customary price charged by them in their normal course of business.

(g) Mailing or otherwise distributing miniature photographs or other merchandise to persons who have not requested same and thereafter representing, either by direct assertion or by implication, that such recipient is under contract legally enforceable either to pay for such unsolicited merchandise or to return the same. (Nov. 12, 1943.)

3759. Hooks and Eyes—Composition and Qualities, Properties or Results.—DeLong Hook & Eye Co., Inc., engaged in the manufacture of metal fasteners and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

DeLong Hook & Eye Co., Inc., in connection with the offering for sale, sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing in any way that its hooks and eyes, or other products made of steel, are composed of brass or that they will not rust. (Nov. 16, 1943.)

3760. Underwear—Doctor's Supervision and Health Features.—Green United Stores, Inc., A. S. Haight & Co., Inc., E-Z Mills, Inc., The Campe Corporation, Carmi-Feature Underwear, Inc., Century-Beverly Corporation, Brown Knitting Mills, P. H. Hanes Knitting Co. and Appalachian Mills Co., corporations, engaged in the sale and

distribution of merchandise, including underwear, in interstate commerce, in competition with other corporations, firms and individuals also engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Green United Stores, Inc., A. S. Haight & Co., Inc., E-Z Mills, Inc., The Campe Corporation, Carmi-Feature Underwear, Inc., Century-Beverly Corporation, Brown Knitting Mills, P. H. Hanes Knitting Co. and Appalachian Mills Co., and each of them, in connection with the sale and distribution of underwear or other wearing apparel in commerce as defined by the Federal Trade Commission Act, agreed that they will forthwith cease and desist from:

1. The use of the abbreviation "Dr." or other abbreviation, word, sign, symbol, or term connoting the word doctor, in connection with or as part of a trade designation for such merchandise; and from the use of such abbreviation, word, sign, symbol, or term in any manner so as to import or imply that such merchandise is made under the supervision of a physician.

2. The use of the word "Health," either alone or in combination or connection with any other word or words, in connection with or as part of a trade designation for such merchandise; and from the use of the word "Health" or any other word or words of like meaning in any manner so as to import or imply that said merchandise has health features or is of therapeutic effect or value. (Nov. 16, 1943.)

3761. Trophies—Prices.—Dodge, Incorporated, is an Illinois corporation, with its principal place of business in the city of Chicago, State of Illinois. Ray E. Dodge, of Los Angeles, Calif., is the president of said corporation and dominates its business practices. Said corporation and individual, engaged in the manufacture of trophies, consisting of plaques, medals, statuettes, and cups, and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair method of competition in commerce as set forth therein.

Dodge, Incorporated, and Ray E. Dodge, and each of them, in connection with the sale and distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, agreed that they will cease and desist forthwith from:

- (a) The use on or in connection with their merchandise of any false, fictitious or misleading price representation which purports to be the retail sales price thereof, but which in fact is in excess of the price for which said merchandise is customarily sold in the usual course of retail trade.

- (b) Directly or inferentially representing, through the use of a fictitious or marked-up price, that the price for which such merchandise is actually offered for sale to a prospective purchaser is an exceptional

price, a low price or a discounted price when in fact the price offered the purchaser is that for which said merchandise is customarily sold in the usual course of retail trade. (Nov. 16, 1943.)

3762. **Trophies—Prices.**—Dodge, Incorporated is a California corporation, with its principal place of business in the city of Los Angeles, Calif. Ray E. Dodge, of Los Angeles, Calif., is the president of said corporation and dominates its business practices. Said corporation and individual, engaged in the manufacture of trophies, consisting of plaques, medals, statuettes, and cups, and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Dodge, Incorporated and Ray E. Dodge, and each of them, in connection with the sale and distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, agreed that they will cease and desist forthwith from:

(a) The use on or in connection with their merchandise of any false, fictitious, or misleading price representation which purports to be the retail sales price thereof, but which in fact is in excess of the price for which said merchandise is customarily sold in the usual course of retail trade.

(b) Directly or inferentially representing, through the use of a fictitious or marked-up price, that the price for which such merchandise is actually offered for sale to a prospective purchaser is an exceptional price, a low price, or a discounted price when in fact the price offered the purchaser is that for which said merchandise is customarily sold in the usual course of retail trade. (Nov. 16, 1943.)

3763. **Feminine Hygiene Preparations—Qualities, Properties, or Results, Success, Use, or Standing, Laboratories, and Safety.**—Milton L. Lieberman, a sole trader, operating as Lee Products and also as Chemi-Culture Laboratories, engaged in the sale and distribution of feminine hygiene preparations in interstate commerce, in competition with individuals, firms, 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.

Milton L. Lieberman, in connection with the offering for sale, sale, and distribution of his medicinal preparations in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means or in the manner above set forth, agreed that he will forthwith cease and desist from:

(a) Use of the word "Periodic" or term of similar connotation as a part of the trade designations for or as descriptive of the pills or capsules heretofore offered for sale as Lee's Periodic Pills or Lee's

Periodic Capsules; or reference to the menstrual period in any way which may indicate that such a preparation has predictable or reliable influence upon the menstrual period.

(b) Representing that either of said preparations, or any compound of like ingredients, is a competent treatment for or an effective or efficient regulator of amenorrhea or dysmenorrhea, is a well-known formula therefor, is one of the finest female regulators known, has been used successfully for years, or successfully used at all, for such purpose.

(c) Use of the symbol "XXX" or the legend "triple strength" or other mark or term indicative of extra strength or unusual potency for said pills and capsules or for any product of like composition.

(d) Designating as "Feminine" or by other term characteristic of females, any tablet or medication which will produce no peculiar or selective effect in women.

(e) Use of the word "Laboratories" or term of like meaning with or as part of his trade name, until such time as he may actually own and operate a laboratory in connection with his business, or designating his business as a "Division" or branch of some nonexistent organization.

(f) Disseminating any advertisement or trade literature pertaining to his medicinal preparations which contain:

1. A laxative, which fails clearly to reveal the potential danger thereof in the presence of nausea, vomiting, abdominal pain, or other symptoms of appendicitis;
2. Apiol or pennyroyal, which fails clearly to reveal that its consumption may produce irritation of the kidneys.

*Provided, however,* That if directions for use of each of said preparations, whether appearing on its label, in the labeling, or in both label and labeling, contain adequate and specific warnings of its potential danger to health as aforesaid, said advertisement need contain only the cautionary statement: CAUTION, USE ONLY AS DIRECTED. (Nov. 18, 1943.)

3764. Paint Oil—Composition, Qualities, Properties or Results and Comparative Merits.—George C. Gordon, an individual, trading as Geo. C. Gordon Chemical Co., engaged in the sale and distribution in interstate commerce of a preparation designated "Gordon's Boiled Oil Blended" for use as a vehicle in preparing paints, in competition with individuals, firms, 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.

George C. Gordon, whether trading under such name, as Geo. C. Gordon Chemical Co., or under any other trade name or style, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, of the preparation designated "Gordon's Boiled Oil Blended" or any other preparation of substan-

tially the same composition, agreed that he will forthwith cease and desist from:

1. The use of the terms "Boiled Oil Blended" or "Boiled Oil," or either thereof, as a designation for or as descriptive of a preparation other than boiled linseed oil; and from the use of such terms or other words or terms of like meaning in any manner so as to import or imply that a preparation containing ingredients other than linseed oil is linseed oil or a blend of linseed oils.

2. Representing, directly or inferentially, that said preparation is superior to linseed oil; that it provides a tougher or more weather- or wear-resisting surface film than does linseed oil; that paint in which it is used as a vehicle possesses longer life or affords better protection than does paint, the oil content of which consists of linseed oil; that the difference between such preparation and linseed oil is "almost negligible"; that it is equal in quality or efficiency to linseed oil; or otherwise that it is comparable to linseed oil as a paint vehicle.

3. Overstating or exaggerating the efficacy of such preparation as compared to that of linseed oil or in any other manner.

4. The use of the statement "contains no rosin or driers"; and from the use of any statement or representation pertaining to such preparation that conveys or has the capacity or tendency to convey the belief or impression that said preparation does not contain any ingredient which, in fact, it does contain, or that the constituent ingredients thereof are other than those of its true composition. (Nov. 18, 1943.)

3765. Beauty and Barber Supplies—Unique or Unusual Advantages, Success, Use, or Standing, Prices, Competitive Products, and Comparative Merits.—United States Beauty Products Corporation, engaged in business, primarily by mail order, as a distributor of beauty and barber supplies in interstate commerce, in competition with other corporations and with individuals, firms, and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

United States Beauty Products Corporation, in connection with the advertisement, offering for sale, sale, or distribution of its merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from the use of any statement or representation which imports or implies or the effect of which tends or may tend to cause or convey the impression or belief: that the resources, that are available to said corporation and/or employed by it to the interests of its customers, are in excess of what is the fact; that the customer trade supplied by said corporation is of a magnitude which is an exaggeration of the true facts; that its customers enjoy dividends or benefits which are the result of its merchandising policy, when such representation is not capable of substantiation; that

the prices for its merchandise generally are much less or are lower by any indicated amount than prices charged by competitors for similar merchandise of comparable worth or value, unless such price representation actually prevails.

Said corporation also agreed to cease and desist from the use of the word "exclusive," in referring to or as descriptive of the formula for its "Beau Catcher" machineless pads so as to import or imply that the formula for said pads is used solely by said corporation, or that it has exclusive right to use any feature of said pads other than the name thereof, to wit: the words "Beau Catcher."

Said corporation further agreed to cease and desist from stating that it is "the only company featuring only good brushes made without inferior substitutions," or of any other similar statement which tends or may tend to convey the impression or belief that there are no competitive brushes on the market that are of good value and/or contain no inferior substitutions. (Nov. 22, 1943.)

**3766. Photographic Prints and Enlargements—Terms and Conditions and Free.**—Theodore F. Dusseau, an individual, who, for some time past traded at Hollywood, Los Angeles, Calif., under the names of Filmland Studios and Film Studios, in the conduct of a business consisting of the development of film exposures and the sale and distribution of prints and enlargements thereof in interstate commerce, in competition with 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.

Theodore F. Dusseau, in connection with the advertisement, offering for sale or sale of his photographic merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that he will cease and desist forthwith from:

1. Stating or representing that 16 prints and 2 enlargements of developed exposures, or any stated quantity of merchandise, are or is offered and will be furnished to a customer upon receipt from him of 25 cents, or any specified sum, when in fact, delivery of such merchandise either is not made in strict conformity with such offer or is contingent upon the payment by the prospective recipient of a charge or charges in addition to the sum specified, but which fact is not explained, adequately and unequivocally, in connection with such offer.

2. The use of the word "free," or of any other word or words of similar meaning or import, as descriptive of an enlargement or any item which forms a part of a combination offer of merchandise for which an inclusive charge is made, and from stating or representing, in any manner, that such enlargement or item is given free or as a gratuity, when in fact, the prospective recipient thereof is required to pay or



furnish a consideration in order to obtain said enlargement or item. (Nov. 22, 1943.)

3767. "Convert-O-Grate"—Comparative Costs and Merits, Qualities, Properties, or Results, Etc.—Jersey Oil Heating, Inc., engaged in the manufacture of a device designated "Convert-O-Grate," for use in converting oil burning furnaces to coal burning furnaces, and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Jersey Oil Heating, Inc., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act of the device designated Convert-O-Grate, or any other device of similar construction, whether sold under such name or any other name or names, agreed that it will forthwith cease and desist from representing or placing in the hands of others a means to represent, directly or inferentially:

1. That said device can be installed for one-half or less than one-half the installation cost of similar devices; that said device "saves 65% of former cost" or that the installation cost thereof is 65 percent less than that of competitive products; or otherwise that the cost or comparative cost of such device or of its installation is other than is actually a fact.

2. That said device can be installed in 8 minutes; that a furnace in which the device has been installed can be converted from oil to coal or from coal to oil in 8 minutes; or that the time required to install such device or to convert a furnace equipped therewith from oil to coal or from coal to oil is less than is actually a fact.

3. That said device is an "Amazing wartime invention" or that it embodies any new amazing principle. (Nov. 24, 1943.)

3768. "Convert-O-Grate"—Comparative Costs and Merits, Qualities, Properties, or Results, Etc.—Anchor Post Fence Co., engaged in the sale and distribution of a device designated "Convert-O-Grate" in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Anchor Post Fence Co., in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act of the device designated Convert-O-Grate, or any other device of similar construction, whether sold under such name or any other name or names, agreed that it will forthwith cease and desist from representing, directly or inferentially:

1. That said device can be installed for one-half or less than one-half the installation cost of similar devices; that said device "saves 65%

of former cost" or that the installation cost thereof is 65 percent less than that of competitive products; or, otherwise, that the cost or comparative cost of such device or of its installation is other than is actually a fact.

2. That said device can be installed in 8 minutes; that a furnace in which the device has been installed can be converted from oil to coal or from coal to oil in 8 minutes; or that the time required to install such device or to convert a furnace equipped therewith from oil to coal or from coal to oil is less than is actually a fact.

3. That said device is an "Amazing wartime invention" or that it embodies any new amazing principle. (Nov. 24, 1943.)

3769. Textile Fabrics—Nature, Composition, and Mills.—Joseph Gluck, a sole trader, engaged in the sale and distribution of textile fabrics in interstate commerce, in competition with individuals, firms, 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.

Joseph Gluck, in connection with the sale and distribution of his merchandise in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from:

1. The use of the terms "Jer-Zee" or "Jerzette" as designations for fabrics other than Jersey fabrics; and from the use of such terms or other term or word simulating or connoting "Jersey" in any manner so as to import or imply that a product is a jersey fabric when, in fact, such product is not a jersey fabric.

2. Advertising, branding, labeling, invoicing, selling, or offering for sale products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or material other than rayon, from failing to disclose, in immediate connection or conjunction with the word "rayon," and in equally conspicuous type, each constituent fiber of said product in the order of its predominance by weight beginning with the largest single constituent.

3. Representing, directly or inferentially, that he has three mills or any number of mills in excess of the number he actually owns and operates or directly and absolutely controls; or that he has a mill in New Jersey, Pennsylvania, or any other State or States, unless and until he actually owns and operates, or directly and absolutely controls a mill or mills in such State or States. (Nov. 26, 1943.)

3770. Chicks—"U. S. Approved and Certified," "Pullorum Free," Breeders, Etc.—Emmett J. Smith and Sarah Alma Maxwell, copartners, trading as Emmett J. Smith & Daughter, engaged in the sale and distribution of chicks in interstate commerce, in competition with firms, corpora-

tions, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Emmett J. Smith and Sarah Alma Maxwell, whether trading under such names, as Emmett J. Smith & Daughter, or under any other trade name or style, in connection with the sale and distribution of chicks in commerce as defined by the Federal Trade Commission Act, agreed that they, and each of them, will forthwith cease and desist from:

1. Using the statements "U. S. Approved," "U. S. Certified," "U. S. Approved and Banded," or other statement or representation of like meaning as descriptive of or in connection with any chick or chicks that are not in fact U. S. Approved, U. S. Certified, or U. S. Approved and Banded, as the case may be, in accordance with the provisions of the National Poultry Improvement Plan.

2. Representing, directly or inferentially, that they are members of or participants in the National Poultry Improvement Plan, unless and until they actually are participating members of the Plan.

3. Representing by the use of statements such as "Absolutely Pullorum Free," or "Pullorum Free," or in any other manner, that chicks can be depended upon to be Pullorum free.

4. Representing, directly or inferentially, that they are poultry breeders or are engaged in the poultry breeding business, or that they operate a hatchery or hatcheries, unless and until they actually are engaged in the poultry breeding business and/or operate hatcheries as represented. (Nov. 26, 1943.)

3771. "Root Beer"—"Draft."—Silver Cup Beverage Co., engaged in the manufacture of soft drinks, including so-called root beer and other carbonated bottled beverages of different flavors, and in the sale thereof in interstate commerce, in competition with other corporations and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Silver Cup Beverage Co., in connection with the advertising, offering for sale, sale, or distribution of its bottled carbonated beverage called "Root Beer" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that it will cease and desist forthwith from the use of the word "Draft" as or in connection with the trade name for or as descriptive of said beverage; and from the use of the word "Draft," or of any other word or term of similar meaning or implication, either alone or in connection with the picturization of a wooden keg or container, or with the words "Old Style," or in any other way, so as to import or imply, or the effect of which tends or may tend to cause or convey the impression or belief, that the said product is drawn or dispensed from a keg or container to the consumer, or that

the said product possesses flavors, such as are associated by a substantial portion of the public with draft beverages, as distinguished from those which are bottled. (Nov. 26, 1943.)

3772. **Athletic Trainers' Supplies and First Aid Preparations—Success, Use, or Standing and Qualities, Properties, or Results.**—Cramer Chemical Co., engaged in the sale and distribution of athletic trainers' supplies and first aid preparations in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Cramer Chemical Co., in connection with the offering for sale, sale, and distribution of its various preparations in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from representing directly or inferentially:

(a) That the product sold as Nitrotan is the best known or the most universally used germicide in the United States, gives complete sterilization in 90 seconds or affords complete sterilization at all, checks or stops bleeding other than the capillary bleeding from superficial skin lesions, seals nerve ends, treats lymphatics, dehydrates destroyed tissue, promotes growth of new tissue, draws the torn, jagged edges of a wound together, stops sore throat, serves as a quick or dependable preventative thereof or assists in the prevention of influenza; or that the use of such product may be relied upon to give quick and safe recovery from all such conditions or any of them.

(b) That Cramer's Athletic Stringent for Gargle would be effective in the checking or prevention of influenza, tonsillitis, or like afflictions.

(c) That Cramer's Athletic Liniment has special penetrating powers, or by inference or suggestion that it penetrates into muscular or other tissues to any significant degree.

(d) That Cramer's Dextrose Tablets will produce quick energy in the sense of capacity for more intense physical exertion; will stimulate an athlete to greater performance; gives added zip to basketball players; enables athletes to win more games; may be relied upon to afford immediate relief from hay fever or asthma, or would have any value whatsoever in the prevention or treatment thereof.

(e) That Cramer's Athletic Hair Oil prevents or serves to prevent "shower bath baldness" or any other kind of baldness.

(f) That Iso-Pine, or any product of like composition, is a suitable or effective preparation for use in sterilizing surgical instruments.

(g) That Cramer's Athletic Effervescent Alkaline Powder, or any compound of like ingredients, relieves acid condition of the system; or by similar statement or implication, representing that it will have any significant influence on the acid-base balance of the body.

(h) That its Athletic Ointment is a "healing" ointment, promotes rapid healing, has any therapeutic effect on boils; or otherwise, that it performs any function in the healing process.

(i) That its Athletic Red Hot Ointment relieves deep-seated pain or constitutes a competent treatment for or affords adequate relief from sprains.

(j) That its Athletic Analgesic Balm, applied as indicated, relieves congestion;

(k) That its Athletic Foot Ointment is effective in treating athlete's foot or ringworm, unless it be clearly indicated that there are deep-seated cases of such conditions for which it would not serve as an adequate or competent treatment;

(l) That its Athletic Inhalant, used in the nose, affords an adequate treatment or an effective relief of sinus trouble, is efficacious in the prevention of colds, forms a protective coating against bacteria; or that it could give more than temporary relief to nose and throat irritations of a minor nature;

(m) That its Cold Tablets assist or have any appreciable effect in the prevention of common colds;

(n) That Cramer's Athletic Alkaline Powder relieves nausea and stomach sickness without regard to the nature or cause thereof.

Cramer Chemical Co. also agreed to cease and desist from:

(o) The use of the word "Antiseptic" as part of the trade name, brand or designation of its product heretofore sold as Cramer's Athletic Antiseptic Powder, or indicating in any way that said preparation, or one of like composition, has antiseptic properties under such conditions of use. (Nov. 26, 1943.)

3773. Trophies—Prices.—Bechard Manufacturing Co., engaged in the manufacture of plated base metal trophies, prize cups, and silver-plated hollow ware, and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Bechard Manufacturing Co., in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) The use on or in connection with its merchandise of any false, fictitious, or misleading price representation which purports to be the retail sales price thereof but which in fact is in excess of the price for which said merchandise is customarily sold in the usual course of retail trade;

(b) Directly or inferentially representing, through the use of a fictitious or marked-up price, that the price for which such merchan-

dise is actually offered for sale to a prospective purchaser is an exceptional price, a low price or a discounted price when in fact the price offered the purchaser is that for which said merchandise is customarily sold in the usual course of retail trade. (Nov. 29, 1943.)

3774. *Women's Coats—Nature, Composition, and Source or Origin.*—Morris Cohen and Morris Metzger, copartners, trading as Metzger & Cohen, engaged in the sale and distribution in interstate commerce of merchandise including women's coats, in competition with individuals, firms, 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.

Morris Cohen and Morris Metzger, whether trading under such names as Metzger & Cohen, or under any other trade name or style, in connection with the sale and distribution of their merchandise in commerce as defined by the Federal Trade Commission Act, agreed that they and each of them will forthwith cease and desist from:

1. Using the terms "Krimkurl," "Broadtel" fabric, "Persianlece" fabric, "Cana-Curl" fabric, or any other term of similar import, to designate or describe any fabric which is not in fact made from the fur or hair of the fur-bearing animal so indicated or suggested: *Provided, however,* That in designating a textile fabric which is made in such manner as to resemble the peltry of a fur-bearing animal there may be used such terms as "fur-like fabric," "fabric made to simulate fur," or similar terms which clearly disclose that such fabric is not made of fur but merely resembles the peltries of a fur-bearing animal.

2. Using the words "Krimkurl," "Broadtel," "Persianlece," "Cana-Curl," or any other term or word which is indicative of a fur-bearing animal, to designate or describe any coat or other garment which is not in fact made from the peltry of the animal so indicated or suggested: *Provided,* That when used to designate a coat or other garment made of a textile fabric which is manufactured in such manner as to resemble the peltry of the animal so indicated or suggested, such terms or words may be used if immediately accompanied by other word or words, printed in equally conspicuous type, disclosing that the fabric of which such coat or other garment is made is merely an imitation of the peltry of the animal named or indicated as, for example, "Imitation Persian Lamb."

3. Representing in any manner or by any means that coats or other garments made from textile fabrics are made from the peltries of fur-bearing animals or from the fur or hair of such animals.

4. The use of the words "Nome," "Ural," "Newral," "Polakin," or other terms or word connoting or suggesting geographical origin as a designation for or as descriptive of a product which is not imported from or made of materials imported from the locality indicated or suggested by the use of such designation or term.

5. Advertising, branding, labeling, invoicing, selling, or offering for sale products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such products are composed of or contain rayon; and, when a product is composed in part of rayon and in part of fibers or material other than rayon, from failing to disclose, in immediate connection or conjunction with the word "rayon," and in equally conspicuous type, each constituent fiber of said product in the order of its predominance by weight beginning with the largest single constituent.

It was further understood and agreed that no provision of this agreement shall be construed as relieving the said Morris Cohen or Morris Metzger in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. (Nov. 29, 1943.)

3775. Spyglasses—Nature, Qualities, Properties, or Results, Prices, Value, Limited Supply, Free, Refund, Etc.—Chester M. Miller, Frank M. Baker, Edward H. Larson, and Nelson J. McMahon, copartners, trading under the firm name of Miller & Co., engaged in the sale and distribution of spyglasses in interstate commerce, in competition with firms, individuals, 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.

Chester M. Miller, Frank M. Baker, Edward H. Larson, and Nelson J. McMahon, individually, as copartners, trading as Miller & Co., or operating under any other name or style, in connection with the offering for sale, sale, and distribution of their spyglasses or other merchandise, in commerce as defined by the Federal Trade Commission Act, agreed that they will forthwith cease and desist from representing:

(a) That any spyglass offered for sale or sold by them is a fine telescope, is precision made, has precision ground lenses, combines the convenience of a field glass with the power and range of a telescope, was developed by its manufacturers to replace or serve as a substitute for binoculars or field glasses; or by presentations of like import, that it would serve the purpose of or could take the place of a pair of field glasses or similar instrument.

(b) That such instrument brings objects which may be far beyond the range of the naked eye, or objects at any other distance, into sharp, easy vision.

(c) That the price of \$1.49 is amazingly low for an article normally retailed at \$1, or that its maker is now at last able to offer, or has offered, the same for only \$1.49; that the purchaser would anticipate a charge of \$3, \$4, or \$5 for such instrument; or by inference or connotation, that said spyglass is in a class with or can perform the func-

tions of an article costing \$10, \$15, or any sum above that charged for those of like kind and quality.

(d) That the spyglass offered by them at \$1 is "NOT \$5.00 \* \* \* NOT \$10.00," or "not" any extravagant or fanciful figure conversely suggesting that it might be of such value; or by any manner of statement, that said article is either actually or potentially worth the price of a \$5, a \$10, or a \$15 field glass, or is in any way comparable thereto; that the advertised price of \$1 is either new, low, sensationally low, amazing, reduced, money-saving, a close-out bargain, or otherwise advantageous or exceptional.

(e) That the 50-cent spyglass sold by them is "NOT \$5 \* \* \* NOT \$4 \* \* \* NOT EVEN \$1"; or by any such use of suppositious or fantastic figures, representing that said article either is or may be worth more than the price charged for it; or otherwise, by direct assertion or by adroit or crafty terminology, representing that any article offered for sale by them has worth or value in excess of the price for which it may be purchased generally, in the usual course of trade.

(f) That "the company," by inference Miller & Co., has sold expensive telescopes and lenses at high prices, or has ever sold any such instruments.

(g) That the available supply of said spyglasses is limited; that the manufacturer has been barred from making same, or is closing out its stock thereof; that the prospective purchaser may never have another chance to obtain such a telescope for the price offered; that their supply of carrying cases is less than the number of spyglasses with which they came, or that such cases are included as a special premium to those, only, who buy the spyglasses before the stock of cases is exhausted.

Said copartners also agreed to cease and desist from:

(h) Use of the words "free," "absolutely free," "gift," "a special gift," "an added free gift," or terms of like import to describe merchandise when such merchandise is not given free or as a gratuity but the recipient is required, as a consideration, either to pay in whole or in part the price thereof, to purchase some other article or articles, or to render some service in order to obtain the same.

(i) Description of or reference to an order blank which conveys no unusual, economizing, or bargain-sale advantage, as a "special," "money-saving," or "close-out" coupon; designation of their usual offer to the public as a "special offer made to Thrilling Comics readers only"; denomination of their customary order blank as "Thrilling Comics Special Coupon"; or any other indication, that the offer made or the coupon used, confers upon the readers of the particular magazine named, some concession, benefit, or favor not open to other persons.



(j) Representation that the money of a dissatisfied purchaser will be refunded in full where the total amount paid by him for the delivered merchandise is not returned. (Nov. 23, 1943.)

3776. Trophies, Medals, and Charms—Prices.—A. C. Rehberger Co., engaged in the manufacture of trophies, medals, and charms, and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

A. C. Rehberger Co., in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) The use of or in connection with its merchandise of any false, fictitious, or misleading price representation which purports to be the retail sales price thereof but which in fact is in excess of the price for which said merchandise is customarily sold in the usual course of retail trade.

(b) Directly or inferentially representing, through the use of a fictitious or marked-up price, that the price for which such merchandise is actually offered for sale to a prospective purchaser is an exceptional price, a low price, or a discounted price when in fact the price offered the purchaser is that for which said merchandise is customarily sold in the usual course of retail trade. (Dec. 2, 1943:)

3777. Bacteria Cultures—Qualities, Properties or Results, Composition and Testimonials.—G. H. Earp Thomas, is an individual, trading as Earp Laboratories, with his principal place of business in the city of Bloomfield, State of New Jersey. Earp-Thomas Laboratories, Inc., and Bloomfield Laboratories Corporation, are New Jersey corporations, with their place of business in the city of Bloomfield, State of New Jersey, at the same address as that of the aforesaid G. H. Earp Thomas, who is the principal stockholder of and exercises personal control over the sales promotional and other activities of said corporations. Said individual and corporations, engaged in the sale and distribution in interstate commerce of bacteria cultures, variously designated as Silogerm, Humogerm, Farmogerm, and Acidofilac, also designated as Bloomfield Culture Lactobacillus, in competition with corporations, individuals and firms likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

G. H. Earp Thomas, whether trading under such name, or as Earp Laboratories, or under any other trade name or style, Earp-Thomas Laboratories, Inc., and Bloomfield Laboratories Corporation, in connection with the sale and distribution in commerce as defined by the Federal Trade Commission Act, or the advertising by the means and in the manner above set forth, of the preparations designated Silo-

germ, Humogerm, Farmogerm, Acidofilac, or Bloomfield Culture Lactobacillus, or any other preparation composed of substantially the same ingredients or possessing substantially the same properties, whether sold under such names or any other name or names, agreed that they, and each of them, will forthwith cease and desist from:

1. Representing, directly or inferentially, that Silogerm or the use thereof:

- (a) Protects silage against decomposition.
- (b) Safeguards animals' digestive systems.
- (c) Adds one-third more nutrition or any appreciable nutrition to silage.
- (d) Increases the food value of silage.
- (e) Makes available to animals all the phosphorous, calcium, and nitrogen in silage; or
- (f) Increases the food value of corn treated therewith.

2. Representing that the use of Silogerm, in connection with salt, acts as a perfect cure for green silage; that Silogerm prevents mold or decay or makes the best or better silage out of green fodder; or that said preparation, used in connection with corn silage, makes the silage better, more palatable or more valuable as a feed, helps keep animals in good condition or makes more minerals available.

3. The use of representations to the effect that the organisms in Humogerm will remain alive and virile until used, or otherwise from representing that such organisms can be depended upon to remain alive and virile for an indefinite or extended period of time.

4. Representing that the organisms in Farmogerm will "keep good for 2 years" or otherwise from representing that the organisms in said preparation will be sufficiently active to inoculate plants successfully for any period of time in excess of the time for which they actually will be so active.

5. Representing that toxic poisons in the system or blood stream are the result of or caused by intestinal fermentation or by undigested food stagnating or fermenting in the intestinal tract or that serious diseases and symptoms from which mankind suffers are caused by or are the result of intestinal autointoxication.

6. Representing, directly or inferentially, that Acidofilac, sold also under the name Bloomfield Culture Lactobacillus, or the use thereof:

- (a) Will have any significant effect in connection with the digestion of food.
- (b) Will constitute an effective treatment for or prevent conditions arising from digestive disturbances.
- (c) Can be depended upon to prevent conditions resulting from intestinal disturbances.
- (d) Will assure the complete destruction of undesirable organisms or "harmful bacteria."

(e) Will destroy germs in the digestive system.  
 (f) Will have any significant effect upon the acidbase balance of the body.

(g) Is rich in vitamins.

(h) Is nature's ideal health agent; or

(i) Assists nature in maintaining the health.

7. Representing that a large percentage of all diseases or that disease generally either are caused by or are greatly exaggerated by digestive disturbances.

8. Representing that if blue litmus paper placed under the tongue turns pink in 2 minutes the subject cannot digest starches, or from any other representation or expression of like effect or similar import.

9. Publishing or disseminating any testimonial containing statements, assertions, or implications contrary to the terms and spirit of the foregoing agreement. (Dec. 2, 1943.)

3778. Men's Ties and Mufflers—Composition and Domestic as Imported.—Beau Brummell Ties, Inc., an Ohio corporation, with its principal place of business in the city of Cincinnati, State of Ohio, was first chartered as Weisbaum Bros., Brower Co., Inc., and the name was changed in 1940 to Beau Brummell Ties, Inc., engaged in the manufacture of men's ties and mufflers and in the sale and distribution thereof in interstate commerce, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Beau Brummell Ties, Inc., in connection with the offering for sale, sale, and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed that it will forthwith cease and desist from:

(a) Branding, labeling, advertising, or in any way designating as "Burton's Poplin," neckwear or other merchandise which is not in fact made of the cotton fabrics converted by Burton Brothers & Co., Inc., and widely known to the trade and public as "Burton's Poplin"; or representing by use of the trade designation "Burton's Poplin Ties," by means of statements such as "the name Burton stands for the poplin that tops all others," "Burton's Poplin \* \* \* The exclusive dull finish of this great fabric," "Burton's Poplin rich dull finish," "the typical Burton Shamrocks," or by similar implications, that neckwear made of materials obtained from other sources, whether of cotton, silk, wool, or rayon, has been processed or treated by the converters of Burton Poplins, or that said cotton converting firm has contributed something of value thereto.

(b) Branding, labeling, or otherwise identifying a domestic fabric, or merchandise of domestic origin, with the words "shamrock," "Kil-

kenny Castle Ireland" or picturizations thereof or of the gilded harp, a green color scheme in connection therewith or other indicia suggestive of the country Ireland, depicted in any guise which tends or may tend to convey the impression or belief that such fabric or merchandise is an Irish product. (Dec. 2, 1943.)

3779. Toiletries—Composition, U. S. Pharmacopoeia Recognition and Manufacturer.—Roycemore Toiletries, Inc., trading also as Shy Products Co., engaged in the sale and distribution in interstate commerce, of toiletries, including a preparation designated "Diopreen" for the "promotion of personal hygiene," in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Roycemore Toiletries, Inc., whether trading under such name, as Shy Products Co. or under any other trade name or style, in connection with the sale and distribution of its toiletries in commerce as defined by the Federal Trade Commission Act, or the advertising thereof by the means and in the manner above set forth, agreed that it will forthwith cease and desist from:

1. Representing that the preparation "Diopreen" or any other preparation of substantially the same composition, whether sold under such name or under any other name or names, contains 7 grains of oxyquinoline sulfate per tablet; or otherwise representing that the oxyquinoline sulfate content or other content of such preparation is in excess of or other than that actually contained therein.

2. The use of the statement "Diopreen contains Oxyquinoline Sulfate (United States Pharmacopoeia Standard)"; and from the use of any other statement or representation of like connotation in any manner so as to import or imply that oxyquinoline sulfate is recognized by or described in the United State Pharmacopoeia.

3. Representing, directly or inferentially, that it manufactures any preparation or article of merchandise, unless and until it actually owns and operates or directly and absolutely controls the plant or factory wherein are made any and all products offered for sale or sold by it under such representation. (Dec. 7, 1943.)

3780. Mattress Ticking—Qualities, Properties or Results, and "Sanitary."—Solinger & Sons Co., Inc., engaged in the sale and distribution of a type of mattress ticking, treated with a chemical solution, designated "Aseptex," in interstate commerce, in competition with other corporations and with individuals and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Solinger & Sons Co., Inc., in connection with the advertisement, offering for sale, sale or distribution in commerce, as commerce is defined

by the Federal Trade Commission Act, of its fabrics treated with the preparation designated "Aseptex," or any other preparation composed of substantially the same ingredients, agreed that it will cease and desist forthwith from:

1. Representing, directly or inferentially, or placing in the hands of others a means to represent that the said fabrics, due to their having been treated with the aforesaid preparation, or for any other reason, have or possess such bactericidal, germicidal, or fungicidal properties as makes said fabrics germ resistant, or such as will resist bacteria, germs, fungi, or vermin.

2. The use of the word "Sanitary," or the word "Aseptex," or any other word or term of similar meaning or connotation, as descriptive of or in referring to said fabrics, so as to import or imply or the effect of which tends or may tend to cause or convey the impression or belief that the said fabrics will be effective in preventing, checking, or removing agencies, as filth and infection, which are injurious to health. (Dec. 7, 1943.)

3781. **Testing Service—Qualities, Properties or Results, "Scientific Tests," Comparative Merits, Etc.**—United States Testing Co., Inc., engaged in conducting tests of materials and commodities for manufacturing and merchandising concerns which sell and distribute such tested articles in interstate commerce, and in the conduct and furtherance of such testing business, it disseminates in commerce its reports, promotion literature, and advertising claims, in competition with corporations, firms, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

United States Testing Co., Inc., in connection with the solicitation, in commerce as defined by the Federal Trade Commission Act, of customers for its aforesaid testing service, agreed that it will forthwith cease and desist from:

(a) That its advertised cloth testing methods are competent or effective for determining the toxic qualities of fabrics, include a complete chemical analysis to reveal the cause of dermatitis, or otherwise constitute adequate or sufficient tests of wearing apparel for skin irritating substances.

(b) That any such test brings within the reach of everyone, or of anyone, a reliable procedure to determine whether a textile finish, a textile fabric, or a form of wearing apparel is free from skin irritating substances; or by similar statement or implication, that it may assuredly be depended upon to indicate whether a substance in a fabric is a sensitizer of the skin, or even to reveal the presence of primary irritating substances therein contained.

(c) That said methods yield precise and adequate information for the purpose intended, as imported or implied by descriptions such as "scientific tests."

(d) That its pamphlet mailed to inquirers for the "Inside Story of Dermatitis" gives "proper precautions" to take against dermatitis, that is to say, suitable, correct, or appropriate measures to be taken against such skin disorder.

(e) That said short-cut method of testing fabrics is, for practical purposes or otherwise, as effectual, sufficient, or reliable as those procedures recommended by the United States Public Health Service; or by comparative figures or in any other way, representing that for an expenditure such as \$10 a manufacturer can ascertain whether his fabric contains skin irritants or sensitizers as well as could be determined by means of tests requiring 200 persons at a probable cost of \$1,000. (Dec. 15, 1943.)

3782. Neckties—Nature of Manufacture, Composition, Imported, and Replicas.—Resisto Tie-Makers, engaged in the manufacture of a line of neckwear and in the sale thereof under the trade designation "Resisto" in interstate commerce, in competition with other corporations and with individuals, firms, and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Resisto Tie-Makers, in connection with the advertisement, offering for sale, sale, or distribution of its neckties in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that it will cease and desist forthwith from:

1. The use of the words "silk lined" as descriptive of a tie which is only partially lined with silk or "silk tipped," as that term is understood to mean; or of any other word or words of similar connotation, in connection with the name of an indicated fabric or fiber, so as to import or imply or the effect of which tends or may tend to cause or convey the impression or belief that said partially lined tie is fully lined or lined throughout with the indicated fabric.

2. Advertising, branding, labeling, invoicing, selling, or offering for sale any product composed in whole or in part of rayon, without clearly and unequivocally disclosing, by the use of the word "rayon," the fact that such product is composed of or contains rayon; and, when a product is composed in part of rayon and in part of fibers or materials other than rayon, from failing to disclose each constituent fiber, in the order of its predominance by weight, beginning with the largest single constituent, in immediate connection or conjunction with and in type equally as conspicuous as, the word "rayon."

3. The use of the word "Bemberg," as descriptive of a product or fiber contained therein, unless such word or term, whenever used, be accompanied, in immediate connection therewith, and with at least

equal prominence and conspicuousness, by the word "rayon," to the end that the said word "rayon" and the fact that the product is or contains rayon, as the case may be, will not be misleadingly or deceptively minimized, obscured or in any other way rendered inconspicuous: *Provided*, That the word "Bemberg" be truthfully used as, for example, "Bemberg Rayon" as descriptive of rayon manufactured by the Bemberg process.

4. The use of the word "shantung," either alone or in connection with the words "Far East," or any other word or words of similar inference, as descriptive of or to designate a product which is not composed of silk, and/or the use of which word or words imports or implies that the silk, of which said product actually is composed, was imported from the Province of Shantung, China, the Far East, or the Orient.

5. The use of the words "Belfast Poplins" as descriptive of a product which is not fabricated from materials made in or imported from Belfast, Ireland; and from the use of the words "Belfast Poplins," in any way, so as to import or imply or the effect of which tends or may tend to cause or convey the impression or belief that the materials used in the fabrication of said product are, contrary to the fact, that material known as Irish Poplin, manufactured in Ireland of silk and wool.

6. Stating or representing, in any manner, that its ties are replicas, reproductions, or exact or authentic copies of simulated ties, unless said ties actually are facsimiles or reproductions of the simulated ties in all respects and not merely in appearance. (Dec. 15, 1943.)

3783. Herb Product—Qualities, Properties or Results, and Professional Indorsement.—George W. Moody, engaged in conducting business at Pensacola, Fla., under the name Moody's Herb Teas, the said business consisting, in part, in the packaging of a dried herb known as Hydrocotyle, and in the sale and distribution thereof in interstate commerce, in competition with other individuals and with corporations and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

George W. Moody, in connection with the advertisement, offering for sale, sale, or distribution of the herb product designated "Gotu Kola," or by any other name, in commerce as commerce is defined by the Federal Trade Commission Act, agreed that he will cease and desist forthwith from representing, directly or inferentially,

1. That the use of said product will serve to increase the vitality of an individual of 70 or 80 years of age to that of an individual of 40 years of age; cause perpetual youth; exert an energizing effect on the cells of the brain; strengthen and revitalize worn out bodies and

brains or indefinitely preserve them; prevent brain fag or nervous breakdown or be an effective treatment for mental troubles or weakness or poor memory, blood pressure, abscesses, rheumatism, elephantiasis, bruises, swollen parts, rheumatic swelling, fever, ulcers, leprosy, skin eruptions or diseases, nerve trouble, jaundice, neuritis, or heart trouble; serve to increase the average span of human life; prevent individuals from dying a natural death; relieve pains in the back or kidneys; pep up all the glands in the body.

2. That the medical profession generally has knowledge of and uses or praises the said product in practice.

3. That the said product has therapeutic properties or value in excess of what it actually possesses. (Dec. 15, 1943.)

3784. Garden Seeds—"Coffee."—E. Andrews Frew, a sole trader, operating as Good Luck Gardens, engaged in the sale and distribution of garden seeds in interstate commerce, in competition with individuals, firms, 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.

E. Andrews Frew, in connection with the offering for sale, sale, and distribution of his commodities in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from designating, describing or referring to soybeans or any other substitute as "Coffee," "Domestic Coffee," "Domestic Coffee Berry"; or in any way representing that the purchaser thereof will or may receive genuine coffee of any type or variety whatsoever, that he can grow his own coffee, or can grow any berry comparable to "costly imported coffee" or coffee costing 1 cent per pound or any other sum; and from the use of the word "Coffee" in connection with any such ersatz commodity unless, whenever used, the word "substitute" be joined therewith in type of equal size and prominence. (Dec. 20, 1943.)

3785. Seeds—"Coffee."—Edward F. Carey, an individual trader, engaged in the mail order sale and distribution of formulas, printed matter, and other commodities in interstate commerce, in competition with individuals, firms, 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.

Edward F. Carey, in connection with the offering for sale, sale, and distribution of his soybean substitute for coffee in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from designating, describing or referring to soybeans or any other substitute as "Coffee," "Domestic Coffee," "Domestic Coffee Berry"; or in any way representing that the purchaser thereof will or may receive genuine coffee of any type or variety whatsoever, that he can grow his own coffee, or can grow



any berry comparable to "costly imported coffee" or coffee costing 1 cent per pound or any other sum; and from the use of the word "Coffee" in connection with any such ersatz commodity unless, whenever used, the word "substitute" be joined therewith in type of equal size and prominence. (Dec. 20, 1943.)

3786. Hair Coloring Preparation—Qualities, Properties, or Results.—Godefroy Manufacturing Co., engaged in the business of selling cosmetic products, including a certain preparation designated "Godefroy's Lariouse Hair Coloring" in interstate commerce, in competition with other corporations and with individuals, partnerships, and other concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Godefroy Manufacturing Co., in connection with the advertisement, offering for sale, sale, or distribution of the preparation designated "Godefroy's Lariouse Hair Coloring" or by any other name, in commerce as commerce is defined by the Federal Trade Commission Act, agreed that it will cease and desist forthwith from the use of the slogans "Ends Gray Hair," "puts an end to dingy, off-color hair," "get rid of dull, gray-streaked hair," as descriptive of the results purportedly accomplished by the use of said preparation; and from the use of said slogans or any thereof, or of any other slogan of similar import, the effect of which tends or may tend to cause or convey the impression or belief that the said preparation will do more than to dye the exposed hair to which it is applied, or that its use upon the hair will cause the hair shaft, as it grows from the scalp, to be similar in color, type or condition to that portion of the shaft to which the preparation has been applied. (Dec. 22, 1943.)

3787. Shoes—Qualities, Properties, or Results.—Joseph Burger, engaged in the manufacture of custom built shoes and in the sale and distribution thereof under the trade designation "Staturaid" shoes in interstate commerce, in competition with individuals, firms, 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.

Joseph Burger, in connection with the offering for sale, sale, and distribution of his shoe products in commerce as defined by the Federal Trade Commission Act, agreed that he will forthwith cease and desist from representing directly or inferentially that those Staturaid, or shoes of like construction, designed solely to give an appearance of increased height, would improve posture, would be beneficial to health, or are or may be an investment in or an assurance of either health or better posture. (Dec. 27, 1943.)

3788. Motion Picture Film—Government Sponsorship or Indorsement, Copyright and Change of Title.—Al P. Scott, trading as A. P. S. Sales

Co., and George A. Hirliman, individuals, with their respective principal places of business in Hollywood, Calif., and in New York, N. Y., engaged in promoting the sale and distribution, in interstate commerce, of a motion-picture film entitled "Tell Your Children," in competition with individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair method of competition in commerce as set forth therein.

Al P. Scott, whether trading under such name, as A. P. S. Sales Co. or under any other trade name or style, and George A. Hirliman, in connection with the sale and distribution of the aforesaid motion-picture film or copies thereof in commerce as defined by the Federal Trade Commission Act, agreed that they, and each of them, will forthwith cease and desist from:

1. Representing, directly or inferentially, or placing in the hands of others a means to represent, that said film was based on authentic data obtained from the files of the Bureau of Narcotics of the Department of the Treasury; that it was filmed through or by the cooperation of the Bureau of Narcotics or any other Governmental agency or authority; or that it has been or is sponsored or indorsed by the Bureau of Narcotics or by Parent Teacher Associations.

2. Representing, by the use of the word "Copyright" or other word or words of like meaning that said film has been copyrighted, unless or until it actually has been copyrighted.

3. Selling or leasing, offering to sell or lease advertising, or authorizing others to display or advertise said film or copies thereof designated or indicated by a title other than that under which it originally was issued and exhibited, unless, in every instance where a new title is used either in the photoplay itself and/or in any advertising matter pertaining thereto, the former title of the photoplay and the fact that it has heretofore been exhibited under such former title be clearly, definitely, distinctly and unmistakably stated and set forth in immediate connection or conjunction with and in type equally as conspicuous as that used in displaying or advertising the new title. (Dec. 27, 1943.)

## DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS<sup>1</sup>

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03052.<sup>2</sup> Dry Dog Food Preparations—Composition.—Battle Creek Dog Food Co., a corporation, trading as Miller's Dog Foods, Battle Creek, Mich., vendor-advertiser, engaged in selling various dry dog food preparations designated "Miller's Kibbles," "Miller's Biscuits," "Miller's Puppy Meal," "Miller's Meaties," and "Miller's Ration"; and Paul C. Staake and Carl B. Schoonmaker, individuals and copartners trading as Staake & Schoonmaker, a partnership, American National Bank Building, Kalamazoo, Mich., advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named products on behalf of Battle Creek Dog Food Co., agreed, in connection with the dissemination of future advertising, to cease and desist from using the terms "Meat," "Meat Scraps," "dehydrated meat," "meat scrap," or any other terms of similar import or meaning, to designate or describe said ingredient, or any ingredient which is not meat in fact.

It is further agreed by Battle Creek Dog Food Co., Paul C. Staake, and Carl B. Schoonmaker, and each of them, that, in the dissemination of advertising by the means or in the manner above set out of the product now designated Miller's Meaties they will forthwith cease and desist from representing by use of the term "Meaties" in the brand name, or by any other term of similar import or meaning that the said product contains meat.

The said Battle Creek Dog Food Co., Paul C. Staake and Carl B. Schoonmaker, and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated any testimonial containing any representation contrary to the foregoing agreement. (July 5, 1943.)

03122. Memberships and Lists of Names of Persons in Matrimonial Agency—Nature, Guarantee, Price, Limited and Special Offer, Etc.—C. T. Petty and Mary Petty, copartners, doing business under the trade names of National Service and National Forwarding, Post-Office Box 200, Oklahoma City, Okla., vendor-advertisers, were engaged in sell-

<sup>1</sup> The stipulations in question are those of the radio and periodical division with vendor-advertisers and advertising agents. Period covered is that of this volume, namely, July 1, 1943, to December 31, 1943, inclusive. For digests of previous stipulations, see vols. 14 to 36 of Commission's decisions.

<sup>2</sup> Amended.

ing memberships in the National Service and lists of names purporting to be members of said service or club and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication :

- (a) That introductions of members are made in a confidential manner.
- (b) That any of the results claimed in their advertising is guaranteed.
- (c) That their statements relating to the financial standing, education, character, age, occupation, or profession of those whose names appear on membership lists are other than mere statements of the members themselves, in the absence of some responsible investigation into the truth or falsity of such statements.
- (d) That any specified price is the regular membership fee when such price is in excess of the amount regularly and customarily charged.
- (e) That any offer is limited as to time, when such is not a fact.
- (f) That any offer is a "Special" offer, unless it is less in price than the usual or regular price and limited in time.

The said C. T. Petty and Mary Petty agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 13, 1943.)

03123. Dry Dog-Food Preparations—Qualities, Properties, or Results and Composition.—Spratt's Patent (America) Limited, a British corporation, 18 Congress Street, Newark, N. J., vendor-advertiser, was engaged in selling various dry dog-food preparations designated "Spratt's Fibo," "Spratt's Ovals," "Spratt's Spix," "Spratt's Fish and Meat Ovals," "Spratt's Meat-Fibrine Dog Biscuits," "Spratt's Dog Biscuits," and "Spratt's Assorted Dog Biscuits," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication :

- (a) That Spratt's Charcoal Ovals will maintain the dog's breath in a sweet or clean condition, prevent canine ills or remove systemic impurities.
- (b) That Spratt's Biscuits will eliminate pyorrhea and disorders of the bowel or skin.
- (c) That Spratt's Biscuit Foods will tone the dog's stomach, prevent dog odors or dental decay; or
- (d) That Spratt's Dog Foods contain meat.

It is further agreed by Spratt's Patent (America) Limited, that in the dissemination of advertising, by the means or in the manner above set out, of the products now designated, "Spratt's Fish and Meat Ovals" and "Spratt's Meat-Fibrine Dog Biscuits," it will forthwith cease and desist from the use of the word "Meat" in the brand name, or any other word or term of similar import or meaning, unless the word "Meat," or such other term or word, is plainly qualified by other words or phrases, so that it will be accurately descriptive of the animal protein ingredient contained in said product. (July 22, 1943.)

03124. Dog Food—Composition and Qualities, Properties or Results.—Ballard & Ballard Co., a corporation, 912 East Broadway, Louisville, Ky., vendor-advertiser, was engaged in selling a dog food designated

Ballard's Insurance Dog Food and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That it contains meat.
- (b) That it will insure the health of dogs.

The said Ballard & Ballard Co. further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representations contrary to the foregoing agreement. (July 26, 1943.)

03125. Apparatus for Chemically Treating Water—"Distilled."—Infilco, Inc., a corporation, 325 West Twenty-fifth Place, Chicago, Ill., vendor-advertiser, was engaged in selling an apparatus for chemically treating ordinary city or well water and agreed, in connection with the dissemination of future advertising, to cease and desist from using the word "distilled" as descriptive of any water or fluid treated by said process, or from the use of any word, or words, which represent, directly or impliedly, that any water or fluid treated by said process is distilled.

The said Infilco, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 26, 1943.)

03126. Dog Food—Composition, Health Inspection and Qualities, and Properties.—Foxstand Foods Inc., a corporation, 81 Arlington Street, Boston, Mass., vendor-advertiser, was engaged in selling a dry dog food preparation designated Sassified Dried Meat for Dogs and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That "Sas," previously offered for sale and sold as "Sassified Dried Meat For Dogs" contains any meat or beef.
- (b) That the animal protein ingredient of "Sas" is produced in a plant licensed by the State of Massachusetts or that it is subject to inspection by duly appointed State health inspectors unless and until such is an actual fact.
- (c) That the animal protein ingredient of its product, in its original form, is fit for human consumption.

Foxstand Foods Inc. further agreed not to publish, disseminate, or cause to be published or disseminated any testimonial containing any representation contrary to the foregoing agreement. (Aug. 2, 1943.)

03127. Dog Foods—Composition.—The Kennel Food Supply Co., a corporation, Fairfield, Conn., vendor-advertiser, engaged in selling dog foods designated Cero-Meato, C. F. Meat Biscuits, Cod Liver Oil Biscuits, Terrier Food and Puppy Biscuits, and The Park City Advertising Agency, Inc., a corporation, 252 Middle Street, Bridgeport, Conn., advertising agency, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-

named products on behalf of The Kennel Food Supply Co., agreed, in connection with the dissemination of future advertising for Cod Liver Oil Biscuits, Terrier Food and Puppy Biscuits, to cease and desist from using the terms "meat," "meat scrap," "dry meat," or any other terms of similar import or meaning to designate or describe said ingredient, or any ingredient which is not meat in fact, and also agreed, in connection with the dissemination of future advertising for C. F. Meat Biscuits, to cease and desist from using the terms "meat," "dry meat," or any other terms of similar import or meaning to designate or describe its said product, or any product which is not meat in fact, or from representing by the use of the word "meat" in the brand or trade name of this product or by any other expression, term or means, that the said product contains meat.

It was further agreed that each of them will cease and desist from the use of the said brand name "Ceró-Meato" and from the use of any other brand names or designations in the dissemination of all such advertising for any of the said products unless the composition of said products is truthfully described therewith.

The Kennel Food Supply Co. and The Park City Advertising Agency, Inc., and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representation contrary to the foregoing agreement. (Aug. 2, 1943.)

03128. Medicinal Preparation—Qualities, Properties or Results and Safety.—Espiridion Gonzalez, an individual, P. O. Box 47, Laredo, Tex., advertiser-vendor, was engaged in selling a medicinal preparation designated Pomade Gonzalez and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That excellent results may be obtained in cases of ring worms, warts or skin sores, or that it will get rid of all kinds of skin eruptions or pimples.

The advertiser-vendor further agreed to cease and desist from disseminating any advertisements which fail to reveal the additional material fact that it contains 50 percent salicylic acid and that a preparation of this strength when repeatedly applied to the skin other than two or three applications to hard corns and calluses, will cause local irritation: *Provided, however*, That such advertisement need only contain the statement: "CAUTION, Use Only as Directed", if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect. (Aug. 3, 1943.)

03129. Health Device—Qualities, Properties or Results.—J. W. Cole, an individual doing business under the trade name of Posture-Aid Co., 509 Centre Street, Dallas, Tex., advertiser-vendor, engaged in selling a

health device designated Posture-Aid; and John Brough and Evelyn Brough, copartners, doing business under the trade name of John and Evelyn Brough, Stewart Building, Dallas, Tex., advertising agents, engaged in conducting an advertising agency which disseminated advertisements for the above-named product on behalf of Posture-Aid Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that said device:

- (a) Relieves constipation, headache, backache, nervousness, fatigue, or tenseness.
- (b) Pulls muscles into place, relaxes or strengthens the muscles, relieves tired or cramped muscles or teaches the muscles to hold the body erect.
- (c) Corrects misplaced vertebrae, double chin, round shoulders, sway-back, or flat chest; lifts the chest or gives greater room for lung expansion; or flattens the stomach.
- (d) Promotes health, appetite, well-being, new energy, beauty of figure, or improved posture.
- (e) Exercises the muscles of the neck or takes the kinks out of the neck or the system.
- (f) Tones, relaxes, straightens, or stretches the spine.

The said J. W. Cole and John Brough and Evelyn Brough, and each of them, further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Aug. 3, 1943.)

03130. Scalp Preparation—Qualities, Properties, or Results.—Samuel P. Shokunbi, an individual, doing business as S. P. S. Chemical Co., 3404 Calumet Avenue, Chicago, Ill., advertiser-vendor, was engaged in selling a medicinal preparation designated S. P. S. Scalp Food and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that his preparation:

- (a) Will feed or nourish the scalp.
- (b) Is a cure or a remedy for, or has therapeutic value in the treatment of, itching scalp, eczema, tetter, conditions which cause falling hair, or dandruff, except insofar as its use would facilitate the mechanical removal of the loose scales of dandruff.
- (c) Will grow hair or promote the growth of hair.
- (d) Will restore burnt hair to its former condition; or
- (e) Will improve the grade of the hair.

The said Samuel P. Shokunbi further agreed to cease and desist from representing, through the use of the term "Scalp Food," or any other term of similar import or meaning to designate or describe such preparation, or in any other manner, that such preparation will feed or nourish the scalp.

The said Samuel P. Shokunbi also further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Aug. 6, 1943.)

03131. **Jewelry—Composition.**—Uncas Manufacturing Co., a corporation, 623-631 Atwells Avenue, Providence 1, R. I., vendor-advertiser, was engaged in selling jewelry, including rings, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing:

By quality markings on rings and other articles of jewelry, or otherwise, the ratio of the weight of the gold alloy overlay to the weight of the metal of any such article or the gold fineness of the gold alloy when the actual ratio of the weight of the gold alloy overlay to the total weight of the metal is less than that indicated by the markings, or the actual gold fineness is less than that indicated by the markings.

The said Uncas Manufacturing Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 9, 1943.)

03132. **Medicinal Preparations—Composition, Qualities, Properties, or Results and Safety.**—The Chattanooga Medicine Co., a corporation, Chattanooga, Tenn., vendor-advertiser, engaged in selling medicinal preparations designated "Syrup of Black-Draught," "Black-Draught," and "Black-Draught (Granulated)"; and Nelson Chesman Co., a corporation, Chattanooga, Tenn., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named products on behalf of The Chattanooga Medicine Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that any of said preparations:

- (a) Contains a tonic.
- (b) Helps to tone lazy intestinal muscles or the digestive system; or
- (c) Has any effect upon a sallow complexion.

The said The Chattanooga Medicine Co. and Nelson Chesman Co. further agreed not to publish or cause to be published any advertisement for any of the aforesaid preparations which fails to reveal that said preparations should not be used when abdominal pain, nausea, vomiting, or other symptoms of appendicitis are present.

*Provided, however,* That such advertisements need only contain the statement: "CAUTION, Use only as Directed" if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said The Chattanooga Medicine Co. and Nelson Chesman Co. and each of them further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 9, 1943.)



03133. Medicinal Preparation—Qualities, Properties or Results and Safety.—Histex Corporation, a corporation, 604 North Wells Street, Chicago, Ill., vendor-advertiser, engaged in selling a medicinal preparation designated Histeen Tablets; and United Advertising Companies, a corporation, 205 North Michigan Avenue, Chicago, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of Histex Corporation, agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that the said product will be effective in freeing one from attacks of hay fever.

The Histex Corporation and United Advertising Companies, and each of them, further agreed to forthwith cease and desist from disseminating any advertisement which fails to reveal that the product should not be taken by persons having heart or kidney ailments except on competent medical advice, and that such product may cause serious blood disturbances if taken frequently or continuously: *Provided, however,* That such advertisements need only contain the statement "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The Histex Corporation and United Advertising Companies, and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representation contrary to the foregoing agreement. (Aug. 11, 1943.)

03134.<sup>1</sup> Drug Preparation for Poultry—Qualities, Properties or Results.—I. D. Russell, an individual, trading as I. D. Russell Co., 2463 Harrison Street, Kansas City, Mo., vendor-advertiser, engaged in selling a drug preparation for poultry, designated "Korum"; and Allen C. Smith, an individual, trading as Allen C. Smith Advertising Co., 20 West Ninth Street, Kansas City, Mo., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of I. D. Russell Co., agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the use of Korum alone will speed or facilitate the maturity of chicks or cause chicks to mature in a healthier manner.

(b) That the use of Korum alone will increase egg production or improve the fertility or hatchability of eggs.

(c) That Korum will cause chicks or poultry to drink 30 percent more water or cause any specific increase in the amount of water consumed by chicks or poultry.

<sup>1</sup> Supplemental.

(d) That the use of Korum will cause any reduction in chick losses due to infections, parasitic, or nutritional bowel troubles.

The said I. D. Russell and Allen C. Smith, and each of them, also agreed not to publish or cause to be published any testimonial contrary to the foregoing agreement. (Aug. 9, 1943.)

03135. Medicinal Preparations—Qualities, Properties, or Results and Composition.—Eugene Schiff, an individual, doing business as Schiff Bio-Food Products, 3265 Joy Road, Detroit 6, Mich., vendor-advertiser, was engaged in selling a medicinal preparation containing Karaya Crystals, Okra Powder, Gelatin and Irish Moss, designated "Crysta-Jell," and a medicinal preparation designated "Reducers Skin Lotion" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Crysta-Jell:

1. Will restore energy or health.
2. Will preserve health, youth, or appearance.
3. Will cure obesity.
4. Will satisfy hunger.
5. Will effect a loss of 3 to 4 pounds weight per week or any other definitely stated amount within any given period of time.
6. Contains no drugs or chemicals.
7. Is a vegetable gelatin compound.
8. Is a vegetable concentrate.

(b) That Reducers Skin Lotion:

1. Will keep skin firm.

The said Eugene Schiff further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 19, 1943.)

03136. Publication—Qualities, Properties, or Results and Safety.—George V. Harnetty, an individual, P. O. Box 1736, San Diego, Calif., vendor-advertiser, was engaged in selling a publication designated "My Own Story of My Diabetes" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That by reading said publication a person can learn a cure for diabetes.

And the said George V. Harnetty further agreed not to publish or cause to be published any advertisement concerning the publication entitled "How I Got Rid of My Diabetes" which fails to reveal the material fact that the treatment referred to in said advertisement involves the use of a chemical or drug which would have irritant effects and may seriously interfere with the proper functioning of injured or diseased kidneys, and that its prolonged use might injure kidneys that are normal. (Aug. 23, 1943.)

03137. **Dry Dog Food Preparations—Composition.**—National Retailer-Owned Grocers, Inc., a corporation, Merchandise Mart, Chicago, Ill., vendor-advertiser, was engaged in selling certain dry dog food preparations designated “Roxey Dog Food Mix,” “Roxey Dog Food,” in kibbled and meal form, and “Roxey Rations Dog and Cat Food Meal,” and referred to generally as Roxey Brand Dog Food and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that such products contain meat or beef.

National Retailer-Owned Grocers, Inc., further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representations contrary to the foregoing agreement. (Aug. 23, 1943.)

03138. **Mastic Preparation—Qualities, Properties or Results and Unique.**—G. W. Orth, an individual trading as Permaflex Products Co., 1844 North Front Street, Philadelphia 22, Pa., vendor-advertiser, was engaged in selling a mastic preparation designated Permaflex and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That the product is wearproof.
- (b) That the product is the only hard mastic.

The said G. W. Orth agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 25, 1943.)

03139. **Crucifixes—Nature of Manufacture.**—M. B. Waterman, an individual doing business as The Religious House and M. B. Waterman & Co., Not Inc., 333 South Market Street, Chicago, Ill., vendor-advertiser, was engaged in selling certain religious articles, including crucifixes and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the crucifix is hand-carved.

The said M. B. Waterman further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 25, 1943.)

03140.<sup>1</sup> **Medicinal Preparations—Safety.**—Stanco Incorporated, a corporation, 216 West Fourteenth Street, New York, N. Y., vendor-advertiser, engaged in selling drug products designated “Mistol Drops” and “Mistol Drops with Ephedrine”; and McCann-Erickson, Inc., a corporation, 50 Rockefeller Plaza, New York, N. Y., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named products on behalf of Stanco Incorporated, and agreed, in connection with the dissemination

<sup>1</sup> Supplemental.

of future advertising, to cease and desist from disseminating any advertisement which fails to reveal that Mistol Drops and Mistol Drops with Ephedrine should not be administered to undernourished infants, or abnormally weak children and debilitated elderly persons; that frequent or excessive use of Mistol Drops should be avoided; that frequent or excessive use of Mistol Drops with Ephedrine may cause nervousness, restlessness, or sleeplessness and that individuals suffering from high blood pressure, heart disease, diabetes, or thyroid trouble should not use this preparation except on competent advice: *Provided, however,* That such advertising need only contain the statement: "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect. (Sept. 2, 1943.)

03141. Medicinal Preparation—Qualities, Properties or Results and Safety.—Zeta M. Pack, an individual, doing business as Loyal Distributing Co., 614 National Road, Glenwood, Wheeling, W. Va., vendor-advertiser, was engaged in selling a medicinal preparation designated Blue Bonnet Mineral Water Crystals and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

That the use of this product:

(a) Will correct excess acidity, build up the system or keep the body healthy, or help one to regain good health.

(b) Will increase resistance to colds, grippe, and other ailments.

(c) Will insure good appetite or sound sleep, or will restore energy.

(d) Will be beneficial for conditions of fatigue, worn out feeling, listlessness, or lack of pep.

(e) Will rid the system of, or keep it free from poisons.

Zeta M. Pack further agreed that in the dissemination of advertising by the means and in the manner above set out, of the medicinal preparation now designated Blue Bonnet Mineral Water Crystals, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, she will forthwith cease and desist from disseminating any advertisements representing directly or by implication that the said preparation is in all cases safe and harmless, or which advertisement fails to reveal that the preparation should not be taken by or administered to persons suffering from nausea, vomiting, abdominal pain, or other symptoms of appendicitis: *Provided, however,* That such advertisements need contain only the statement: CAUTION: Use Only as Directed, if and when the directions for use, wherever they appear on the label, in the labeling or in both label or labeling contain a caution or warning to the same effect.

The said Zeta M. Pack further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 3, 1943.)

03142. **Rodent Exterminating Preparation—Qualities, Properties, or Results.**—W. G. Reardon Laboratories, Inc., a corporation, Port Chester, N. Y., vendor-advertiser, engaged in selling a mouse poison designated "Mouse Seed"; and H. B. LeQuatte, Inc., a corporation, 200 Madison Avenue, New York 16, N. Y., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of W. G. Reardon Laboratories, Inc., agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that:

(a) Mice cannot resist eating Mouse Seed.

(b) Use of Mouse Seed in one's house will rid the house of all mice.

(c) Mice, having eaten the preparation in one's house, will not die in the house.

The said W. G. Reardon Laboratories, Inc., and H. B. LeQuatte, Inc., and each of them, further agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 6, 1943.)

03143. **Dehydrated Goats' Milk Product—Unique, Qualities, Properties, or Results, Etc.**—J. F. Darrington, an individual, trading as Darringtons, P. O. Box 296, Marshfield, Oreg., vendor-advertiser, was engaged in selling a dehydrated goats' milk product recommended for the treatment of various human ailments, designated "Dar-Sal" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that Dar-Sal:

(a) Is made by a secret process.

(b) Possesses unique or special properties which are not present in other dehydrated goat milk products.

(c) Has any therapeutic value when used in connection with the treatment of run-down conditions, nervous disorders, stomach trouble, eczema, asthma, hyperacidity, rheumatism, paralysis, or arthritis.

(d) Is a cold preventive.

(e) Will improve the user's health or build up the user's resistance to infectious diseases.

The said J. F. Darrington further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Sept. 8, 1943.)

03144.<sup>1</sup> **Laxative Preparation—Safety.**—Dr. J. F. True & Co., Inc., a Maine corporation, Auburn, Maine, vendor-advertiser, engaged in selling a drug product called "Dr. True's Elixir"; and S. A. Conover

<sup>1</sup> Supplemental.

Co., a Massachusetts corporation, 75 Federal Street, Boston, Mass., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of Dr. J. F. True & Co., Inc., agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails to reveal that the product should not be used when abdominal pain, nausea, vomiting or other symptoms of appendicitis are present: *Provided, however,* That such advertisement need only contain the statement, "CAUTION: Use Only as Directed," if and when the directions for use wherever they appear on the label, in the labeling or in both label and labeling, contain a caution or warning to the same effect. (Sept. 10, 1943.)

03145. Flour—Qualities, Properties or Results and Composition.—Hopkinsville Milling Co., a corporation, Hopkinsville, Ky., vendor-advertiser, was engaged in selling a flour designated "Enriched Sunflour" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That the consumption of said flour furnishes one with his entire daily minimum requirement of Vitamin B, or niacin or gives one "health assurance"; or
- (b) That said flour contains all the necessary vitamins or double the minimum standard of calcium.

The said Hopkinsville Milling Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 13, 1943.)

03146. Rat-Killing Preparation—Safety and Qualities, Properties or Results.—J. P. Melvin, an individual, trading as Exterminator Manufacturing Co., P. O. Box 1572, Baltimore, Md., vendor-advertiser, was engaged in selling a rat-killing preparation designated "Ratfinish" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That Ratfinish is completely safe or without danger to human beings, domestic animals or poultry.
- (b) That Ratfinish is an effective poison for mice.
- (c) That rats dying from eating this product will leave no odor.
- (d) That Ratfinish will drive poisoned rats out of doors to die in the open.

The said J. P. Melvin agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Sept. 13, 1943.)

03147. Medicinal Preparation for Colds—Qualities, Properties or Results.—N. Edwards and Bertha Edwards, individuals, doing business as Vanco Co., Brady, Nebr., vendor-advertisers, were engaged in selling a medicinal preparation designated "Vanco Ointment" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said preparation prevents the development of a cold, is a cure for a cold, or penetrates to the source of a cold; or

(b) That said preparation draws out congestion or pain or otherwise representing that said preparation has any effect upon congestion or pain in excess of that of a counterirritant; or

(c) That said preparation is a remedy or cure for a sinus condition aggravated by a cold or for pneumonia or flu.

The said N. Edwards and Bertha Edwards, and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 16, 1943.)

03148. Medicinal Preparation for Sinus—Qualities, Properties or Results.—Estelle Cobb Brown, an individual, 793 Lynnfield Street, East Lynn, Mass., vendor-advertiser, was engaged in selling a drug preparation called "Dr. Carolus M. Cobb's Nasal Spray for Sinus Relief" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the said product will relieve sinus trouble or will open or clear out sinus passages.

(b) That the said product will relieve pain or headaches associated with sinus trouble.

The said Estelle Cobb Brown further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 16, 1943.)

03149. Quilting Materials—Refunds.—H. E. Shoaf, an individual, doing business under the trade name Paramount Remnant Co., Lexington, N. C., vendor-advertiser, engaged in selling quilting materials; and Thomas D. Shaffer, and Samuel B. Margulis, copartners doing business under the trade name Shaffer Brennan Margulis Advertising Co., 4 North Eighth Street, St. Louis, Mo., advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named products on behalf of Paramount Remnant Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that all money is refunded to dissatisfied purchasers when in fact reimbursement is not made for all charges sustained by the purchasers including cost of the goods, transportation charges, and c. o. d. fees. (Sept. 20, 1943.)

03150. Medicinal Preparation—Qualities, Properties or Results, Comparative Merits and Value.—V. E. Michael, an individual, 4642 Main Avenue, Ashtabula, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated Vi-Mins or Vita-Food and agreed, in connection with the dissemination of future advertising, to cease

and desist from representing directly or by implication, that said preparation:

- (a) Is the most complete vitamin or mineral product ever offered.
- (b) Insures a radiant or vigorous personality, a strong, disease-resisting body, good teeth, a clear complexion, an alert mind, or a more youthful appearance.
- (c) Improves eyesight, prevents hair from turning gray, relieves fatigue, increases resistance to cold germs, reduces nervousness, aids digestion, gives more energy, or is a treatment for anemic conditions.
- (d) Postpones the appearance or relieves the infirmities of age.
- (e) Prevents earache, sinus trouble, catarrh, lung, liver or kidney infections, muscle cramps, or headaches.
- (f) Prevents pimples, arthritis, rheumatism, neuritis, or heart troubles.
- (g) Assists in keeping the ducts or cavities clean, in throwing out waste, overcoming excess weight, or in preventing infection from entering the body; or
- (h) That 90 percent, or any definite amount of vitamins, are lost in cooking; or
- (i) That the cost of food containing vitamins and minerals equivalent to those contained in Vi-Mins is a measure of the value of Vi-Mins, or that because of such cost of food the price at which Vi-Mins is sold is a bargain.

The said V. E. Michael further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Sept. 20, 1943.)

03151. Preparations for Hair and Scalp—Patent.—Dermatological Products Corporation, a corporation, 110 Observer Highway, Hoboken, N. J., vendor-advertiser, was engaged in selling certain products for the treatment of the hair and scalp designated Seborol Scalp Lotion and Seborol Scalp Ointment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that the mark "Seborol" is a registered trade-mark in the United States Patent Office, unless and until such mark is registered with the United States Patent Office. (Sept. 24, 1943.)

03152. Baby Chicks—Government R. O. P.—D. C. Calhoun, John Calhoun, and Charles Calhoun, copartners, doing business under the trade name of Calhoun Poultry Farm and Hatchery, Montrose, Mo., vendor-advertisers, engaged in selling baby chicks; and The Potts-Turnbull Co., a corporation, 912 Baltimore Avenue, Kansas City, Mo., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named products on behalf of Calhoun Poultry Farm and Hatchery agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or impliedly:

- (a) That the chicks in any group offered for sale have a specified pedigree when not all of the chicks included in that group have that pedigree.
- (b) That chicks hatched from eggs supplied by other poultry breeders have an R. O. P. pedigree without disclosing that the eggs from which such chickens were hatched were procured from other breeders.



(c) By the use of the terms "R. O. P.," or "U. S. R. O. P.," that the poultry farm operated by D. C. Calhoun, John Calhoun, and Charles Calhoun, operates under the National Poultry Improvement Plan.

The said D. C. Calhoun, John Calhoun, and Charles Calhoun, and The Potts-Turnbull Co., and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 24, 1943.)

03153. Medicinal Preparation—Safety.—Herb Juice-Penol Co., Inc., a corporation, Danville, Va., vendor-advertiser, was engaged in selling a medicinal preparation, recommended as a treatment for indigestion, gas pains, dull throbbing headaches, nervousness, dizzy spells, and other ailments, designated "Pow-O-Lin" and agreed, in connection with the dissemination of future advertising, to reveal that said preparation should not be used in cases of nausea, vomiting, abdominal pain, or other symptoms of appendicitis: *Provided, however,* That said advertisements need contain only the statement: "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or a warning to the same effect. (Oct. 1, 1943.)

03154. Formulas, Bulletins, Pamphlets, Cleansing Preparation, Insecticides, Polishes, and Perfumes—Qualities, Properties or Results, History, Guarantee, Comparative Merits, Safety, Composition, Earnings, Etc.—N. W. Farrand, an individual, trading as Farrand Chemical Co., 1600 Madison Ave., Tyrone, Pa., vendor-advertiser, was engaged in selling formulas, bulletins and pamphlets, a cleansing preparation, insecticides, polishes, and a perfume and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That a product compounded from the formula designated "Hy-Gloss" will be the newest and latest auto polish on the market, or will impart a dust proof luster, or that such product will in any way be guaranteed when such is not the fact; or,

(b) That a product compound from the formula designated "Whiz" will clean hands instantly, or will remove all stains, or will surpass in effectiveness all other hand cleaners, or will represent a new discovery; or

(c) That a product compounded from the formula designated "Miracle Cleaner" will represent an entirely new kind of cleaner, or will remove all coffee, tea, or fruit stains, or will leave no ring in the fabric to be cleaned; or

(d) That the formula designated "Clor-O" represents a modern discovery or will provide for a new type of product; or

(e) That a preparation compounded from the formula designated "Cornox" will eliminate the pain of a corn as soon as applied, or will be therapeutically effective in the treatment of bunions, or will constitute a cure for corns, or will be absolutely painless, or will attack nothing but dead tissue, or that a preparation made from the formula designated "Prevent It" will prevent the return of a corn or will, whether used alone or in conjunction with a product compounded from the "Cornox" formula, cure a corn; or

(f) That a product compounded from the formula designated "Plastic Leather" cannot come off objects to which applied, or will contain a new and different kind of rubber, or will be an entirely different kind of product; or

(g) That the formula designated "Clen-Zit" is a new scientific creation or discovery, or that a product made from said formula will clean everything like magic, or will not injure sensitive skins, or will not harm any surface or fabric; or

(h) That the formula designated "Sav-Your-Upper" represents a new discovery or something absolutely new and different; or

(i) By the use of the word "Benzine" or "Benzlene" or words or terms of similar import in the formula names; "Benzine Crystals" and "Benzlene Liquid Cleaning Fluid," or in any manner, that products compounded from said formulas will be benzene products or products made of crystallized benzene, or that a product compounded from the formula designated "Benzlene Liquid Cleaning Fluid" will contain a secret ingredient; or

(j) That a preparation made from the formula designated "Breath Purifying Liquid" will purify, eliminate, stop, or end any offensive breath odors; or

(k) That a preparation made from the formula designated "Machineless-Heatless Permanent Wave Fluid" will be harmless to the hair; or

(l) That products made from the formulas designated "Laundry Cleansing Compound," "Wizard Washing Tablets," and "Wizard Discs" will effectively wash clothes without the aid of any rubbing or mechanical agitation; or

(m) That a product made from the formula designated "Magic Gas" will, when added to gasoline, increase car mileage from 1 to 8 miles per gallon, or will absolutely prevent carbon deposits, or will make low gravity gasoline entirely combustible, or that motors in which such product is used will never develop carbon trouble; or

(n) That a product made from the formula designated "Waterless Soap" will remove acid or iodine stains from the hands or will heal cuts or burns; or

(o) That a product made from the formula designated "Waterless Shaving Cream" is capable of healing facial cuts, or that it is known that said formula cannot be purchased elsewhere for less than \$5; or

(p) That the formula designated "Liquefying Cleansing Cream" is known to have been perfected by Hollywood specialists; or

(q) That a preparation compounded from the formula designated "Magic Flesh and Muscle Developing Cream" can be worked into the flesh, or will eliminate wrinkles, or by designating said formula "Magic Flesh and Muscle Developing Cream," or in any manner, that preparations made from said formula will be capable of developing muscles or flesh; or

(r) That a product made from the formula designated "Non-Poisonous Insecticide" will kill all plant insects; or

(s) That a product made from the formula designated "Silver Jiffy Plate" is capable of depositing pure silver upon silver or will make any worn article new; or

(t) That preparations made from the formulas designated "Inhalants" will relieve or check colds, or will kill cold germs, or will give instant relief from nasal congestion, or will give instant or permanent relief from nasal infections; or

(u) By designating, describing, or referring to any of his formulas relative to asthma treatments as "Asthma Remedies," or in any manner, that preparations made from such formulas will cure or permanently correct asthma; or

(v) That preparations compounded from any of his formulas relative to hay fever treatments will completely relieve hay fever, or by designating, describing, or referring to any such formulas as "Hay Fever Remedies," or in any manner, that preparations made therefrom will cure or permanently correct hay fever; or

(w) That a preparation compounded from the formula designated "Formula D: Borated Petrolatum" will be effective in treating all skin irritations; or

(x) That a product compounded from the formula designated "Fly-Non and Insecticide," will kill all insect life or will be an effective bactericide, germicide, disinfectant, or disease killer; or

(y) By use of the words "Tissue Builder" or any words of similar import in the formula name, "Liquid Tissue Builder," or in any manner, that a preparation made from said formula is capable of building or developing tissue; or

(z) By the use of the word "Parisian" in the formula names, "Parisian Beauty Lotion" and "Parisian Liquid Curling Fluid," or in any manner, that said formulas are, or call for ingredients, of French origin; or

(aa) That the product designated "Cleaning Crystals" leaves no ring in the fabric to be cleaned, or is harmless to the skin, or to any surface or fabric; or

(bb) That the product designated "Insecticide" is harmless to man; or

(cc) That the products designated "Bed Bug and Roach Insecticide" and "Roach Powder" are nonpoisonous; or

(dd) That the products designated "Metal Polish" and "Paste Metal Polish" will not injure any metal surfaces; or

(ee) That the various formulas which he sells are trade secrets; or

(ff) That "The World's Bargain Opportunity Bulletin" contains reliable information as to sources where one may purchase genuine diamond rings for as little as \$1.23, or pearl bead necklaces for as little as 6 cents, or a rope of pearls for only 25 cents, or unbreakable combs for only 7 cents, or high-grade straight razors for only 39 cents, or that, through information supplied in said bulletin or in any of his other information bulletins, one may purchase or sell any type or grade article or service for a definitely designated amount or otherwise, or will be enabled to make any type of article at any definitely designated cost or otherwise, or will thereby be able to accomplish any results, when in fact such is not the case; or

(gg) That he owns, operates, or controls an appropriately equipped laboratory where research work in connection with his said business is conducted by trained technicians when such is not the case; or

(hh) That he manufactures all of the various products which he sells, or that he manufactures any of such products when such is not the case; or

(ii) That prospective agents, salesmen, distributors, dealers, or other representatives can, by selling and soliciting the sale of any of his products, make profits or earnings within a specified period of time, which are in excess of the average net profits or earnings which have theretofore been consistently made in like periods of time by his active full-time agents, salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances; or

(jj) By use of such words as "up to," "as high as," or any words or terms of like import that prospective agents, salesmen, distributors, dealers, or other representatives can, by selling and soliciting the sale of any of his products, make earnings or profits within any specified period of time of any amounts which are in excess of the net average earnings or profits within like periods of time made by a substantial number of his active, full-time agents, salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

The said N. W. Farrand further agreed to cease and desist from adopting and using any name to designate any of his formulas or products when such name is identical or similar to the name of a well-known or trade-marked product with the result that purchasers are

confused and misled as to the origin, identity, or quality of his formulas or products so designated.

It is further agreed by N. W. Farrand that in connection with the offering for sale, sale and distribution in commerce as defined by said act or the following designated formulas, he will forthwith cease and desist:

1. From disseminating or causing to be disseminated any advertisement for his formulas designated "Cornox" and "Prevent-It," and from distributing any instructions with respect to the compounding of preparations to be made from these formulas, which fails to reveal that preparations compounded from said formulas should not be applied to a soft corn and only sparingly to the immediate surface of a hard corn, care being taken that neither of said preparations comes in contact with the surrounding skin, and that neither of said preparations be allowed to remain on the part treated longer than from 10 to 15 minutes during which time the part treated should not be bandaged or covered with a sock or shoe; or

2. From disseminating or causing to be disseminated any advertisement for his "Inhalant" formula designated H, for his "Asthma Remedy" formulas designated C, K, E, and J, and for his "Hay Fever Remedy" formula designated B, and from distributing any instructions with respect to the compounding of preparations to be made from these formulas which fails to reveal that the use of a preparation compounded from any of said formulas is dangerous to health; or

3. From disseminating any advertisement for his "Asthma Remedy" formula designated D, and from distributing any instructions with respect to the compounding of a preparation to be made from this formula, which fails to reveal that a preparation compounded from said formula should not be used by persons suffering from tuberculosis and that frequent or continued use may lead to mental derangement and skin rash; or

4. From disseminating or causing to be disseminated any advertisement for his "Asthma Remedy" formula designated I, and from distributing any instructions with respect to the compounding of a preparation to be made from this formula, which fails to reveal that a preparation compounded from said formula should not be used by persons suffering from tuberculosis; or

5. From disseminating or causing to be disseminated any advertisement for his "Petrolatum" formula designated C, and from distributing any instructions with respect to the compounding of a preparation to be made from this formula, which fails to reveal that preparation compounded from said formula should be limited in application to a very small area of the surface of the skin and that the part treated should not be bandaged; or

6. From disseminating or causing to be disseminated any advertisement for his "Machineless-Heatless Permanent Wave Fluid" formula, and from distributing any instructions with respect to the compounding of a preparation to be made from this formula, which fails to reveal that a preparation compounded from said formula should not be allowed to remain on the hair longer than a very few minutes in order to prevent destruction of the hair.

The said N. W. Farrand agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Oct. 14, 1943.)

03155. Laxative Preparation—Qualities, Properties or Results and Safety.—Yoghurt Products, Inc., a corporation, 108 Denny Way,

Seattle, Wash., vendor-advertiser, was engaged in selling a laxative preparation designated "Yog-A-Lax" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That Yog-A-Lax is a stomach or bowel corrective.
- (b) That Yog-A-Lax is nonhabit forming.

Yoghurt Products, Inc., further agreed that in the dissemination of advertising, by the means or in the manner above set out, of a medicinal preparation now designated "Yog-A-Lax," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, it will forthwith cease and desist from disseminating any advertisements which fail to reveal that such product should not be used when abdominal pains, nausea, vomiting or other symptoms of appendicitis are present: *Provided, however,* That such advertisements need only contain the statement: "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a warning statement to the same effect.

The said Yoghurt Products, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 14, 1943.)

03156. **Astrological Charts and Forecasts—Nature, Personnel or Staff, Endorsements, Free and Special Price.**—Adalbert Nebel, Arthur Bernhard, and Murry Latzen, copartners, trading as Wilbur Adams, 114 East Thirty-second Street, New York 16, N. Y., vendor-advertisers, were engaged in selling astrological charts and forecasts designated Nostradamus Chart and Forecast and Tarot Card Chart and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) By the use of the designation Nostradamus Chart and Forecast, or by any other means, that there is any connection between the prophesies attributed to Nostradamus and astrological charts and forecasts which they sell.

(b) That their charts or forecasts are individually compiled or personally prepared or constitute a complete astrological service.

(c) That Wilbur Adams is a noted American astrologer.

(d) That their charts or forecasts have been endorsed by famous astrologers.

(e) That the Lucky Coin and Bronzed Zodiac Amulet are given free with the purchase of the Nostradamus Chart and Forecast.

(f) That the price charged for their charts and forecasts is a special introductory price.

It is further agreed by Adalbert Nebel, Arthur Bernhard, and Murry Latzen, and each of them, that in connection with the offering for sale, sale, and distribution in commerce, as defined by said act, of astrological charts and forecasts, they will forthwith cease and

desist from the use in advertising of fictitious persons as endorsers of their charts and forecasts.

The said Adalbert Nebel, Arthur Bernhard, and Murry Latzen, and each of them, agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 14, 1943.)

03157. Medicinal Preparation and Foot Device—Qualities, Properties or Results.—Wilson Industries, Inc., a corporation, 545 West Lake Street, Chicago, Ill., vendor-advertiser, was engaged in selling a drug preparation called "Athygienic Foot Powder" and a "glove" to be worn on the foot as a means of keeping the powder around the toes called "Athygienic Foot Glove" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Athygienic Foot Powder or Athygienic Foot Glove is a remedy for corns or foot ailments, generally.

The said Wilson Industries, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 14, 1943.)

03158. Food Supplement—Qualities, Properties or Results.—Joseph Giannatelli, an individual doing business under the trade name Alba Bio-Products Co., 4620 North Leamington Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling a preparation designated "Vita-Rex Capsules," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that such preparation:

(a) Will produce new cells, new blood, new health, new glands, or youthful vigor.

(b) Possesses therapeutic value in the treatment of poor assimilation; constipation, indigestion, gaseous conditions of the stomach or intestines, functional weakness, nerve disorders, run-down or tired-out condition, or lack of spirit, pep, or ambition.

(c) Will enrich the blood, increase the appetite, correct gastro-intestinal disorders, bring about normal functioning of the nervous system, increase systemic resistance, or produce better health.

(d) Will protect individuals against colds, aches, or a tired-out feeling.

(e) Will supply the body with ample nutritional substances.

(f) Is a tonic.

(g) Possesses value as an iron preparation.

The said Joseph Giannatelli further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 14, 1943.)

03159. Medicinal Preparation—Safety, Qualities, Properties or Results and Comparative Merits.—Marie Phillips Stewart and Robert A. Stewart, copartners doing business as The Ache-Knock Co., 3477 Waialae Avenue, Honolulu, T. H., vendor-advertisers, were engaged

in selling a preparation known as "Ache Knock Tablets" and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails clearly to reveal that said preparation should not be used in excess of the dosage recommended, since such use may be harmful: *Provided, however*, That such advertisement need only contain the statement: "CAUTION: Use only as Directed," if and when the directions for use wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

It is further agreed by the said Marie Phillips Stewart and Robert A. Stewart that they will forthwith cease and desist from representing directly or by implication:

(a) That said product will relieve or cure rheumatism, sciatica, lumbago, or neuritis.

(b) That said product will cure or prevent the recurrence of headaches or toothaches.

(c) That said product will relieve all pain or relieve excess acidity, or that it will ward off a cold or prevent the development of a cold.

(d) That said product is safe or that it will produce no ill effect.

It is further agreed by the said Marie Phillips Stewart and Robert A. Stewart that they will forthwith cease and desist from disseminating any claim to the effect that such product is superior to aspirin unless in immediate conjunction therewith appropriate comparison is made of the relative liability to adverse effects from use of Ache Knock Tablets.

The said Marie Phillips Stewart and Robert A. Stewart also agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 14, 1943.)

03160. Medicinal Preparation—Government Approval and Qualities, Properties or Approval.—Hope Buxton, an individual trading as Buxton Medicine Co., Abbot Village, Maine, vendor-advertiser, was engaged in selling a medicinal preparation designated "Buxton's A Special Compound" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said preparation:

(a) Has been approved by a Federal agency.

(b) Is a remedy or cure for sciatica, arthritis, neuritis or rheumatism, or for diseased liver, stomach, or kidneys.

(c) Eliminates uric acid from the system.

(d) Prevents muscular aches or pains.

(e) Is a treatment for indigestion or stomach trouble.

(f) Is a blood purifier.

(g) Overcomes acidity, strengthens the heart or normalizes the kidneys or bladder.

The said Hope Buxton and Carrie Louise Buxton, and each of them, further agreed not to publish or cause to be published any testimonial

containing any representation contrary to the foregoing agreement. (Oct. 18, 1943.)

03161. **Dry Dog Food Preparations—Composition.**—The Beacon Milling Co., Inc., a corporation, Cayuga, N. Y., vendor-advertiser, was engaged in selling certain dry dog food preparations designated “Beacon Dog Pellets” and “Beacon Dog & Puppy Meal” and referred to generally in the advertising as Beacon Dog Foods and agreed, in connection with the dissemination of future advertising, to cease and desist from using the unqualified terms meat or beef and representing, directly or by implication, that such products contain meat or beef.

The Beacon Milling Co., Inc., further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representations contrary to the foregoing agreement. (Oct. 18, 1943.)

03162.<sup>1</sup> **Nursery Products—Terms and Conditions.**—The Gardner Nursery Co., a common law trust, and Clark E. Gardner, Robert E. Gardner, and G. B. Gardner, individually and as officers of The Gardner Nursery Co., Osage, Iowa, vendor-advertisers, were engaged in selling certain nursery products and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that 50 cents or any other specified amount of money is the maximum assessment made to cover shipping or delivery expenses when charges over and above such specified amount of money are assessed before delivery of the advertised article.

The said The Gardner Nursery Co., Clark E. Gardner, Robert E. Gardner, and G. B. Gardner and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representation contrary to the foregoing agreement. (Oct. 18, 1943.)

03163.<sup>1</sup> **Laxative Preparation—Safety.**—Lewis-Howe Co., a Delaware corporation, Fourth and Spruce Streets, St. Louis, Mo., vendor-advertiser, was engaged in selling a drug product called “NR Tablets” or “Nature’s Remedy” and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails to reveal that the product should not be used when abdominal pain, nausea, vomiting or other symptoms of appendicitis are present: *Provided, however,* That such advertisement need only contain the statement, “CAUTION: Use Only as Directed,” if and when the directions for use wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect. (Oct. 21, 1943.)

03164. **Medicinal Powder—Professional and Government Endorsement or Approval, Success, Use, or Standing, History, Value, Price, Etc.**—S. R.

<sup>1</sup> Supplemental.



Ward, an individual doing business as Ward & Sons, 10534 Vincennes Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling a certain medicinal powder designated "Dr. Gray's Foot Bath Powder" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Dr. Gray's Foot Bath Powder is used by doctors, hospitals, or sanitariums.

(b) That this powder is sold nationally.

(c) That this powder is the result of scientific research or a study of foot ailments.

(d) That statements in his advertising have been made by or are quotations from the literature of the United States Public Health Service, or that the United States Public Health Service, or any other agency of the United States Government has endorsed or recommended the use of this product.

(e) That a package of this powder has a greater value than the price at which it is regularly sold.

(f) That the price at which this powder is sold is limited as to time.

(g) That this powder is a treatment for foot troubles of every description, corns or calluses or that it is of benefit in the treatment of foot pains.

(h) That the use of this powder draws poisons from the feet, has curative or healing powers, or destroys germs.

(i) That no other preparations are as effective in the treatment of "Athlete's Foot," itching, broken skin, open sores, and blisters.

(j) That the coloring of the skin caused by this powder destroys infection.

(k) That the use of this powder will prevent the occurrence of the condition known as Athlete's Foot.

The said S. R. Ward further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 22, 1943.)

03165. **Cosmetic Preparations—Qualities, Properties or Results, New Product and Safety.**—The Orjene Co., a corporation, 100 Fifth Avenue, New York City, vendor-advertiser, was engaged in selling cosmetic preparations designated Orjene Pure Shampoo, Vi-Vu Scalp Treatment, V-Kol, and Couleur de Ton and agreed, in connection with the dissemination of future advertising to cease and desist from representing directly or by implication:

(a) That Orjene Pure Shampoo is a cure or remedy for dandruff or has any therapeutic value in the treatment of dandruff in excess of the removal of dandruff scales.

(b) That Orjene Pure Shampoo will provide a strong, healthy growth of hair.

(c) That Orjene Pure Shampoo is new and different.

(d) That Vi-Vu will promote or restore a healthy growth of hair.

(e) That Vi-Vu will remove local scalp irritations.

(f) That Vi-Vu will renew life-giving nutriment.

(g) That Vi-Vu will improve the metabolism of the scalp or grow hair whenever the follicles are alive.

(h) That V-Kol is a cure for itching scalp or skin or eczema.

(i) That V-Kol is a cure for dandruff or has therapeutic value in the treatment of dandruff in excess of the removal of dandruff scales.

(j) That V-Kol will aid nature in obtaining healthy hair.

The vendor-advertiser agreed, in connection with the dissemination of advertising for Couleur de Ton, to cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

**CAUTION:** This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test, according to accompanying directions, should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.

*Provided, however,* That such advertisements need contain only the statement: "**CAUTION: USE ONLY AS DIRECTED ON LABEL,**" if and when such label bears the first described caution conspicuously displayed thereon and the accompanying labeling bears adequate directions for such preliminary testing before each application.

The said The Orjene Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 29, 1943.)

03166. Medicinal Preparation—Qualities, Properties or Results and Safety.—Stomar Products Co., a corporation, 715 Linwood Boulevard, Kansas City, Mo., vendor-advertiser, engaged in selling a medicinal preparation designated Foster's Wonder 30 Minute Corn and Callous Remover and I. B. Wasson, an individual trading as I. B. Wasson Advertising Co., Manufacturers Exchange Building, Kansas City, Mo., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Stomar Products Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that said preparation promotes healing.

The vendor-advertiser and advertiser agent agreed, in connection with the dissemination of future advertising, they will forthwith cease and desist from disseminating any advertisement which fails to reveal the material fact that care should be taken not to allow said preparation, full strength, to remain in contact too long, as otherwise its corrosive action may extend beyond the corn or callous and corrode the underlying tissue: *Provided, however,* That such advertisement need only contain the statement: "**CAUTION: Use Only as Directed,**" if and when the directions for use, wherever they appear in the label, in the labeling, or in both label and labeling, contains a caution or warning to the same effect.

The said Stomar Products Co. and I. B. Wasson, and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 29, 1943.)

03167. Soyabean Bread—Qualities, Properties, or Results.—Helen Baker, an individual doing business as Bill Baker's Products, Ojai, Calif.,

advertiser-vendor, was engaged in selling a food designated Bill Baker's Original Soya Bean Brand Bread and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that Bill Baker's Soyabean Bread will:

- (a) Be of therapeutic benefit in the treatment of acidosis.
- (b) Be of therapeutic benefit in the treatment of stomach acidity.

The said Helen Baker further agreed not to publish or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Nov. 5, 1943.)

03168. Medicinal Preparation—Safety.—Frank M. Spors and Esther Spors, individuals and copartners trading as Spors Co., Le Center, Minn., vendor-advertisers, were engaged in selling a medicinal preparation designated Lax-Aid and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails to reveal that the product should not be used when abdominal pain, nausea, vomiting or other symptoms of appendicitis are present: *Provided, however*, That such advertisements need only contain the statement, "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said Frank M. Spors and Esther Spors further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representation contrary to the foregoing agreement. (Nov. 5, 1943.)

03169. Dog Foods—Composition and Unique. Bannock Food Co., Inc., a corporation, West Chester, Pa., vendor-advertiser, was engaged in selling dog foods designated Bannock Dog Biscuits and Bannock Body Builder and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That its dog food products contain meat or beef.

That Bannock Dog Foods are the only dog foods containing a vitamin concentrate.

The Bannock Food Co., Inc., further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representations contrary to the foregoing agreement. (Nov. 12, 1943.)

03170. Bicarbonate of soda—Qualities, Properties or Results, and Manufacturer.—Church & Dwight Co., Inc., a Delaware corporation, 70 Pine Street, New York, N. Y., vendor-advertiser, engaged in selling a bicarbonate of soda called Arm & Hammer Baking Soda and Cow Brand Baking Soda; and Brooke, Smith, French & Dorrance, Inc., a New York

Corporation, 347 Madison Avenue, New York, N. Y., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named products on behalf of Church & Dwight Co., Inc. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That the said products will prevent shipping fever.
- (b) That Church & Dwight Co., Inc., now manufactures Arm & Hammer Baking Soda or Cow Brand Baking Soda.
- (c) That said products possess any therapeutic value in the treatment of "off feed," colds, scours, or acetoneemia in cattle in excess of that which may result from the action or influence of such products on any acidity or flatulence which may exist.
- (d) That the said products are general conditioners for hogs or poultry.
- (e) That said products possess any therapeutic value in the treatment of influenza, scours, or diarrhea in swine in excess of that which may result from the action or influence of such products on any acidity or flatulence which may exist.
- (f) That the said products alone will relieve or cure azoturia or that they will relieve colds or roup in poultry.

The said Church & Dwight Co., Inc., and Brooke, Smith, French & Dorrance, Inc., and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 18, 1943.)

03171. Photo Enlargements—Limited Offer, Comparative Prices, Qualities, Properties or Results, and Artist.—G. Skrudland, an individual, doing business under the trade name of Skrudland Photo Service, 6444 Diversey Avenue, Chicago, Ill., vendor-advertiser, engaged in selling photo enlargements; and United Advertising Companies, Inc., a corporation, 205 North Michigan Avenue, Chicago, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Skrudland Photo Service agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

- (a) That the offer to sell framed photographic enlargements for 49¢ is a limited offer.
- (b) That the prices of their enlargements are lower than those at which similar or comparable photo enlargements can be obtained anywhere else.
- (c) That the dyes used in coloring the enlargements never fade.
- (d) That the hand coloring of said photo enlargements is done by an artist.

The said G. Skrudland and the United Advertising Companies, Inc., and each of them, agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 22, 1943.)

03172. Drug Preparations—Qualities, Properties or Results, and Safety.—O. B. Whitaker, an individual trading as O. B. Whitaker Mfg. Co., 529 Joplin Street, Joplin, Mo., vendor-advertiser, engaged in selling drug preparations designated Sar-Tol and more specifically designated "Sar-Tol Cough Syrup," "Sar-Tol Nose Drops" and "Sar-Tol Cough Drops"; and Joplin Broadcasting Co., a corporation operating Radio Station WMBH, Frisco Building, Joplin, Mo., broadcasting company, was engaged in the business of conducting a broadcasting company which disseminated advertisements for the above named products on behalf of O. B. Whitaker Mfg. Co. agreed, in connection with the dissemination of future advertising to cease and desist from representing directly or by implication:

(a) That Sar-Tol Cough Syrup, Sar-Tol Nose Drops, and Sar-Tol Cough Drops, used alone or in combination, prevent or cure colds or have any curative effect on the underlying factors which cause colds.

(b) That Sar-Tol Cough Syrup, Sar-Tol Nose Drops, and Sar-Tol Cough Drops, alone or in combination, prevent or cure throat irritations.

(c) That Sar-Tol Cough Syrup, Sar-Tol Nose Drops, and Sar-Tol Cough Drops, alone or in combination, prevent fatigue, maintain the health, or maintain or aid in building body resistance.

(d) That Sar-Tol Cough Drops neutralize tobacco, onion, or other odors.

It is also hereby agreed by the said O. B. Whitaker and Joplin Broadcasting Co. that in connection with the dissemination of advertising, by the means and in the manner above set out, of a drug preparation now designated Sar-Tol Nose Drops, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, they, and each of them, will forthwith cease and desist from disseminating any advertisements which fail conspicuously to reveal therein the following:

"CAUTION: Frequent or excessive use of the preparation may cause injury to the lungs, nervousness, restlessness, or sleeplessness. Do not use at all in infants and younger children except on competent advice. Individuals suffering from high blood pressure, heart disease, diabetes, or thyroid trouble should not use this preparation except on competent advice." *Provided, however,* That such advertisements need only contain the statement: "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling contain a caution or warning to the same effect.

The said O. B. Whitaker and Joplin Broadcasting Co., and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated any testimonial containing any representation contrary to the foregoing agreement. (Nov. 23, 1943.)

03173. Power Electric Fencer Kit—Qualities, Properties or Results, Nature and Safety.—Jack C. Thomas, an individual trading as Power

Fence Co., Darlington, Wis., vendor-advertiser, was engaged in selling a certain kit designated Power Electric Fencer Kit, which when constructed with the use of other parts not supplied with the kit, makes an electric fence controller and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That his Power Electric Fencer Kit can be made into an electric fence controller capable of rendering service equal to that given by commercial electric fence controllers costing up to \$15.

(b) That his electric fencer kit is an electric fence controller.

(c) That the use of his electric fencer kit, when made into an electric fence controller with a single wire enclosure, confines all live stock or any animal of a size which would enable that animal to readily pass under or over that wire without coming in contact with it, or any animal whose natural covering or coat would serve to insulate it from electric shock at the probable point of its contact with the wire.

(d) That the electric fence controller made with his electric fencer kit can be used in remote places or distant pastures without disclosing that the unit must be protected from the weather.

(e) That the use of an electric fence controller made from his power electric fencer kit is safe.

(f) That there are no parts in his electric fencer kit which can get out of order; or

(g) That the use of an electric fence controller made from his electric fencer kit will eliminate weasels, mink, rats, mice, skunks, foxes, and stray cats from chicken houses and yards.

The said Jack C. Thomas agreed not to publish, or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 26, 1943.)

03174. Home Study Course—Institute, Free, Limited Offer, Endorsement, Etc.—A. N. Sawyer, an individual formerly known as A. N. Sauer, formerly doing business as Austin Technical Institute, and doing business as Austin Technical Publishers, 275 Seventh Avenue, New York, N. Y., vendor-advertiser, was engaged in selling a home study course designated "A. T. I. Home Study Course in Blueprint Reading" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) By the use of the word "Institute" as a part of the trade name under which his business is conducted or by any other means that he conducts an institution of learning with a staff of competent, experienced, and qualified educators for the purpose of promoting learning.

(b) That his home study course is an invention.

(c) That articles of merchandise, the cost of which is included in the purchase price of his home study course, are free, either by the use of the term "free" or any other term of similar import or meaning.

(d) That a person as a result of the completion of the course would be a trained expert in blueprint reading.

(e) That a study of his home study course will enable a person to fulfill all blueprint requirements for Civil Service jobs in connection with National Defense.

(f) That he has made statements regarding his home study course under oath in any judicial proceedings.

(g) That an offer to sell his home study course at a certain price is limited in time.

(h) That a substantial number of authorities have commended his home study course.

The said A. N. Sawyer agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 29, 1943.)

03175. Medicinal Preparation—Qualities, Properties or Results, Composition and Safety.—J. P. Hoft, an individual, Post Office Box 137, Berwyn, Ill., vendor-advertiser, engaged in selling a medicinal preparation designated "Amisogen"; and A. N. Baker Advertising Agency, Inc., a corporation, 189 West Madison Street, Chicago, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of J. P. Hoft agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That said preparation will have any effect upon asthma except to the extent that it may afford palliative relief from the paroxysms of asthma; or

(b) That said preparation will relieve hay fever or the symptoms of hay fever; or

(c) That said preparation is free from opiates, narcotics or dope of any kind.

The said J. P. Hoft and A. N. Baker Advertising Agency, Inc., and each of them, further agreed not to publish or cause to be published any advertisement which fails to reveal that said preparation should not be used in excess of the dosage recommended, that frequent or continued use of said preparation may be habit forming, may cause nervousness, restlessness, or sleeplessness, and that said preparation should not be used by persons suffering from high blood pressure, heart disease, diabetes, or thyroid trouble: *Provided, however*, that such advertisement need only contain the statement: "CAUTION, Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said J. P. Hoft and A. N. Baker Advertising Agency, Inc., and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 29, 1943.)

03176. Medicinal Preparation—Qualities, Properties, or Results.—Mamie Wilson, an individual, 1313 East Thirty-third Street, Los Angeles, Calif., vendor-advertiser, was engaged in selling a medicinal prepara-

tion designated "Mamie's New Discovery Scalp Ointment" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Mamie's New Discovery Scalp Ointment will prevent loss of hair or baldness, or will counteract conditions causing hair loss.

(b) That Mamie's New Discovery Scalp Ointment is a cure for, or will remedy, dandruff or other scalp ailments except to the extent that it may mitigate itching of the scalp.

(c) That Mamie's New Discovery Scalp Ointment will nourish or stimulate the hair roots or make the hair grow, or cause the hair to take on new life; and

(d) That Mamie's New Discovery Scalp Ointment will tone or have any other effect upon the blood corpuscles, or will tone the oil glands of the scalp.

The said Mamie Wilson further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Dec. 2, 1943.)

03177. *Cosmetic Preparation—Qualities, Properties or Results, Manufacturer and Safety.*—T. L. Miller, an individual doing business under the trade name T. L. Miller Manufacturing Co., 3716 South Claiborne Avenue, New Orleans, La., vendor-advertiser, was engaged in selling a cosmetic preparation designated "Presto Face Cream" 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 Presto Face Cream will produce a clear, smooth skin.

(b) By use of the word "manufacturing," or by use of any other similar word, words or abbreviations in his trade name, or otherwise, that he is engaged, or that he owns, operates or controls a company which is engaged, in the business of manufacturing or compounding the preparation now designated Presto Face Cream.

The said T. L. Miller further agreed that in the dissemination of advertising by the means and in the manner above set out of a cosmetic preparation now designated Presto Face Cream, or any other preparation of substantially the same composition or possessing substantially the same properties, he will forthwith cease and desist from disseminating any advertisements which represent, directly or by implication, that said preparation is safe or harmless, or which advertisements fail to reveal that said preparation should not be applied to an area of skin larger than the face and neck at any one time, that too frequent applications and use thereof over excessive periods of time should be avoided, that adequate rest periods between series of treatments therewith should be observed, that the said preparation should not be applied to areas where the skin is cut or broken, and that, prior to use thereof, a proper patch test should first be made in order to determine whether the individual user is allergic or sensitive to the said preparation: *Provided, however,* That such advertisements need only contain the statement "CAUTION: Use Only as Directed," if and



when the directions for use, wherever they appear on the label, in the labeling or in both label and labeling, contain a warning statement to the same effect.

The said T. L. Miller further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 2, 1943.)

03178. **Truss—Qualities, Properties or Results, Unique, Comparative Merits, and Guarantee.**—T. E. Brooks, an individual doing business under the trade name of Rupture-Guard Co., Marshall, Mich., vendor-advertiser, engaged in selling a truss for rupture and hernia, designated Elastic Rupture-Guard; and Ralph L. Wolfe & Associates, Inc., a corporation, 76 Adams Avenue West, Detroit 26, Mich., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above named product on behalf of Rupture-Guard Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Elastic Rupture-Guard may be properly fitted to one's personal requirements when ordered through the mails.

(b) That Elastic Rupture-Guard will hold the rupture securely or comfortably in any position of the body.

(c) That Elastic Rupture-Guard will assist nature in strengthening the muscles or in closing the hernia opening.

(d) That Elastic Rupture-Guard is the only device of its kind.

(e) That Elastic Rupture-Guard assures one better support or greater security or body freedom than other trusses.

(f) That the use of Elastic Rupture-Guard will eventually enable one to go without a truss or will correct or cure rupture.

(g) That Elastic Rupture-Guard will stay in position under all conditions of use.

(h) That Elastic Rupture-Guard is useful in cases of most unusual rupture.

(i) That satisfaction in the use of the Elastic Rupture-Guard is guaranteed, without disclosing the terms of said guarantee.

(j) That Elastic Rupture-Guard is more natural or more comfortable than other trusses.

The said T. E. Brooks and Ralph L. Wolfe & Associates, Inc., and each of them, agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 2, 1943.)

03179. **Medicinal Preparation—Qualities, Properties or Results, Composition and Safety.**—Wm. H. Braun and Alice C. Braun (wife), individuals and copartners trading as Imperial Brands Co., 537 South Dearborn Street, Chicago, Ill., vendor-advertisers, were engaged in selling a medicinal preparation designated Imperial Lax-101 and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Imperial Lax-101 is a gentle or mild laxative; and

(b) That it will move the bowels easily, gently, and without irritation to the intestinal walls or surfaces.

(c) That it is a natural product.

(d) That it will induce the bowels to evacuate normally and naturally.

(e) That it will change an unhealthy to a healthy evacuation.

(f) That delayed evacuation will poison the system and lower the body's resistance and that Imperial Lax-101 will remedy such conditions; or

(g) That it contains no habit forming drugs.

It is further agreed by Wm. H. Braun and Alice C. Braun that in soliciting the sale of a medicinal preparation now designated Imperial Lax-101, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under this name or any other name, they, and each of them, will forthwith cease and desist from disseminating or causing to be disseminated, by the means or in the manner above set out, any advertisement which fails to reveal that said preparation should not be used when abdominal pain, nausea, vomiting or other symptoms of appendicitis are present: *Provided, however,* That such advertisement need only contain the statement, "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said Wm. H. Braun and Alice C. Braun, and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representation contrary to the foregoing agreement. (Dec. 7, 1943.)

03180. "Pickwick Coffee"—Comparative Merits, Qualities, Properties, or Results, and Professional Endorsement.—Kansas City Wholesale Grocery Co., a Missouri corporation, 1208-1216 West Twelfth Street, Kansas City, Mo., vendor-advertiser, was engaged in selling a beverage designated "Pickwick Coffee" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Pickwick Coffee is of a low acid content as compared with other coffees or that it has been scientifically proved to contain less acid than other coffees.

(b) That because of its lower acid content Pickwick Coffee will not disagree with a person drinking it or that Pickwick Coffee will keep the acidity of the body at a minimum.

(c) That physicians request Pickwick Coffee for their own use because of its low acid content.

The said Kansas City Wholesale Grocery Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 13, 1943.)

03181. Drug Preparation—Safety.—G. Bernardi, an individual, trading as Benaris, 1375 Euclid Avenue, Cleveland 15, Ohio, vendor-advertiser, was engaged in selling a drug preparation designated

"Benaris" and agreed, in connection with the dissemination of future advertising, to cease and desist from disseminating any advertisement which fails clearly to reveal that its too frequent or continued use may cause nervousness, restlessness, or sleeplessness; that individuals suffering from high blood pressure, heart disease, diabetes, thyroid trouble, or having a high fever should not use the preparation except on a doctor's advice; that when coughs or hoarseness has persisted for 10 days it should not be used without securing a doctor's advice; that use of excessive amounts of the preparation may cause injury to the lungs: *Provided; however,* That such advertisement need only contain the statement: "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said G. Bernardi further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 15, 1943.)

03182. **Talismanic Rings—Qualities, Properties, or Results, Composition, Reduced Price, and Guarantee.**—H. A. Marsh, an individual, trading as Seductive Products, 24 East Twenty-First Street, New York, N. Y., vendor-advertiser, was engaged in selling jewelry and other articles, including Talismanic rings and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Talismanic rings have mysterious power.

(b) That the possessor of a Talismanic ring will thereby become endowed with luck, marriage, friends, happiness, love, employment, a pleasing personality, profit, wealth, success, or power.

(c) That Talismanic rings are plated with 14-karat gold; or

(d) That Talismanic rings may be purchased at a reduced retail price when the alleged reduced retail price is, in fact, the regular retail price thereof.

It is also stipulated and agreed by the said H. A. Marsh, that in connection with the offering for sale, sale and distribution of Talismanic rings, in commerce, as defined by the said act, he will forthwith cease and desist from using the word "guarantee" or any other word or words of similar meaning in connection with the advertising, offering for sale, or sale of said rings, unless, when used, clear and unequivocal disclosure is made in connection therewith of exactly what is offered by way of security.

The said H. A. Marsh agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 15, 1943.)

03183. **Dry Dog Food Preparation—Composition.**—Cosby-Hodges Milling Co., a corporation, Birmingham, Ala., vendor-advertiser, engaged in selling a certain dry dog food preparation designated "Jazz Dog Food"; and Silver & Douce Co., Inc., a corporation, 309-10-11 Protec-

tive Life Building, Birmingham, Ala., advertising agents, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of Cosby-Hodges Milling Co. agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication, that *Jazz Dog Food* contains meat.

The Cosby-Hodges Milling Co. and Silver & Douce Co., Inc., and each of them, further agreed not to publish, disseminate, or cause to be published or disseminated, any testimonial containing any representations contrary to the foregoing agreement. (Dec. 15, 1943.)

**03184. Spark Plugs—Qualities, Properties or Results, and Comparative Merits.**—The Electric Auto-Lite Co., a corporation, Toledo, Ohio, vendor-advertiser, was engaged in selling a commodity designated "Auto-Lite Spark Plugs" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That Auto-Lite Spark Plugs prevent gas waste due to poor ignition or restore gasoline economy unless limited to cases where waste or lack of economy is due to defective or misfiring plugs.

(b) That Auto-Lite Spark plugs end starting troubles.

(c) That Auto-Lite Spark Plugs restore new engine performance unless limited to cases where departure from new engine performance is caused by defective spark plug operation.

(d) That, compared with other new spark plugs of standard make, Auto-Lite Spark Plugs produce a more effective spark, afford any savings, operate with less strain on electrical units, or effect a faster pick-up, more power per gallon of gasoline, or a livelier or smoother engine.

The Electric Auto-Lite Co. further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Dec. 22, 1943.)

**03185. Medicinal Preparation—Qualities, Properties or Results and Safety.**—Montrose Sales Co., Inc., a corporation doing business under its own name and under the trade name of Montrose Products Co., 2036-38 Montrose Avenue, Montrose, Calif., vendor-advertiser, engaged in selling a medicinal preparation recommended for the treatment of asthma designated "Bel-Din"; and Guenther Bradford & Co., a corporation, 15 East Huron Street, Chicago, Ill., advertising agent, engaged in the business of conducting an advertising agency which disseminated advertisements for the above-named product on behalf of Montrose Sales Co., Inc., agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that "Bel-Din," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name:

(a) Will have any effect on the symptoms of asthma, unless cardiac asthma is specifically excluded.

(b) Will relieve the symptoms of bronchial asthma beyond such effect as it may have in easing the difficulty in coughing and breathing.

It is hereby agreed by Montrose Sales Co., Inc., and Guenther Bradford & Co., and each of them, that in the dissemination of advertising by the means and in the manner above set out of the preparation now designated "Bel-Din," or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, they, and each of them, will forthwith cease and desist from disseminating any advertisement which fails to reveal that said preparation is potentially harmful and should not be used in cases of tuberculosis or goiter: *Provided, however,* That said advertisements need contain only the statement, "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or in both label and labeling, contain a caution or warning to the same effect.

The said Montrose Sales Co., Inc., and Guenther Bradford & Co., and each of them, further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 22, 1943.)

03186. **Cosmetic—Qualities, Properties or Results, New, "Certified," Composition and Safety.**—Edwin K. Latz, Israel A. Latz, and Sidney Seligman, copartners, doing business as Seligman & Latz, 745 Fifth Avenue, New York, N. Y., vendor-advertisers, were engaged in selling a cosmetic designated as the "Milky Wayve Permanent Wave Solution" and agreed, in connection with the dissemination of future advertising, to cease and desist from:

(a) Representing, directly or by implication, that such preparation nourishes the hair.

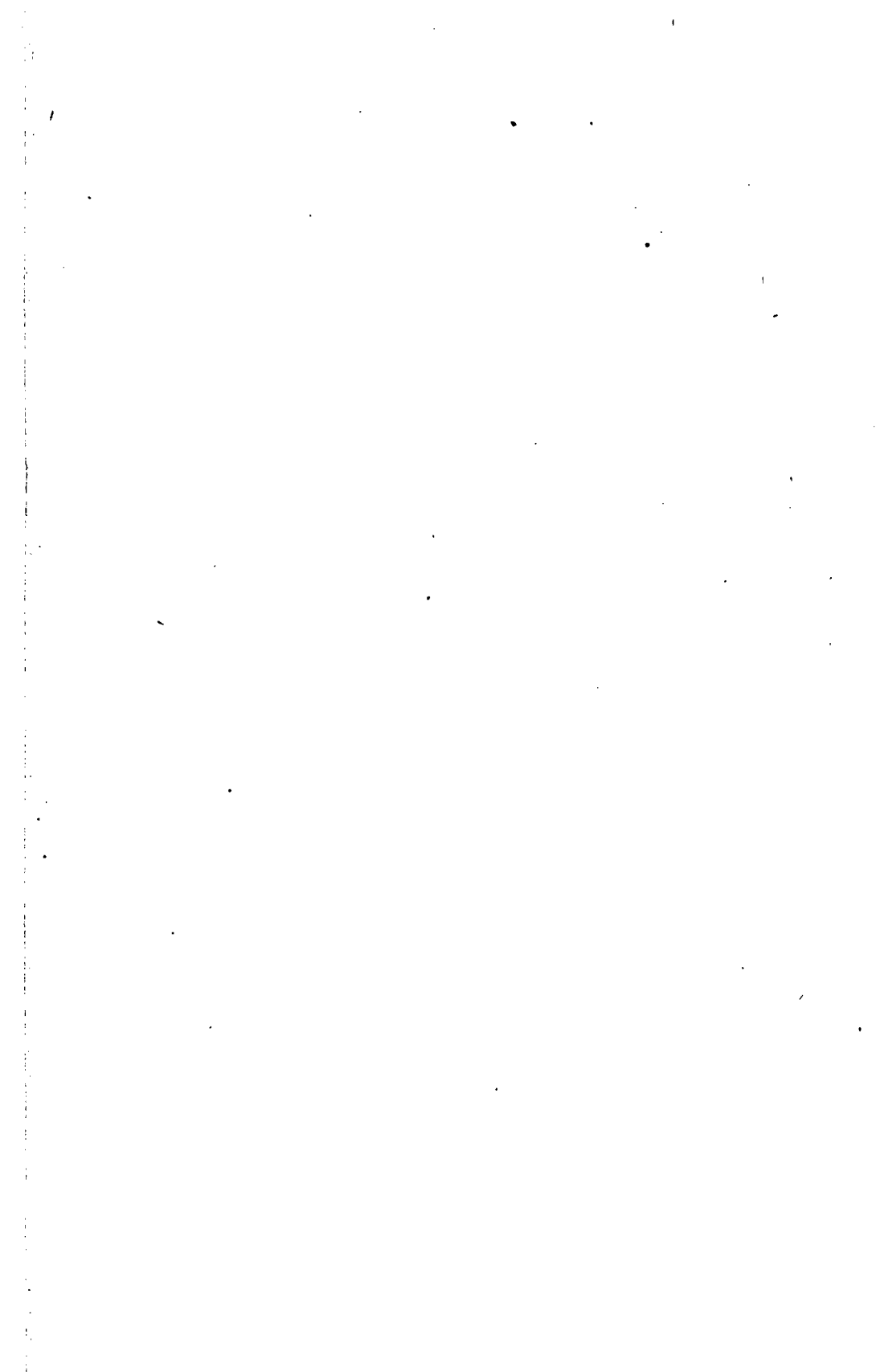
(b) Representing, directly or by implication, that the method of applying such preparation is new or revolutionary.

(c) Using the word "Certified" or any other word or words of similar import, to represent or imply that such preparation has been endorsed or attested as to quality or fitness by any governmental, scientific, or other recognized agency.

(d) Using the words "Milky Wayve," "creme of milk lotion," "milky bath," or any other word or words of similar import, to designate, describe, or refer to such preparation; or representing through the use of picturizations or otherwise that said preparation is milk or contains milk.

(e) Representing through the use of the phrase "prohibits abusive solutions" or through the use of any other phrase or words, or in any other manner, that such preparation cannot injure the hair."

The said Edwin K. Latz, Israel A. Latz, and Sidney Seligman, and each of them, also further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 24, 1943.)



## DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

### NATIONAL PRESS PHOTO BUREAU, INC. ET AL. v. FEDERAL TRADE COMMISSION<sup>1</sup>

No. 18353—F. T. C. Dock. 3898

(Circuit Court of Appeals, Second Circuit. Sept. 18, 1943)

Ordered, pursuant to agreement, that instant proceeding to review and set aside cease and desist order in Docket 3898, June 16, 1942, 34 F. T. C. 1388, may be terminated by entry of a decree affirming the same and commanding obedience thereto; that said order be and is affirmed; and that the corporate petitioners, their officers, etc., and the individual petitioners, jointly or severally, etc., in connection with the solicitation of permission to make photographs, etc., cease and desist from (1) using the words "National Press," etc., in the corporate name of petitioner National Press Photo Bureau, Inc., etc., to designate or describe a business which is principally for the purpose of making and selling photographs to the individuals photographed; and (2) representing, etc., to a prospective customer, that petitioners, etc., are news or press photographers, etc.; without prejudice to the right of the United States, as provided in Section 5 (1) of the Federal Trade Commission Act, to prosecute suits to recover civil penalties for violations of said order, etc., and to the right of the Commission to maintain contempt proceedings for violation of the instant decree; all as in detail therein set forth.

*Mr. Nat C. Helman*, of New York City, for petitioners.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. J. J. Smith, Jr.*, assistant chief counsel, and *Mr. James W. Nichol*, all of Washington, D. C., for Commission.

Before SWAN and CLARK, *circuit judges*.

#### FINAL DECREE AFFIRMING AND ENFORCING ORDER TO CEASE AND DESIST

The petitioners herein, having filed with this Court on August 15, 1942, their petition to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of June 16, 1942, under the provisions of the Federal Trade Com-

<sup>1</sup> Not reported in Federal Reporter. For case before Commission, see 34 F. T. C. 1388.

mission Act; and a copy of said petition having been served upon the respondent; and the respondent having thereafter certified and filed herein, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered; and the parties hereto having agreed that this proceeding may be terminated by the entry by this Honorable Court of a decree affirming said order to cease and desist, and commanding obedience to the terms thereof—

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 June 16, 1942, be, and the same hereby is, affirmed.

And it is hereby further ordered, adjudged, and decreed, that the petitioners National Press Photo Bureau, Inc., a corporation; Kay Hart Studios, Inc., a corporation, and Bolivar Studios, Inc., a corporation—their officers, directors, representatives, agents, and employees; and petitioners Samuel F. Reese and Clara L. Reese, individually and as officers of corporate petitioners National Press Photo Bureau, Inc., and Kay Hart Studios, Inc., jointly or severally, directly or through any corporate or other device, in connection with the solicitation of permission to make photographs, or the offering for sale, sale, and distribution of photographs, in commerce as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the words “National Press,” or any other word or words of similar import or meaning, in the corporate name of petitioner National Press Photo Bureau, Inc., or as a part of any other trade or corporate name, to designate or describe a business which is principally for the purpose of making and selling photographs to the individuals photographed.

(2) Representing or implying in any manner to a prospective customer, that petitioners, or either of them, are news or press photographers, or that they conduct a news or press photographic agency; or that any photograph taken by them is for press or publicity purposes, unless such photograph is actually for immediate press or publicity use.

And it is hereby further ordered, adjudged, and decreed, that within ninety (90) days after the entry of this decree, the petitioners shall file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which they have complied therewith.

Without prejudice to the right of the United States, as provided in section 5 (1) of the Federal Trade Commission Act, to prosecute suits to recover civil penalties for violations of the said order to



cease and desist hereby affirmed, and without prejudice to the right of the Federal Trade Commission to maintain contempt proceedings for violation of this decree, this Court retains jurisdiction of this cause to enter such further orders herein from time to time as may become necessary effectively to enforce compliance in every respect with this decree and to prevent evasion thereof.

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STANLEY LABORATORIES, INC. ET AL. v. FEDERAL  
TRADE COMMISSION<sup>1</sup>

No. 10149—F. T. C. Dock. 4130

(Circuit Court of Appeals, Ninth Circuit. Oct. 20, 1943)

CEASE AND DESIST ORDERS—MISREPRESENTATION—STIPULATIONS—PRIOR OFFERS IN  
TO CEASE AND DESIST FROM.

An offer of a stipulation to cease and desist from certain representations, even if accepted by Federal Trade Commission, would not have constituted a defense in proceeding for issuance of a cease and desist order (Federal Trade Commission Act, 15 U. S. C. A. Sec. 41 et seq.).

CEASE AND DESIST ORDERS—MISREPRESENTATION—STIPULATIONS—PRIOR OFFERS IN  
TO CEASE AND DESIST FROM—PRODUCT NAMES AND BRANDS—"MD" FOR MEDI-  
CATED PREPARATION—IF RIGHT TO CONTINUE, INSISTED ON.

A cease and desist order with reference to use of letters "MD" in connection with a medicated douche powder was not improper because of proffered stipulation to cease and desist from certain representations where proffered stipulation insisted on right to continue the use of "MD."

EVIDENCE—MISREPRESENTATION—PRODUCT NAMES AND BRANDS—"MD" FOR MEDI-  
CATED PREPARATION—LAY WITNESSES—METHOD—EXHIBITION OF ADVERTISING  
SPECIMENS.

Where issue before Federal Trade Commission was whether letters "MD" either alone or in conjunction with picturization of a doctor, nurse or cross in connection with medicated douche powder were misleading to the public, method of examination by showing each lay witness specimens of advertising and asking what came to his mind when he examined them and why was proper.

EVIDENCE—COMMISSION PROCEEDINGS—WHETHER ADMISSIBLE IN—JURY TRIAL  
RULES.

The technical rules for exclusion of evidence in jury trials do not apply to proceedings before Federal Trade Commission.

EVIDENCE—MISREPRESENTATION—PRODUCT NAMES AND BRANDS—"MD" FOR MEDI-  
CATED PREPARATION—LAY WITNESSES—"IMPRESSIONS" OF.

That on cross-examination, lay witnesses stated merely that letters "MD" gave the "impression" that a doctor approved of "MD Medicated Douche Powder" did not preclude entry of cease and desist order.

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<sup>1</sup> Reported in 138 F. (2d) 388. For case before Commission, see 34 F. T. C. 972.

CEASE AND DESIST ORDERS—MISREPRESENTATION—DEPICTIONS—RED CROSS AND RELATED—"MD" MEDICATED DOUCHE POWDER.

The Federal Trade Commission's cease and desist order properly prohibited the use of picturization of a cross or any other simulation of the American Red Cross emblem either alone or in conjunction with the picturization of a doctor or a nurse in selling drug products for feminine hygiene including "MD Medicated Douche Powder."

METHODS, ACTS AND PRACTICES—MISREPRESENTATION—LETTERS—WHETHER USE SPECIFIC, DECEPTIVE.

In determining whether use of certain letters is deceptive to the public so as to justify cease and desist order, each case must be judged by its own facts.

CEASE AND DESIST ORDERS—MISREPRESENTATION—PRODUCT NAMES AND BRANDS—LETTERS AND DEPICTIONS—"MD" AND RED CROSS AND RELATED, FOR MEDICATED PREPARATION.

Evidence sustained Federal Trade Commission's findings that use of letters "MD" or "M. D." either alone or in conjunction with picturization of a doctor, nurse, or [389] cross, in connection with medicated douche powder was deceptive in leading public to believe that powder was endorsed by the medical profession or by the Red Cross, justifying Commission's cease and desist order.

(The syllabus, with substituted captions, is taken from 138 F. (2d) 388)

On petition to review order of Commission, order affirmed.

*Mr. Leo Levenson*, of Portland, Oreg., and *Mr. James J. Hayden*, of Washington, D. C., for petitioners.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. Joseph J. Smith, Jr.*, assistant chief counsel, and *Mr. John W. Carter, Jr.*, special attorney, Federal Trade Commission, all of Washington, D. C., for respondent.

Before GARRECHT, STEPHENS, and HEALY, *Circuit Judges*.

GARRECHT, *Circuit Judge*:

The single issue here presented is whether there is substantial evidence to support the respondent's findings that the petitioners' use of the letters "M. D.," either alone or in conjunction with the picturization of a doctor, nurse, or cross, in connection with a medicated douche powder put out by the petitioners, is deceptive in that it tends to lead the public to believe that the powder is endorsed by the medical profession or by the American National Red Cross.

This is an original proceeding upon a petition to review and set aside an order to cease and desist issued by the respondent, pursuant to a complaint charging petitioners with engaging in unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act.

The complaint alleged that the petitioners sold and transported in interstate commerce certain drug products for feminine hygiene,

including "MD Medicated Douche Powder"; that the petitioners in the course of their business disseminated false advertisements concerning their products; that by the use of the letters "MD" in designating their products, the petitioners made "false, deceptive, and misleading representations to the effect that their products are either prescribed or compounded by physicians or that they bear the endorsement or recommendation of the medical profession."

In their answer, the petitioners alleged that they had long since discontinued the sale of all the products referred to in interstate commerce, except the MD powder, and denied that the use of the letters "MD" was intended to deceive or mislead, or did in fact deceive or mislead the public into the belief that MD powder was endorsed or recommended by the medical profession generally.

As furnishing the setting for the respondent's cease and desist order, the following admissions in the brief of the petitioners are significant:

1. The petitioners disseminated false advertisements through the United States mails, for the purpose of inducing the purchase of their products.

2. The petitioners, by means of those false advertisements and otherwise, represent, directly and by implication, that the douche powder "is a recent development of scientific research which is endorsed by leading physicians and surgeons."

3. By the use of the term "Laboratories" in their corporate and trade name, the petitioners represented that they owned a laboratory equipped for the compounding of medicinal preparations and for research in connection therewith; whereas "In truth and in fact, the [petitioners] neither own nor control any \* \* \* laboratory wherein their medicinal preparations are compounded or wherein any research activities are conducted."

These admissions in the brief refer specifically to certain paragraphs in the "Findings as to the Fact" filed by the respondent. In addition, there are other admissions in the record, which are not, however, repeated in the petitioners' brief.

1. The false advertisements referred to above had the capacity and tendency to mislead a substantial portion of the buying public, and did cause a portion of such public to purchase the petitioners' preparations.

[390] 2. The use by the petitioners of such descriptive words and phrases as "dependable," "insure—personal hygiene," "dependable safeguard," and "effective, reliable antiseptic powder" in referring to the MD Medicated Douche Powder has a tendency to cause prospective purchasers to believe that the preparation is a preventive against conception and a germicide which will combat any form of bacteria; whereas the preparation is not such a preventive, and is not an adequate prophylactic.

The petitioners in their pleadings have sought to qualify their various admissions by reference to a "stipulation" filed by their attorney on January 31, 1940. Similarly, one of the three "points" in their brief is that this "stipulation" "makes a cease and desist order improper and unnecessary in this case."

Nowhere do the petitioners give us a record reference to such a "stipulation," nor do they attempt to outline its provisions. Our own independent scrutiny of the transcript convinces us that there was no such stipulation. The document to which the petitioners apparently refer is a letter from their counsel addressed to the respondent, offering a stipulation to cease and desist from certain representations, which letter is one of the unprinted exhibits herein. This offer was not accepted by the respondent; but even if it had been, it would not have constituted a defense to the present proceedings (*Federal Trade Commission v. Goodyear Tire Company*, 304 U. S. 257, 260 [26 F. T. C. 1521]; *Philip R. Park, Inc. v. Federal Trade Commission*, 9 Cir., 136 F. (2d) 428, 430 [36 F. T. C. 1155]). Furthermore, the proffered stipulation did not relate to the use of the initials "MD," which is the core of the present controversy. On the contrary, the letter in question insisted on the petitioners' right to continue the use of those initials.

Indeed, the second paragraph of the very letter that is so insistently relied upon by the petitioners virtually concedes the unlawful character of their advertising:

I am satisfied from my examination of the law applicable to this matter that the advertising heretofore employed by my clients is an apparent violation of the law in most of the particulars set forth in the proposed stipulation forwarded to my clients by your office \* \* \*.

The advertisements themselves, which are exhibits in this case, amply justify counsel's misgivings. They are of a deceptive and generally reprehensible character. One contains the photograph of a young woman in a trained nurse's garb, speaking into a telephone. Above the picture is the caption, in quotation marks: "Yes \* \* \* M. D. is Decidedly Better." Another advertisement carries the picture of a young woman, also at the telephone who is represented as saying: "Thank you \* \* \* for your Advice, Doctor!" A third piece of publicity consists of the photograph of an elderly, bespectacled man wearing a Vandyke beard, and above is the caption "Your Doctor Will Tell You—." Still others show pictures of women wearing expressions of pain and anxiety, with such captions as "Why Risk Your Health and Beauty?" "Now, let's look at this thing sensibly," "you, too, should change to M. D." And invariably and inevitably, the initials "M. D."—with or without the periods after the letters—are prominently displayed in the body of the advertisements.

With this background, we turn to the testimony bearing on the specific question as to whether the use of the initials "M. D." in connection with the medicated douche was calculated to mislead or did in fact mislead the general public.

The respondent offered the testimony of five physicians to the effect that the public is led to believe that the letters "MD" on MD Medicated Douche Powder mean that the product is endorsed by the medical profession. The petitioners seek to brush this testimony aside with the flippant comment that "such clairvoyance should be rejected by a court of law as beyond the scope of the medical profession." But it *is* decidedly within the scope of the medical profession to caution patients against the dangers of self diagnosis, self-treatment, and self-medication, and the indiscriminate use of patent medicine; and in the discharge of this duty physicians acquire considerable insight into purchasing psychology of their patients. As was said in *Benton Announcements, Inc. v. Federal Trade Commission*, 2 Cir., 130 F. (2d) 254, 255 [35 F. T. C. 941]:

Persons whose business carries them among the buyers of a product are certainly qualified sources of information as to the buyers' understanding of the words they hear and use.

So in the instant case, physicians would be well qualified to testify as to what patients would understand by the legend "M. D." on a container of medicated douche.

[391] Indeed, there is testimony in this record on this precise point. Dr. R. Phillip Smith, a specialist in obstetrics and gynecology, said:

I think one thing that stands out in my mind is the fact that these douche powders are put on the market for patients who go into the drugstore and ask for something to use for a douche and the druggist gives them this, and they start using \* \* \* it, and get into some very dire effects sometimes.

Part of my business is getting patients out of trouble that have gotten themselves in with patent medicines or drugs that they have used over a period of time.

Certainly it is part of practitioner's professional duty to ascertain what *makes* women purchase such nostrums, for thus he can more effectively warn them against the dangers of self-medication.

Furthermore, the petitioners are in error when they state that "All of the Commission doctors testified that they were not deceived by the use of the letters 'MD' or by the use of the likeness of a nurse, or a doctor, or a cross." Some of the experts did testify that they knew that no *reputable* physicians would endorse such a product; but there was other medical testimony to the effect that some of the expert witnesses themselves were misled or at least confused by the use of the

initials. For instance, Dr. Norman A. David, a teacher at the University of Oregon Medical School, testified:

The only interpretation I have of the letters "M. D." is that it refers to Doctor of Medicine, and therefore would be a product that is endorsed by doctors. The letters stand for "Medical Doctor," and naturally that is what one would think.

\* \* \* \* \*

It would make me think that the powder is possibly recommended by a physician, but I must supplement that statement because I know that no physician, reputable, ethical physician, sells or puts his approbation on any douche powder. He may prescribe them, or write prescriptions for them, but I do not think that the doctor would sell this with the idea that other physicians and surgeons—

Despite his professional knowledge that a reputable physician would not sell or endorse a douche powder, Dr. David, even at the time he gave the testimony, was not sure whether or not a physician was not in some way connected with the product in question; for near the close of his testimony he said:

I didn't think—I *don't know yet*—whether or not the formula has been devised by a physician but, the inference is that it has the backing of the medical profession. [Italics our own.]

The doctor was not here endeavoring to perform any feat of "clairvoyance," but was expressing his own honest doubt as to any possible medical connection with MD Douche Powder.

On cross-examination, Dr. Thomas R. Montgomery, a Portland urologist, testified without hesitation that the initials "MD" following even the word "BALTIMORE" in capitals, might under some circumstances lead him to think that "Baltimore" was a doctor, if that combination appeared on the package of medicine.

In their brief, the petitioners assert that Dr. Albert Holman "aptly expressed the attitude of all the doctors who testified that they were not deceived into thinking MD Medicated Douche Powder was endorsed by the medical profession when he said" that he well knew that it was not. An examination of the record, however, discloses that the question to which Dr. Holman made a negative reply was merely as to whether or not the letters "M.D." constitute a "medical term." The question made no mention whatever of medical endorsement. On the precise point in issue, however, Dr. Holman indicated that the abbreviation "M.D." would mislead him as to the fact of *some* claimed endorsement sufficiently to cause him to inquire into the qualifications of the physicians who were said to have recommended the product.

Several lay witnesses testified that the petitioners' advertising matter gave them the impression that the medical profession made or endorsed MD Powder. Counsel objected to the "groundwork" laid for that

testimony. As we shall see later, however, such technical objections are out of place in the consideration of testimony given before an administrative board such as the Federal Trade Commission. Furthermore, each lay witness was shown specimens of the petitioners' advertising in open court, and was asked what came to his mind when he examined them, and why. This method of examining the witnesses was entirely proper, since the issue to be determined was whether or not the [392] letters "M.D." were misleading to the public.

There is evidence in the record, too, that the deception in question was intentional. Henry M. White, in charge of the respondent's office in Seattle district, testified that he interviewed Edward A. Bachman, president of the Stanley Laboratories, Inc., one of the petitioners herein, and that Bachman made the following statement to him:

Then Mr. Bachman stated he simply assumed the name M.D., it was suggested to him by an advertising man, and the argument used was that it would lead the public to believe that it was medicated, and that the picture of the nurse on the label would indicate cleanliness, and he wanted to convey the impression, without baldly stating the fact, that the product had been endorsed by the Medical Association.

Bachman denied that he had made the statement. In view of the welter of admittedly false advertising that had been put out by Bachman's company, however, we think the respondent was justified in believing White rather than Bachman.

The petitioners contend that the respondent's order to cease and desist was not based upon substantial evidence, but "upon a distorted construction of the testimony, much of which was wholly inadmissible, and incredible." We have summarized sufficient of the testimony, most of which was admitted without objection, to show that it was "substantial." We turn now to the questions of whether or not it was "admissible," and whether or not this court has the right to say that it was "incredible."

In *Opp Cotton Mills v. Administrator*, 312 U. S. 126, 155, Mr. Justice [now Chief Justice] Stone said:

The argument of petitioners is not that the record contains no evidence supporting the findings but rather that this class of evidence must be ignored because not competent in a court of law. But it has long been settled that the technical rules for the exclusion of evidence applicable in jury trials do not apply to proceedings before federal administrative agencies in the absence of a statutory requirement that such rules are to be observed. [Cases cited.] We need not consider whether this class of evidence must be excluded from proceedings in court.

Further the documents in question were received in evidence without objection. And even in a court of law if evidence of this character is admitted without objection it is to be considered and must be accorded "its natural probative effect as if it were in law admissible." [Cases cited.]

In *John Bene & Sons v. Federal Trade Commission*, 2 Cir. 299 Fed. 468, 471 [7 F. T. 612], cited with approval in the *Opp Cotton Mills* case, 312 U. S. 126, supra, the court said:

We are of the opinion that evidence or testimony even though legally incompetent, if of the kind that usually affects fair-minded men in the conduct of their daily and more important affairs, should be received and considered; but it should be fairly done.

And in *Arkansas Wholesale Grocers' Ass'n v. Federal Trade Commission*, 8 Cir., certiorari denied, 275 U. S. 533, 534, 18 F. (2d) 866, 871 [11 F. T. C. 646] the following language was used:

Error is assigned because of alleged incompetent testimony at the hearings. This assignment cannot be entertained provided there is any substantial competent testimony to support the findings.

See also *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 229, 230; *Hills Bros. v. Federal Trade Commission*, 9 Cir., 9 F. (2d) 481, 484 [10 F. T. C. 653], certiorari denied, 270 U. S. 662; *Keller v. Federal Trade Commission*, 7 Cir., 132 F. (2d) 59, 61 [35 F. T. C. 970]; *Ellers v. Railroad Retirement Board*, 2 Cir., 132 F. (2d) 636, 639.

The petitioners complain that on cross-examination the lay witnesses stated merely that the letters "MD" gave the "impression" that doctor approved of the powder. But "impressions" are the primary targets of the ad-writers. As was well said in *Aronberg v. Federal Trade Commission*, 7 Cir., 132 F. (2d) 165, 167 [35 F. T. C. 979], where, as here, a preparation related to feminine hygiene was involved:

To an educated analytical reader, these and similar statements may not seem to claim anything more than to relieve delayed menstruation. But the buying public does not ordinarily carefully study or weigh each word in an advertisement. The ultimate impression upon the mind of the reader arises from the sum total of not only what is said but also of all that is reasonably implied. As we said in *D. D. D. Corporation v. Federal Trade Commission*, 7 Cir., 125 F. (2d) 679, 681 [34 F. T. C. 1821]: [393] "Petitioner argues this phrase ['for quick relief from itching of eczema, etc.'] can only refer to itching, and that there is no implication the product is a remedy for relief for such diseases. We think there is merit in petitioner's contention that this and similar statements, when carefully scrutinized, may be thus construed. The weakness of this position, however, lies in the fact that such representations are made to the public, who, we assume, are not, as a whole, experts in grammatical construction. Their education in parsing a sentence has either been neglected or forgotten. We agree with the Commission that this statement is deceptive and calculated to be deceiving to a substantial portion of the public." The law is not made for experts but to protect the public—that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze but too often are governed by appearances and general impressions. [Cases cited.] Advertisements must be considered in their entirety, and as they would be read by those to whom they appeal. [Cases cited.] If the Commission, having discretion to deal with these matters, thinks it best to insist upon a form of advertising



clear enough so that, in the words of the prophet Isaiah, "wayfaring men, though fools, shall not err therein," it is not for the courts to revise its judgment. Advertisements are intended not "to be carefully dissected with a dictionary at hand, but rather to produce an impression upon" prospective purchasers. [Case cited.]

By a parity of reasoning, the foregoing observations apply equally to that part of the cease and desist order that forbids the petitioners' "use of picturization of a cross or any other simulation of the American Red Cross emblem, either alone or in conjunction with the picturization of a doctor or a nurse." It may be added, however, that the commercial imitation of the American Red Cross emblem is prohibited by Federal statute. See 36 Stat. 604, c. 372, 36 U. S. C. A. § 4.

Harking back to the days of King Arthur, the petitioners assert that "hundreds of other articles of merchandise are sold bearing the label which includes a cross similar to that used by the American Red Cross." They also complain that the respondent recently "dismissed a complaint charging deception in the use of the letters M. D. on a toilet tissue."

The obvious answer to all this, of course, lies in the truism that two wrongs do not make a right. Furthermore, each case is to be judged in accordance with its own facts; and we do not have the facts in the toilet-tissue case before us, even if it were proper for us to consider them.

As far as Sir Galahad is concerned, the Federal Statute cited above forbids the use of the Red Cross emblem only after January 5, 1905. We take judicial notice of that fact that any use of the insignia that may have been made by the "chaste knight" was prior to that date.

Above and beyond the oral evidence in this case—evidence which, we repeat, is both substantial and impressive—stands the mute and accusing testimony of the thing itself. We have examined the advertising matter and the container put out for the petitioners' douche powder. Like the Commission, we too have noticed that blatant emphasis on the letters "MD." We too have discerned the attempt—and, we believe, the conscious attempt—to capitalize upon the prestige of a profession that, for all its blunders and ineptitudes, from the very days of Hippocrates and Galen has built up a noble tradition of self-sacrifice and service to humanity.

We agree with the conclusion of the respondent that the use of the letters "MD" is deceptive. But even if we did not, we should be compelled to affirm the order, since it is supported by substantial evidence.

Accordingly, the respondent's order is affirmed, and the petitioners are commanded to obey its terms.

Affirmed.

UNITED STATES v. STANDARD EDUCATION SOCIETY  
ET AL.<sup>1</sup>

No. 4521—F. T. C. Dock. 1574

(District Court of the United States for the Northern District of Illinois.  
Oct. 20, 1943)

APPELLATE PROCEDURE AND PROCEEDINGS—AFFIRMANCE AND ENFORCEMENT APPLI-  
CATIONS—IN GENERAL.

Upon filing of application for affirmance and enforcement of Federal Trade Commission's cease and desist order, Circuit Court of Appeals will first determine validity of order and after affirming it wholly or partly, will then consider question of compliance.

APPELLATE PROCEDURE AND PROCEEDINGS—AFFIRMANCE AND ENFORCEMENT APPLI-  
CATIONS—WHEELER-LEA AMENDMENTS—IF FINAL DECREE THEREAFTER, FOLLOWING  
INTERVENING PROCEEDINGS PRIOR TO—WHETHER MODIFIED CEASE AND DESIST  
ORDER IN COMPLIANCE WITH SEC. 5 (1) OF ACT AS AMENDED.

Where Circuit Court of Appeals affirmed Trade Commission's cease and desist order with modification, and remitted proceeding to Commission to report whether defendants had complied with affirmed provisions, and Supreme Court reversed on the merits, and subsequent order of Circuit Court of Appeals did not disclose which provisions were to remain in force, and after passage of Wheeler-Lea Act, Circuit Court of Appeals entered final decree affirming the order as modified, and certiorari was denied by the Supreme Court, Commission's modified order was issued in compliance with the Federal Trade Commission Act as amended. Federal Trade Commission Act Sec. 5 (1), as amended by Wheeler-Lea Act Sec. 3, 15 U. S. A. Sec. 45 (1).

PENALTY SUITS—WHERE ENFORCEMENT PROCEEDING PENDING—IF PRIOR TO SUIT,  
ORDER FINAL UNDER SEC. 5 (g to j) OF ACT AS AMENDED.

The continuance in Circuit Court of Appeals of proceeding to enforce Federal Trade Commission's cease and desist order was no bar to commencement of a penalty [190] suit, where prior to commencement of suit the order had become final under the Federal Trade Commission Act as amended. Federal Trade Commission Act Secs. (g to j), as amended and Sec. 16, as added by Wheeler-Lea Act Sec. 3, 4, 15 U. S. C. Sec. 45 45 (g to j), 56.

PENALTY SUITS—WHERE ENFORCEMENT PROCEEDING PENDING—IF LATTER REMITTED  
BY COURT OF APPEALS TO COMMISSION AS SPECIAL MASTER TO REPORT WHETHER  
AFFIRMED PROVISIONS OF CEASE AND DESIST ORDER COMPLIED WITH BY DEFEND-  
ANTS.

Where Circuit Court of Appeals remitted proceedings to Federal Trade Commission as special master to report whether defendants had complied with affirmed provisions of cease and desist order, and relief sought in penalty suit was for violation of the order after it had become final, penalty suit would be continued until such time as Commission made its report. Federal Trade Commission Act, Secs. 5 (g-j), as amended and Sec. 16, as added by Wheeler-Lea Act Secs. 3, 4, 15 U. S. C. A. Secs. 45 (g to j), 56.

(The syllabus, with substituted captions, is taken from 55 F. Supp. 189)

<sup>1</sup> Reported in 55 F. Supp. 189.

In proceeding by the United States against the Standard Education Society, and others, to recover penalties under the Federal Trade Commission Act, as amended, for sales of encyclopedias in violation of cease and desist order, reported in 16 F. T. C. 1, ordered in accordance with opinion.

*Mr. J. Albert Woll*, United States District Attorney, and *Mr. John Peter Luliniski*, Assistant United States District Attorney, both of Chicago, Ill., for the Government.

*Mr. Henry Ward Beer*, of New York City, and *Anderson & Roche*, of Chicago, Ill., for defendants.

SULLIVAN, *District Judge*.

The Government brings this action to recover penalties against defendants under section 5 (1) of the Federal Trade Commission Act, as amended on March 21, 1938, by the Wheeler-Lea Act, charging defendants with the sale or attempted sale of 55 encyclopedias in violation of what the Government alleges is a final modified order to cease and desist, issued on March 28, 1940, by the Federal Trade Commission [30 F. T. C. 827], purportedly in accordance with a decree of the Circuit Court of Appeals for the Second Circuit, dated May 20, 1938 [26 F. T. C. 1524].

On February 25, 1929, long prior to the filing of the present action, the Federal Trade Commission issued its complaint against the above defendants, and served same upon them charging them with an unfair method of competition, in connection with the sale of encyclopedias, in violation of section 5 of the Federal Trade Commission Act of September 26, 1914. Defendants denied the charges, and in the course of the hearings which followed the Commission amended its complaint. Subsequently findings of fact were made by the Commission, and an order consisting of 10 paragraphs numbered from 1 to 10, inclusive, was entered by it on December 24, 1931, directing defendants to cease and desist from pursuing such unfair methods as were complained of [16 F. T. C. 1].

January 20, 1936, in accordance with section 5 of the Federal Trade Commission Act, the Commission filed in the Circuit Court of Appeals for the Second Circuit its application for the affirmance and enforcement of its cease and desist order. Defendants thereupon filed their answer in the Circuit Court of Appeals, denying violation of the cease and desist order, and praying that the application for enforcement of the order be dismissed, and the order be vacated and set aside.

November 12, 1936, the cause came on for argument, and on December 14, 1936, the Circuit Court of Appeals rendered an opinion holding that those certain provisions of the cease and desist order

numbered as paragraphs 1, 3, and 8, did not constitute any violation of the law and consequently should be reversed; that certain other provisions numbered as paragraphs 7 and 10 should be modified; and the remaining provisions, numbered as paragraphs 2, 4, 5, 6, and 9, should be affirmed [86 F. (2d) 692; 24 F. T. C. 1591]. Thereafter the cease and desist order was amended in accordance with the opinion, and the Circuit Court of Appeals decreed that the cause should be remitted to the Commission, as special master, to hear and report back as to whether defendants had complied with the provisions thereof which had been affirmed, and those which had been modified and affirmed, the court specifically directing that further proceedings before it should await the return of the report of the Commission as special master, and entering an order on December 21, 1936, in accordance with this opinion. Thereafter, the Commission, by certiorari in the Supreme Court of the United States, sought review of those paragraphs of the Commission's cease and desist order which had been re[191]versed as well as those which had been modified. The Supreme Court granted certiorari, and on November 8, 1937, reversed the decree of the Circuit Court of Appeals "except as to clause ten of the Federal Trade Commission's order," and remanded the cause to the "Circuit Court of Appeals for further proceedings in conformity with opinion of this court" [302 U. S. 112; 25 F. T. C. 1715]. The mandate of the Supreme Court then issued to the Circuit Court of Appeals, and on December 10, 1937, the clerk of the Circuit Court of Appeals entered a pro forma order reciting that the mandate of the Supreme Court be made the decision of this court.

Because the order of December 10, 1937, did not set forth the paragraphs of the Commission's order to cease and desist, the parties agreed that a resettlement of same by the Circuit Court of Appeals was necessary, and thereupon, on April 14, 1938, defendants moved the Circuit Court of Appeals for a resettlement of its order of December 10, 1937, which would set forth at length the provisions of the Commission's order to cease and desist. A difference of opinion arose between the defendants and the Commission as to the proper construction of the Supreme Court's opinion in relation to paragraph 10 of the order. The Commission and the defendants each submitted a proposed decree, the Court finally, on May 20, 1938, signing the decree submitted by the Commission, which recited, as had the decree entered by the Circuit Court of Appeals on December 21, 1936, approximately 2½ years previously, that the cause was remitted to the Commission, as special master, to hear evidence and report back, and that the cause before the Circuit Court of Appeals should await the return of this report for such other proceedings as might be necessary [26 F. T. C. 1524].

On September 20, 1938, defendants, by certiorari to the Supreme Court, sought review of the decree of May 20, 1938, which petition was denied on November 7, 1938. *Standard Education Soc. v. Federal Trade Comm.*, 305 U. S. 642. Meanwhile, on March 21, 1938, the Wheeler-Lea Act was passed which amended the Federal Trade Commission Act.

From the time of the entry by the Circuit Court of Appeals of its decree of May 20, 1938, until December, 1942, no steps seem to have been taken by the Commission to act as special master, to take testimony and report back to the Circuit Court of Appeals.

On March 28, 1940, the Commission issued what it designated as a modified order to cease and desist, alleged to be in accordance with the provisions of subsection h, i, j and k of section 5 of the Federal Trade Commission Act, as amended by the Wheeler-Lea Act of March 21, 1938, and alleging also that the modified order was in conformity with the decree of the Circuit Court of Appeals. The modified order to cease and desist contained the following provision [30 F. T. C. 827, 830]:

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.

On April 1, 1940, the modified order to cease and desist was served on defendants, who did not, however, file with the Commission a report of compliance, but rather advised the Commission by letter that they were obeying the law.

On October 20, 1941, approximately a year and a half later, the Commission presented to the Circuit Court of Appeals a motion asking that the court temporarily relieve the Commission of its obligations under that portion of the court's decree which provided that the Commission should hear evidence and report back to the court as to whether or not the defendants had complied with the Commission's order to cease and desist, as the same had been affirmed, or modified and affirmed. The motion set out that this temporary relief was requested by the Commission pending the result of such action as might be taken against defendants by the Attorney General, at the request of the Commission, under the penalty provisions of the Federal Trade Commission Act, as amended by the Wheeler-Lea Act of March 21, 1938. This motion was denied. Subsequently the Commission certified certain facts to the Attorney General, and as a result the present complaint under section 5 (1) of the Federal Trade Commission Act, as amended by the Wheeler-Lea Act was instituted in this court to recover penalties for the sale of encyclopedias in violation of the Commission's modified order to cease and desist.

October 15, 1942, defendants filed a petition in the proceeding pending before the [192] Circuit Court of Appeals, asking that the At-

torney General, the United States Attorney for the Northern District of Illinois and the Commission be enjoined from the further prosecution of this penalty suit, which injunction was denied.

The first question for the court to decide is whether the Commission's modified order of March 28, 1940, was issued in conformity with section 5 (i) of the Federal Trade Commission Act. Defendants urge that the Commission's modified order to cease and desist constitutes a wrongful and unconstitutional assumption of power, and is a nullity issued in violation of the Circuit Court of Appeals specific directions to the Commission to report back to the court as a special master.

Plaintiff urges that the Commission's order of March 28, 1940, was issued as provided by section 5 (i) of the Federal Trade Commission Act, and that it became final on April 27, 1940, and therefore is no question as to the jurisdiction of the District Court over this suit or as to the sufficiency of the complaint.

The above statement of facts shows that the original order of the Commission was entered on December 24, 1931. On January 20, 1936, the Commission filed in the Second Circuit Court of Appeals an application for the affirmance and enforcement of that order. The rule in the second circuit is that upon the filing of such an application the Circuit Court of Appeals will first determine the validity of the Commission's order, and after it has affirmed the order in whole or in part, it will then consider the question of compliance. *Federal Trade Commission v. Balme*, 2 Cir., 23 F. (2d) 615, 618 [11 F. T. C. 717].

Following the above rule, the Circuit Court of Appeals proceeded to consider the validity of the Commission's order and on December 21, 1936, entered a decree substantially modifying the order and affirmed it as so modified. The decree contained a further clause remitting the proceeding to the Commission as special master to hear and report whether the defendants had complied with the provisions of the order which were affirmed. [See, for decision, 86 F. (2d) 692; 24 F. T. C. 1591.]

The Supreme Court thereafter granted the Commission's petition for certiorari and reversed the Circuit Court of Appeals upon the merits [302 U. S. 112; 25 F. T. C. 1715]. The case was remanded to the Circuit Court of Appeals for further proceedings in conformity with the opinion of the Supreme Court. The cause having been remanded the clerk of the Circuit Court of Appeals on December 10, 1937, entered an order merely directing that the "mandate be filed and the decision of the Supreme Court of the United States be made the decision of this court." From this order neither the defendants nor the Commission could ascertain what provisions of the Commission's original order were to remain in force. The defendants then moved the Circuit Court of Appeals for a "resettlement of the order

of the Court of December 10, 1937, so as to set forth its terms in full upon the ground that said order as originally entered is incorrect and further fails adequately to advise respondents in the premises." Finally on May 20, 1938 [26 F. T. C. 1524], the Court entered its final decree, which was the first and only definitive adjudication of the rights and obligations of the defendants as determined by the Supreme Court. This of course was after the passage of the Wheeler-Lea Act on March 21, 1938.

The Circuit Court of Appeals decree of May 20, 1938, finally modified the order of the Commission and affirmed it as modified, and was then subject to review by the Supreme Court only upon the question of whether it complied with the mandate of the Supreme Court, pursuant to which it was issued. Petition for certiorari for such review was denied by the Supreme Court on November 7, 1938. The Commission's modified order of March 28, 1940, seems therefore to have been issued in accordance with the mandate of the Circuit Court of Appeals, and as authorized by section 5 (i) as amended by sec. 3 of the Wheeler-Lea Act, which provides that an order of the Commission shall become final upon (1) modification of the Commission's original order by a Circuit Court of Appeals, (2) denial by the Supreme Court of a petition for certiorari.

Defendants concede that the act as amended provides that a cease and desist order entered prior to the amendment, but not theretofore reviewed by the courts, shall become final after the passage of the amendment, but assert that the finality provisions of section 5 (g) to 5 (j) do not apply in any case where the order was affirmed or modified by the Circuit Court of Appeals prior to the amendment.

I am of the opinion that there is no doubt but what the order of the Circuit Court of Appeals modifying and affirming the order of the Commission was made on [193] May 20, 1938, and that the Commission's modified order to cease and desist of March 28, 1940, was issued in compliance with section 5 (i) of the Federal Trade Commission Act as amended.

Section 5 (i) of the Federal Trade Commission Act requires only that the Commission's orders shall have been modified by the Circuit Court of Appeals. There is no reference to enforcement. The act, both before and after the Wheeler-Lea Amendment, provides for enforcement of the Commission's orders by the Circuit Court of Appeals, but the provisions of such enforcement are independent of and separate from the finality provisions of sections 5 (g) to 5 (j). The Circuit Court of Appeals is vested with exclusive jurisdiction to enforce the Commission's cease and desist orders under section 5 (d), but that Court has no jurisdiction over penalty suits. The two remedies are concurrent. Under section 16 of the act the

Commission is required, whenever it has reason to believe that a final cease and desist order is being violated, to certify the facts to the Attorney General for institution of a penalty suit, and this requirement does not depend upon whether an enforcement proceeding is then pending in a Circuit Court of Appeals or not. Continuance of the enforcement proceedings in the Circuit Court of Appeals appears to be no bar to the commencement of a penalty suit, if, prior to the commencement of the suit, the Commission's order of May 28, 1940, has become final under the provisions of section 5 (i), as I believe it has.

However, inasmuch as the decree of the Circuit Court of Appeals provides that the proceeding before it be remitted to the Federal Trade Commission, as special master, to hear and report to it whether respondents have complied with the provisions of said order to cease and desist which were affirmed or modified and affirmed, and the relief sought here in the penalty suit is for violation of an order of the Commission to cease and desist after it has become final, the proceeding in this court will be continued until such time as the Commission makes its report to the Circuit Court of Appeals for the Second Circuit.

The question to be decided by the Circuit Court of Appeals is whether or not the defendants here have complied with the provisions of the cease and desist order; the question before the court in the instant case is whether or not defendants have violated the same cease and desist order of the Commission. Hearings are now being carried on by the Commission, in conformity with the order of the Circuit Court of Appeals. Nothing will have been gained by also forcing defendants into the position of furnishing the same lengthy and expensive evidence in the penalty case.

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### JAFFE v. FEDERAL TRADE COMMISSION <sup>1</sup>

No. 8202—F. T. C. Dock. 4656

(Circuit Court of Appeals, Seventh Circuit. Nov. 11, 1943)

EVIDENCE—FINDINGS AND CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—LOTTERY MERCHANDISING—PUSH CARDS, ETC.—ENTIRE BUSINESS AS BUILT ON SALES PLAN INVOLVING.

Finding of Federal Trade Commission of sale of merchandise to public by means of games of chance, gift enterprise, or lottery by use of push cards, etc., in the sale or distribution of merchandise, was supported by evidence showing that entire business was built on sales plan (Federal Trade Commission Act, Sec. 5 (a), 15 U. S. C. A. Sec. 45 (a)).

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<sup>1</sup> Reported in 139 F. (2d) 112. For case before Commission, see 35 F. T. C. 702. Rehearing denied November 22, 1943.



CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—LOTTERY MERCHANDISING—PUSH CARDS, ETC.—PROOF OF SALES THROUGH USE OF—WHETHER PRE-REQUISITE.

Proof of sales of merchandise through use of push cards, punch books, or other devices was not necessary to warrant cease and desist order.

METHODS, ACTS AND PRACTICES—LOTTERY MERCHANDISING—AS VIOLATION OF PUBLIC POLICY AND UNFAIR METHOD OF COMPETITION.

Supplying the means of conducting lotteries in the sale of merchandise is a practice contrary to established public policy of the United States and constitutes "unfair competition."

(The syllabus, with substituted captions, is taken from 139 F. (2d) 112)

On petition to review order of Commission, order affirmed.

*Mr. Benjamin F. Morrison*, of Chicago, Ill., for petitioner.

*Mr. W. T. Kelley*, chief counsel, *Mr. Joseph J. Smith, Jr.*, assistant chief counsel, and *Mr. Donovan R. Divet*, special attorney, Federal Trade Commission, all of Washington, D. C., for respondent.

Before EVANS and SPARKS, *Circuit Judges*, and LINDLEY, *District Judge*.

EVANS, *Circuit Judge*.

This petition to review an order of the Federal Trade Commission directing petitioner to cease and desist supplying "push cards, pull cards, punch books, or other devices which are used or may be used in the sale or distribution of cameras, radios, jewelry, and other merchandise to the public by means of a game of chance, gift enterprise, or lottery" is based on the assertion that there was no proof of a sale of merchandise to the public through the use of these push cards.

The evidence does disclose that in the year 1941 more than five and one-half million push cards were distributed by petitioner throughout the United States in the manner described, that is, through the mail. They went from Chicago, petitioner's home, to every state in the Union. The conclusion is inescapable that sales followed—otherwise petitioner's business would not have continued to thrive. Since the owner of the petitioner company testified that over 50 percent of the company's sales of merchandise had been in connection with the push-card business, the deduction is unavoidable that the merchandise was sold through and because of the lottery practices. In this connection, Mr. Jaffe, as a witness, admitted, "We built our entire business on this sales plan. We used these sales cards to sell our merchandise. The cards are so designed."

The finding of the Commission is supported by the evidence.

Moreover, proof of sales through the use of such push cards was unnecessary. No proof that sales actually resulted from such prac-

tices is required to make out a case against the malpractitioner for a violation of section 5 (a) of the Federal Trade Commission Act.

We held in the *Koolish* case, 129 F. (2d) 64 [34 F. T. C. 1863], and reiterate the ruling here, that supplying the means of conducting lotteries in the sale of merchandise is a practice contrary to the established public policy of the United States. It constitutes unfair competition in business and violates section 5 (a) of the act in question. We specifically hold that proof that sales were made because of such lottery practices is not necessary to support an order under this section.

The order of the Federal Trade Commission is affirmed. Petitioner is hereby ordered to forthwith comply with the order of the Commission.

## ADOLPH KASTOR & BROS., INC. v. FEDERAL TRADE COMMISSION<sup>1</sup>

No. 1—F. T. C. Dock. 3466

(Circuit Court of Appeals, Second Circuit. Nov. 12, 1943)

**CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—TRADE MARKS—RELATIVE PREJUDICE AND DAMAGE TO OWNER AND INFRINGER AS CRITERION.**

In cases of trade-mark, the test in determining whether a cease and desist order should issue is to compare what prejudice it will impose upon an infringer to avoid infringing, and what will be damage to owner of the mark if the infringer persists.

**CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—TRADE MARKS—RELATIVE PREJUDICE AND DAMAGE TO OWNER AND INFRINGER AS CRITERION—IF WORD OF COMMON SPEECH—"SCOUT."**

Petitioner, in using word "Scout" as marking on pocket knife manufactured by it, was using a word of common speech, which all were prima facie entitled to use, and, hence, organization known as Boy Scouts of America were required to show some superior interest in order to enjoin petitioner's use of the word.

**CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—TRADE MARKS—"SCOUT" FOR POCKET KNIVES NOT ENDORSED, ETC. BY "BOY SCOUTS."**

Evidence supported order of Federal Trade Commission directing petitioner to cease and desist from using word "Scout" as marking on pocket knife manufactured by it because of possible confusion with organization known as Boy Scouts of America.

(The syllabus, with substituted captions, is taken from 138 F. (2d) 824)

On petition to review order of Commission, order affirmed.

*Mr. Sylvan Gotshal*, of New York City, for petitioner.

<sup>1</sup> Reported in 138 F. (2d) 824. For case before Commission, see 31 F. T. C. 1044.

*Mr. Joseph J. Smith, Jr.*, assistant chief counsel, Federal Trade Commission, of Washington, D. C., for respondent.

Boy Scouts of America, *amicus curiae*.

Before L. HAND, SWAN, and FRANK, *Circuit Judges*.

L. HAND, *Circuit Judge*:

This case comes before us upon a petition to review an order of the Federal Trade Commission which forbade the petitioner to use the words, "Scout," "Boy Scout," or "Scouting," upon, or in connection, with any knives made or sold by it. The facts upon which the order issued are in substance as follows. The Kastor Co., or its predecessor—a partnership—has been making and selling cutlery and the like since 1879; and the subject of this controversy is a "Scout Set," comprising a three-bladed "Scout Knife," and a "Sportsman's Knife," sold together in a box, for 50 cents. The "Scout Knife" has one large cutting blade, a can opener, and a combination screw driver and bottle opener; the "Sportsman's Knife" is a hunting knife with one large blade and a bone handle. On the cover of the cardboard box it used to print the words, "Scouting Set," with the picture of a tent, a campfire, and boys in "Boy Scout's" uniform; but this box it discarded some years ago, and it now sells the set in a plain box. [825] It also makes and sells a four-bladed "Scout Knife" like the three-bladed knife just mentioned, except that this knife has a leather punch in addition to the other tools. It introduced testimony that it had begun selling a similar "German Army" knife, marked "Scout Knife," as early as 1895 like the present "Scout Knife"; and that before 1910 it had also imported from England, and sold, hatchets and knives with the words, "Boy Scout," on the blades. The Commission found that before 1910 "there was and had been no pocket knife on the market marked with the word 'Scout'"; but it is not necessary for us to decide whether the testimony should have prevailed, because, as will appear, such user would be in any event immaterial, whatever its length. In the year 1910, the sale began which the order forbids, and it has continued ever since except that the legend, "Boy Scout" was discontinued more than 15 years ago, giving place to "Scout," simpliciter.

The Boy Scouts of America is a corporation organized under the laws of the District of Columbia on February 8, 1910; its general activities are so well known that it is scarcely necessary to describe them in detail. At present there are sold with its consent and by its license two-bladed knives costing \$1.50, which bear the legend, "Official Knife—Boy Scouts of America," the insignia of the organization, and the motto—"Be Prepared." On the handle of these there is a disk which also carries the insignia, and on the box in which it is sold the insignia appear. No knives sold with its consent—no "official

knives"—bear merely the words, "Scout," or "Boy Scout." The Commission has found, however, that "even before the incorporation of the Boy Scouts of America, the words 'Scout' and 'Scouting' had acquired a secondary meaning as applying to the Boy Scout movement." There was adequate support for that conclusion in the testimony of persons who were in a position to know the public mind, and whom the Commission credited. Indeed, the Commissioner of Patents refused to register the name, "Winchester Scout" as a trade-mark for pocket knives upon the opposition of the Boy Scouts of America (*Boy Scouts of America v. Winchester Repeating Arms Co.*, 15 Trade Mark Reports 142). See also *In Re Excelsior Shoe Company*, 40 Appeals D. C. 480. At the outset we hold therefore that the word, "Scout," when applied to a boy's pocket knife suggests, if indeed it does not actually indicate, that the knife is in some way sponsored by the Boy Scouts of America. It is true that this suggestion is vague; it does not mean that the Boy Scouts sell the knife, and would be misleading if it did, for they sell no knives of any kind. But it does, we think, indicate that the knives have the countenance of the organization, either by being licensed as an "official knife," or by having some less explicit recognition.

That is enough as matter of law under the circumstances. In cases of trade-mark the right test is to compare what prejudice it will impose upon an infringer to avoid infringing, and what will be the damage to the "owner" of the mark, if the infringer persists. In the case at bar the Kastor Co. is using a word of common speech, which all are entitled *prima facie* to use; for this reason we agree that it may demand that the Boy Scouts show some superior interest. On the other hand it is an error to suppose that its past user—even though dated, as it claims, from 1895—adds any privilege to that of a newcomer. The only protected private interest in words of common-speech is after they have come to connote, in addition to their colloquial meaning, provenience from some single source of the goods to which they are applied. The Kastor Co. does not assert that the word, "Scout," on a pocket knife means anything of the sort; and no such assertion could be sustained, for there is not a shred of evidence in the record to sustain it. Therefore, the decision turns upon whether the suggestion—to put it no more strongly—from the name, "Scout," upon a boy's pocket knife that the Boy Scouts of America sponsor it as proper for Boy Scouts, is enough to support the order. We hold that it is; that the Boy Scouts have a cognizable interest in preventing such possible confusion. It is not even necessary that the label shall lead "boy scouts" to buy Kastor knives supposing that they are "Official Knives"; boys who are not "Scouts" may be led to buy them because in their minds they vaguely have

the imprimatur of the Boy Scouts of America. That interest the law will protect against an opposing interest no greater than that of all persons in the use of common speech. We have again and again decided, in cases where a merchant's mark has been used upon goods which he does [826] not in fact sell, but may be thought to be selling, that he may stop the use. No one need expose his reputation to the trade practices of another, even though he can show no pecuniary loss (*Aunt Jemima Mills v. Rigney*, 247 Fed. 407; *Anheuser-Busch v. Budweiser M. P. Co.*, 295 Fed. 306; *French Milling Co. v. Washburn Crosby Co.*, 7 F. (2d) 304; *Yale Electric Corp. v. Robertson*, 26 F. (2d) 972; *L. E. Waterman v. Gordon*, 72 F. (2d) 272; *Emerson Electric Mfg. Co. v. Emerson R. & P. Corp.*, 105 F. (2d) 908). The Boy Scouts of America have a legal grievance if anyone buys the 50-cent knife supposing that it has their approval. The Kastor Co. is in a dilemma: either its knives will sell as well under some other name, or the name, "Scout," gives them an advantage to the prejudice of the Boy Scouts.

In the foregoing we have not relied upon section 7 of the act of Congress of June 15, 1916. We have not done so, because the validity of that section has not been argued before us, and because there might be some question whether the word, "Scout," taken by itself, was within the clause "words or phrases \* \* \* used by the Boy Scouts of America in carrying out its program." True, it is a part of "words or phrases" so used; but whether the statute meant to go so far as to protect a single word broken from its context, might be open to debate. Moreover, the Commission does not appear to have relied upon the statute in making its order.

Order affirmed.

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## WHOLESALE DRY GOODS INSTITUTE, INC. ET AL. v. FEDERAL TRADE COMMISSION<sup>1</sup>

No. 3—F. T. C. Dock. 3751

(Circuit Court of Appeals, Second Circuit. Nov. 15, 1943)

EVIDENCE—FINDINGS AND CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—CONCERT AND COMBINATION OF ACTION—REFUSAL TO DEAL WITH TO LIMIT CHANNELS OF DISTRIBUTION—BY WHOLESALERS TO PREVENT DIRECT SELLING ON SAME TERMS TO RETAILERS, BY MANUFACTURERS.

Substantial evidence sustained a "cease and desist" order of the Federal Trade Commission on ground that a combination existed among wholesalers not to buy of manufacturers dealing with retailers on the same terms on which they dealt with wholesalers, where the purpose of the whole scheme was patently to prevent manufacturers from dealing directly with retailers.

<sup>1</sup> Reported in 139 F. (2d) 230. Certiorari denied Feb. 7, 1944. For case before Commission, see 34 F. T. C. 177.

(The syllabus, with substituted caption, is taken from 139 F. (2d) 230)

On petition to review order of Commission, order affirmed.

Before L. HAND, CLARK, and FRANK, *Circuit Judges*.

*Mr. Charles H. Tuttle*, of New York City, for petitioners.

*Mr. Everette MacIntyre*, of Washington, D. C., for respondent.

PER CURIAM:

The Supreme Court held in *Eastern States Retail Lumber Dealers Association v. United States*, 234 U. S. 600, that retailers who combined not to buy of such jobbers as sold direct to the consumer, were within the Sherman Act, and that it was no excuse "that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities" (p. 613). There as here the combination was covert, disguised as an interchange of information, whose purpose was innocent; a circumstance which the court naturally, and indeed inevitably, treated as irrelevant, if the agreement peered through the mask. Nothing which has followed has qualified that ruling; it remains true, now as it was then, that such a combination is unlawful no matter how pressing may be the evils which it is designed to correct, and which indeed it may in fact correct; as in the case of the combination to fix prices, nothing will justify it. *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150. Of the wisdom of so depriving an industry of such means of self-help we have nothing to say; indeed, we have no acquaintance with the subject matter which would warrant any opinion; once we have ascertained whether in the case at bar there was evidence of such agreement, our function ends.

The petitioner, as we understand it, challenges the continued authority of *Eastern States Retail Lumber Dealers Association v. United States*, *supra*, 234 U. S. 600, thinking it overruled, or at any rate modified, by *Maple Flooring Association v. United States*, 268 U. S. 563; *Cement Manufacturers Protective Association v. United States*, 268 U. S. 588; and *Appalachian Coals, Inc. v. United States*, 288 U. S. 344. In the first of these cases—it is not necessary to deal separately with the second—an association collected, and passed about, trade information as to prices, supply, and production among the members, which, as the court recognized (p. 585), might have been used to fix prices or otherwise to restrict competition, and which a minority of the court thought had been in fact collected for those purposes. However, upon a review of all the evidence the majority found that there was no such understanding between the members; and the decision really comes to no

more than that a trade association may lawfully exchange general trade information, if in fact that is not a fetch or cover for a combination to control the market. Nothing said in either opinion indicates a disposition to overrule *Eastern States Retail Lumber Dealers Association v. United States*, *supra*, 234 U. S. 600. In *Appalachian Coals, Inc. v. United States*, *supra*, 288 U. S. 344, there were indeed expressions (p. 374) seeming to [231] indicate that the correction of evils existing in an industry might justify an agreement fixing prices; yet when the whole opinion is read, it appears that the court relied rather upon the fact that the combination controlled too little of the supply really to affect the price of coal (p. 373); and—what was perhaps the same thing in another form—that, in spite of the very substantial percentage of the “Appalachian territory” occupied by the parties, the market to which they had to resort was far wider (p. 376); so wide that their combination could not prejudice the public. Moreover, whatever may be thought of the implications to be drawn from that decision, the court very positively held in *United States v. Socony-Vacuum Oil Co.*, *supra*, 310 U. S. 510, that price-fixing agreements of every kind are forbidden, and admit of no excuse. So far, therefore, as an agreement of the kind here at bar may be thought to be parallel to a price-fixing agreement—the only assumption on which *Appalachian Coals, Inc. v. United States*, *supra*, 288 U. S. 344, can be revelant at all—the present state of the decisions gives no countenance to the notion that the doctrine of *Eastern States Retail Lumber Dealers Association v. United States*, *supra*, 234 U. S. 600, has been relaxed. If the Commission had before it evidence enough to support its findings that a combination existed not to buy of manufacturers who dealt with retailers on the same terms on which they dealt with wholesalers, its order was unquestionably right.

The report of the “Differential Committee” of 1930, standing alone, really lends itself to no other conclusion; the scarcely veiled purpose of the whole scheme was patently to prevent manufacturers from dealing directly with retailers. The information exchanged could have had no other use to wholesalers, unlike information as to current, or past, prices, supply, and production. There was no action which they could take upon it except to blacklist a manufacturer who would not adhere to the project. Indeed, the only intimation of excuse we can find is that they might learn whom they could “profitably” deal with. If that meant those who by their loyalty would prove in the end profitable to the wholesale trade, it confesses the charge; if it meant that disloyal manufacturers would in general be untrustworthy persons to deal with, it is irrelevant. The restriction being itself unlawful, disregard of it could not lawfully be made an occasion for imposing it upon the pretence that truants were in general

morally unfit. That would be to secure compliance indirectly with that which could not be directly enforced. We must not be fobbed off with pious protestations, when the design is so clear. And if it had not been, the later conduct of the association would have left no room for debate. The instructions to buyers, the vote at the general meeting, the Dykstra episode—to take one instance: each of these alone leave no doubt as to the real understanding. Not only was there “substantial evidence” to support the findings, but it is impossible to see how any fair tribunal could have come to another conclusion.

Order affirmed.

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FRESH GROWN PRESERVE CORPORATION ET AL. v.  
FEDERAL TRADE COMMISSION<sup>1</sup>

No. 132—F. T. C. Dock. 3682

(Circuit Court of Appeals, Second Circuit. Dec. 6, 1943).

EVIDENCE—FINDINGS AND CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—MISREPRESENTATION—ADVERTISING FALSELY OR MISLEADINGLY AND MISBRANDING OR MISLABELING—FRUIT PRESERVES.

Evidence sustained findings of Federal Trade Commission on which Commission based cease and desist order regarding labeling and advertising of fruit preserves.

(The syllabus, with substituted caption, is taken from 139 F. (2d) 200)

On petition to review order of Commission and on motion of the Commission to confirm supplemental findings and conclusions<sup>2</sup> of the Commission and for a decree enforcing the cease and desist order, petition dismissed and decree of enforcement granted.

*Mr. Louis Halle*, of New York City, for petitioners.

*Mr. W. T. Kelley*, chief counsel, and *Mr. Earl J. Kolb*, special attorney, Federal Trade Commission, both of Washington, D. C., for respondent.

Before SWAN, AUGUSTUS N. HAND, and CHASE, *Circuit Judges*.

PER CURIAM:

The petition to review and set aside the order made by the Federal Trade Commission against these petitioners has already been heard and decided in so far as was possible on the original record. See *Fresh Grown Preserve Corp. v. Federal Trade Commission*, 125 F. (2d) 917 [34 F. T. C. 1827]. All but one of the issues were then decided adversely to the petitioners.

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<sup>1</sup> Reported in 139 F. (2d) 200. For case before Commission, see 31 F. T. C. 952.

<sup>2</sup> Supplemental findings as to the facts and conclusion published at end of opinion.



We then held that they had been so limited in their effort to show that there was no known and established standard for the manufacture of fruit preserves that they had not been given a fair hearing and remanded the cause to the commission that the petitioners might have an ample opportunity to present their evidence on that subject. The commission has now accorded them the opportunity to introduce such evidence as they cared to offer upon that issue and, having duly considered this additional evidence in connection with all the other evidence brought out in the proceedings, has made supplemental findings which show that the standard did actually exist as previously found.

The matter is now before us on the motion of the commission for the dismissal of the petition to review and for the confirmation and enforcement of its original cease and desist order and, as the record is now complete, we can decide the sole issue before left at large by determining whether there was sufficient evidential support for the findings in view of all the proof on that subject.

It is apparent that there was and that the commission has made no error in its findings of fact. They undoubtedly support the cease and desist order. That being so, it follows from our former decision which disposed of all the other matters the petitioners have undertaken to argue anew that the present motion of the commission should be granted.

Petition for review dismissed. Let a decree for the confirmation and enforcement of the cease and desist order be entered.

#### SUPPLEMENTAL FINDINGS AS TO THE FACTS, AND CONCLUSION

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 respondents, Fresh Grown Preserve Corporation, Sun Distributing Co., Inc., and Rite Packing Corporation, corporations, and Murray Greenberg and Leo Greenberg, individuals, charging them with the use of unfair methods of competition in commerce in violation of the provisions of that act. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, respondents' answer thereto, testimony, and other evidence in support of and in opposition to the allegations of the complaint introduced before Robert S. Hall, a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; and the Commission, having duly considered the matter, on September 20, 1940, issued and subsequently served upon the respondents its findings as to the facts and conclusion based thereon and its order requiring the respondents to cease and desist from the practices charged in the complaint.

Subsequently, the respondents filed with the United States Circuit Court of Appeals for the Second Circuit their petition for review of the Commission's order under the provisions of section 5 (c) of the Federal Trade Commission Act, (15 U. S. C. A. Sec. 45 (c)). After hearing said cause, the said Court, on March 4, 1942, issued its decree remanding the proceeding to the Commission for the purpose of conducting further hearings to give the respondents an opportunity to introduce for consideration whatever material and relevant evidence they might wish to offer on the subject of a standard for preserves, said decree further directing the Commission to report its finding and conclusion to the Court.

Pursuant to said decree, the Commission, on April 10, 1942, issued its order designating John W. Norwood, a trial examiner of the Commission, to take testimony and receive evidence in the proceeding on the subject of a standard for preserves and to perform all other duties authorized by law, vice Robert S. Hall, deceased. Pursuant to such order, supplemental hearings were held before the trial examiner, at which the respondents were afforded an opportunity to recall for further examination all witnesses theretofore examined in the proceeding and to offer any other testimony and other evidence which they might wish to offer on said subject. During the course of these supplemental hearings, the respondents recalled for further cross-examination certain witnesses who had previously testified in the proceeding at the instance of the Commission, and respondents also recalled for further examination a witness who had previously testified at the instance of the respondents. All of the testimony and other evidence introduced at the supplemental hearings was duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the record, including the testimony and other evidence introduced at the supplemental hearings, report of the trial examiner upon such supplemental testimony and other evidence and the exceptions to such report, briefs of the attorney for the Commission and the attorney for the respondents, and oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its supplemental findings as to the facts and its conclusion drawn therefrom:

#### SUPPLEMENTAL FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** The Commission finds that no new testimony has been developed in the supplemental hearings which in any way affects the findings of the Commission heretofore made in this proceeding. The cross-examination of the several witnesses conducted during the course of these hearings produced no testimony differing substantially from

the testimony given by these witnesses during the course of the original hearings. The only witness who testified for the respondents was Albert R. Whitman, who was recalled by the respondents to give testimony concerning a survey conducted in 1937 by an advertising firm with which he was connected, relative to the extent to which prepared pectin products are used in the making of jellies and preserves in the home. This witness testified concerning this same survey during the original hearings, and the additional testimony given by him during the supplemental hearings has added no material facts to his former testimony.

PAR. 2. Prepared pectin products designed for use in the making of jellies and preserves in the home have a wide distribution throughout the United States. While there is some variation in the recipes of these products for various fruit preserves, the average or more common recipe is 4 cups (2 pounds) of fruit to 7 cups (3 pounds) of sugar, which means a ratio of approximately 37 pounds of fruit to 55 pounds of sugar. The survey testified to by the witness Albert R. Whitman indicates that some 40 percent of the women in the United States have used prepared pectin at one time or another. As prepared pectin is more frequently used in the making of jellies than in the making of preserves, it appears that the percentage of women who have used prepared pectin in preserve-making is substantially less than 20 percent. Some of these women who use prepared pectin do not reduce the proportional fruit content of their preserves, but use the prepared pectin merely to supply a deficiency in the quantity of natural pectin present in the fruit. Others use prepared pectin solely for purposes of economy, that is, to effect a saving in the amount of fruit used, and consequently a saving in the cost of the preserves. There is no indication in the record that the women who use prepared pectin prefer a preserve made from the prepared pectin formula over a preserve having the full fruit content.

PAR. 3. The use of prepared pectin in the making of preserves in the home has had no effect on the proportional fruit content used in the commercial manufacture of preserves. Commercial manufacturers generally have for years used as the minimum formula for preserves a fruit content of at least 45 pounds to 55 pounds of sugar. Products having a lesser fruit content have been and are designated as "imitation preserves." The Food and Drug Administration has from time to time since 1906 published an advisory standard for the commercial manufacture of preserves which has provided for a proportional fruit content of at least 45 pounds of fruit to 55 pounds of sugar. This advisory standard was adopted, and has been continued from time to time, after public hearings at which both commercial manufacturers and members of the purchasing public were heard. In 1936 the Trade

Practice Conference Division of the Federal Trade Commission, after conducting hearings at which both commercial manufacturers of preserves and members of the consuming public were heard, issued its Trade Practice Rules for the Preserve Industry, and these rules fixed the minimum fruit content to be used in the manufacture of preserves at 45 pounds of fruit to 55 pounds of sugar. Moreover, the testimony taken during the supplemental hearings in the present proceeding indicates that even those women who use prepared pectin in the making of preserves in the home would expect, when purchasing preserves in the market, to obtain a product containing a minimum fruit content in the proportion of 45 pounds of fruit to 55 pounds of sugar.

#### CONCLUSION

After consideration of the entire record, including the testimony and other evidence introduced during the supplemental hearings, the Commission concludes that there is no testimony or other evidence in the record which would warrant modification in any particular of the findings as to the facts heretofore issued by the Commission in this proceeding.

### PHELPS DODGE REFINING CORPORATION ET AL. v. FEDERAL TRADE COMMISSION<sup>1</sup>

Nos. 9-12—F. T. C. Dock. 4145

(Circuit Court of Appeals, Second Circuit. Dec. 23, 1943)

#### APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—EVIDENCE— WEIGHT—ADMISSIONS, AND INFERENCES FROM.

In determining violation of Federal Trade Commission Act, weight to be given admitted facts and inferences reasonably to be drawn therefrom are for the Commission. Federal Trade Commission Act Sec. 5 (c), 15 U. S. C. A. Sec. 45 (c).

#### APPELLATE PROCEDURE AND PROCEEDINGS—PETITIONS TO REVIEW—EVIDENCE— INFERENCES—WHERE CONFLICTING.

On petition to review cease and desist order of Federal Trade Commission, court cannot try the case anew and may not pick and choose between conflicting inferences if the one drawn by Commission is permissible.

#### METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING—ASSOCIATION ACTIVITIES—PRICE INFORMATION EXCHANGE.

[394] Where association acted as clearing house for exchange of information submitted by its members, including reports as to sales of various

<sup>1</sup>The case involves four separate petitions to review, namely, in addition to the petition of the named corporation, the petitions of the Tennessee Corporation, of John Powell & Co., Inc., Southern Acid & Sulphur Co., Inc., Stauffer Chemical Co., Inc., R. Earl Demmon, and of American Cyanamid & Chemical Corporation.

Reported in 139 F. (2d) 393. For case before Commission, see 35 F. T. C. 201.

types of insecticides, fungicides, and related articles, together with prices, terms, and discounts at which items were sold or offered to be sold, and in some instances including advance notice of future prices, association and some of its members were engaged in "price fixing" which violated Federal Trade Commission Act. Federal Trade Commission Act, 15 U. S. C. A. Sec. 41 et seq.

**METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING—ASSOCIATION ACTIVITIES—"DISTRIBUTOR GUIDES."**

An association's preparation and distribution of so-called "distributor guides," which were lists of wholesale buyers entitled to favorable concessions not given to trade in general, bore taint of illegality under Federal Trade Commission Act.

**EVIDENCE—METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—INDIRECT AS SUFFICING.**

An agreement to use unfair methods of competition in violation of Federal Trade Commission Act need not be proven by direct evidence, conduct pointing to concerted action being sufficient.

**EVIDENCE—METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING—ASSOCIATION ACTIVITIES—PRICE INFORMATION EXCHANGE—PRICE AND CUSTOMER LISTS AND "DISTRIBUTOR GUIDES"—FILING, DISSEMINATION, AND RECEPTION—PRESUMPTION OR INFERENCE OF MEMBERS' COMPLICITY.**

Members of association engaged in price fixing in violation of Federal Trade Commission Act, who filed their prices with the association and received through it announcements of previous price changes by other manufacturers and who submitted lists of wholesale customers and received "distributor guides" prepared by the association, had burden of proving that they had not acquainted themselves fully with association's purposes, and otherwise inference of their complicity could reasonably be drawn.

**EVIDENCE—METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING—ASSOCIATION ACTIVITIES—PRICE INFORMATION EXCHANGE—PRICE AND DEALER LISTS—RECEIPT BY MEMBER—WHETHER INFORMED THEREBY OF ILLEGAL ACTIVITIES.**

In the absence of proof to the contrary, the receipt by member of association engaged in illegal price fixing of price and dealer lists warranted inference that member learned of association's illegal activities in view of common recognition of circulation of price and dealer lists as a potential means of restraining competition.

**METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—ASSOCIATION ACTIVITIES—WHERE IN VIOLATION OF FEDERAL TRADE COMMISSION ACT—WHETHER MEMBER CHARGEABLE WITH KNOWLEDGE OF—IF MEMBERSHIP CONTINUED WITHOUT PROTEST.**

A member who knows, or should know, that his association is engaged in unlawful enterprise in violation of Federal Trade Commission Act and continues his membership without protest, may be charged with complicity as a confederate and becomes one of principals in enterprise and cannot disclaim joint responsibility for illegal uses to which association is put.

**EVIDENCE—COMMISSION PROCEEDINGS—CRITERIA, IN GENERAL.**

The Federal Trade Commission need not follow strict rules of evidence.

**EVIDENCE—COMMISSION PROCEEDINGS—STIPULATIONS—HEARSAY MEMORANDA IN—  
WHETHER STIPULATING CORPORATIONS MAY REPUDIATE OF PRICE FIXING MEETING.**

A memorandum of a meeting at which illegal price fixing was agreed upon, and which related that representatives of corporations were appointed by president of association to serve on a committee to prepare a list of agents, propose price schedules, etc., which memorandum was included in stipulation to which corporations agreed in proceeding before Federal Trade Commission, could not be repudiated by the corporations.

**EVIDENCE—METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING—  
ASSOCIATION ACTIVITIES—MEMBER COMPLICITY—MEMORANDUM OF PRICE FIXING  
MEETING.**

Evidence of a memorandum of a meeting at which price fixing in violation of Federal Trade Commission Act was agreed upon, which related that corporations' representatives were appointed by president of association to serve on a committee to prepare a list of agents, propose price schedules, etc., sustained finding of Commission of corporations' complicity in illegal price fixing.

**CORPORATIONS—DIRECTORS—TORT LIABILITY OF.**

Ordinarily, a director is not personally liable for torts of his corporation unless he [395] has personally voted for or otherwise participated in them.

**EVIDENCE—METHODS, ACTS AND PRACTICES—CONCERT OF ACTION—PRICE FIXING—  
ASSOCIATION ACTIVITIES—MEMBER COMPLICITY—DIRECTOR—IF NOT SHOWN AS  
CHARGEABLE WITH ATTENDANCE OR KNOWLEDGE.**

Federal Trade Commission's finding that director of association which engaged in price fixing in violation of Federal Trade Commission Act, who was also an officer in a corporate member of the association participated in illegal price fixing in violation of the act, was not sustained by evidence which failed to show that he ever attended directors' meetings or knew anything about the illegal activities.

(The syllabus, with substituted captions, is taken from 139 F. (2d) 393)

On four petitions to review cease and desist order of the Commission, before the court upon a consolidated record, order affirmed as to the corporate petitioners and reversed as to petitioner R. Earl Demmon, director of the association and an officer of petitioner Stauffer Chemical Co., Inc.

*Mr. William H. Wurts*, of New York City (*Mr. Arthur W. Rinke*, of New York City, of counsel), for petitioners John Powell & Co., Inc. et al.

*Mr. Henry C. Little*, of New York City (*Mr. Arthur W. Rinke*, of New York City, of counsel), for petitioner American Cyanamid & Chemical Corporation.

*Reeves, Todd, Ely & Beaty*, of New York City (*Mr. David Cohen*, of New York City, of counsel), for petitioner Phelps Dodge Refining Corporation.

*Guggenheimer & Untermeyer*, of New York City (*Mr. Jules C. Randall*, of Buffalo, N. Y., and *Mr. Harry Hoffman*, of New York City, of counsel), for petitioner Tennessee Corporation.

*Mr. W. T. Kelley*, chief counsel for Federal Trade Commission, *Mr. Eugene W. Burr*, and *Mr. Reuben J. Martin*, special attorneys for Commission, all of Washington, D. C., for respondent.

Before L. HAND, SWAN, and FRANK, *Circuit Judges*.

SWAN, *Circuit Judge*:

In May 1940 the Federal Trade Commission issued a complaint against the Agricultural Insecticide & Fungicide Association, its officers and directors, a number of its members and certain nonmembers, charging them with using unfair methods of competition in commerce, as defined in the Federal Trade Commission Act, 15 U. S. C. A. § 41 et seq. After the filing of answers and a stipulation of facts the Commission made findings of fact and issued a cease and desist order against 38 named respondents, including all of the present petitioners, who were found to have combined to restrain and suppress competition in agricultural insecticides and fungicides. *In the Matter of Agricultural Insecticide & Fungicide Assn. et al.*, 35 F. T. C. 201.

Four of the corporate petitioners, whom for brevity we shall refer to as Powel, Southern, Stauffer, and Cyanamid, were members of Agricultural Insecticide & Fungicide Association. Petitioner Demmon was a director of the Association and an officer of Stauffer. The other two petitioners, who will be referred to as Phelps Dodge and Tennessee, were not members of the Association; they were found to have cooperated with the Association and its members. All of the petitioners challenge the order of the Commission on the ground that the findings of fact upon which it is based are not supportable as against them. Hence the only question before us is as to the sufficiency of the proof to connect the several petitioners with the illegal conspiracy in which all the respondents were found to be engaged.

In approaching this question the court must bear in mind that findings of the Commission as to the facts, if supported by evidence, are made conclusive by the terms of the act, 15 U. S. C. A. § 45 (c). This means that the weight to be given to admitted facts and circumstances, as well as the inferences reasonably to be drawn from them, is for the Commission. *Fed. Trade Com. v. Pac. Paper Assn.*, 273 U. S. 52, 63 [11 F. T. C. 636]. The court is not to try the case anew, and may not pick and choose between conflicting inferences, if the one drawn by the Commission is permissible. *Fed. Trade Com. v. Algoma Co.*, 291 U. S. 67, 73 [18 F. T. C. 669]; *Labor Board v. Nevada Copper Co.*, 316 U. S. 105, 106.

[396] The stipulation of facts states that the Association, organized in 1934, has acted as a clearing house for the exchange of information submitted by its members, including reports as to the sales of various types of insecticides, fungicides, and related items, together with the

prices, terms, and discounts at which said items are sold, or offered to be sold, and in some instances including advance notice of future prices. Thus it admits of no doubt that the association and some of its members were engaged in price fixing, which violated the act. *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150. The stipulation likewise reveals that the association prepared and distributed so-called "distributor guides," lists of wholesale buyers entitled to favorable concessions not given the trade in general. This too bears the taint of illegality. *Eastern States Lumber Co. v. United States*, 234 U. S. 600; *Fashion Originators' Guild v. Fed. Trade Com.*, 114 F. (2d) 80 (C. C. A. 2) [31 F. T. C. 1837], affirmed, 312 U. S. 457 [32 F. T. C. 1856]. The agreement need not be proven by direct evidence; conduct pointing to concerted action is sufficient: *Eastern States Lumber Co. v. United States*, *supra*; *Southern Hardware Jobbers' Assn. v. Fed. Trade Com.*, 290 Fed. 773 (C. C. A. 5) [6 F. T. C. 597]. The Commission argues that this being established, the complicity of Powell, Southern, Stauffer, and Cyanamid is provided by the fact of their membership in the association. We are not prepared to hold that mere membership is enough. If the purposes of an association are lawful on their face, we doubt that its members should be held for acts of the association outside its purposes, unless knowledge of the illegal acts is brought home to the members. But the present record does not squarely present this question. Nor did *Standard Container v. Fed. Trade Com.*, 119 F. (2d) 262 (C. C. A. 5) [32 F. T. C. 1879] upon which counsel for the respondent strongly relies. There the evidence was that members adhered or were disqualified for not adhering to the price lists. See 119 F. (2d) at page 266. Other cases relied upon, where broad orders of the Commission have bound parties who did not contest their application, have no persuasive weight, as for example, *In the Matter of American Photo-Engravers Assn.*, 12 F. T. C. 29; *Chamber of Commerce of Minneapolis v. Fed. Trade Com.*, 7 F. T. C. 115, affirmed 13 F. (2d) 673 (C. C. A. 8) [10 F. T. C. 687].

By their answers Powell, Southern, and Stauffer admitted that after announcement to the trade they filed their prices with the association and received through it announcements of previous price changes by other manufacturers. Southern and Stauffer further admitted that they submitted lists of wholesale customers and received "distributor guides" prepared by the association. None admits that it agreed to adhere to the price lists or become a party to the price-fixing combination, nor do the latter two concede the illegality of the dealer lists. But we think it was permissible for the Commission to infer that when these companies sent in their data they knew what use was to be made of them. They did affirmative acts, and if they had not acquainted themselves fully with the association's purposes with respect to the



data, at least it was for them to prove that fact. Otherwise the inference of their complicity could reasonably be drawn.

The answer of Cyanamid admitted that from time to time it received through the association announcements of previous price changes by other manufacturers; but there is no admission or proof that it ever furnished its own price lists to the association. It also received dealer lists from the association, and these contained the names of some of its customers. In the absence of proof to the contrary we think the receipt of these price lists and dealer lists was enough from which to infer that the company learned of the association's illegal activities. Both price lists and dealer lists have been the source of much litigation and their circulation is commonly recognized as a potential means of restraining competition. We think that at least it should put a member of a trade association upon inquiry and charge him with knowledge of what an inquiry would have disclosed as to his association's activities. Thus the issue is reduced to whether a member who knows or should know that his association is engaged in an unlawful enterprise and continues his membership without protest may be charged with complicity as a confederate. We believe he may. Granted that his mere membership does not authorize unlawful conduct by the association, once he is chargeable with knowledge that his fellows are acting unlawfully his failure to dissociate himself from them is a ratification of what they are doing. He becomes [397] one of the principals in the enterprise and cannot disclaim joint responsibility for the illegal uses to which the association is put. While the culpable role of petitioner Cyanamid is less clearly established than that of the three petitioners already considered, it nevertheless sustains the Commission's findings.

There is only one item of proof as to Phelps Dodge and Tennessee but it is ample to establish their complicity. It is the so-called "Gunther memorandum" of the meeting of November 15, 1937 at which price-fixing was clearly agreed upon. Phelps Dodge, whose corporate name was then Nichols Copper Co., was represented by Mr. Rice and Tennessee by Mr. Porter. The memorandum relates that both these representatives were appointed by the president of the association to serve on a committee "to prepare a list of agents, propose price schedules, etc." It is true that Gunther's memorandum is hearsay; but it is persuasive hearsay, and the Commission is not bound to follow the strict rules of evidence which prevail in courts of law. *John Bene & Sons v. Fed. Trade Com.*, 299 Fed. 468 (C. C. A. 2) [7 F. T. C. 612]. Moreover, it was included in the stipulation to which these petitioners agreed. Having staked the outcome of the proceedings upon this presentation of evidence they may not now repudiate their agreement. *Forbes v. Comm'r of Int.*

*Rev.*, 82 F. (2d) 204, 207-8 (C. C. A. 1); *Andrews v. St. Louis Joint Stock Land Bank*, 127 F. (2d) 799, 804 (C. C. A. 8); *cf. Oscanyan v. Arms Co.*, 103 U. S. 261, 263. The memorandum was set forth for the obvious purpose of being considered by the Commission as evidence of the facts stated. That being true the inference that Rice and Porter had authority to act for the corporations which Gunther stated they represented was plainly permissible. And the illegality of their participation was incontestably established by express description.

All that the record discloses about petitioner Demmon is that he was a director of the association and held some unnamed office in Stauffer. It does not appear that he ever attended a directors' meeting or knew anything about the illegal activities of the association or the supplying and receipt of price lists and dealer lists by Stauffer. The ordinary doctrine is that a director, merely by reason of his office, is not personally liable for the torts of his corporation; he must be shown to have personally voted for or otherwise participated in them. *Leonard v. St. Joseph Lead Co.*, 75 F. (2d) 390, 395 (C. C. A. 8); *Metropolitan El. R. Co. v. Kneeland*, 120 N. Y. 134, 144; 19 C. J. S. Corporations, p. 271, s. 845. The doctrine seems applicable here. The finding against petitioner Demmon is therefore unsupported, and his inclusion by name in the order is not sustained.

Accordingly the order is affirmed as to the corporate petitioners and reversed as to Demmon. An order of enforcement, excluding his name, may be entered.

## PENALTY PROCEEDINGS<sup>1</sup>

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Civil penalties totaling \$7,250 were collected in the 6 months from July 1 through December 31, 1943, the period covered by volume 37, in the following cases:

*United States v. William C. Steffy, et al.*; United States District Court for the Northern District of Illinois; judgment entered for \$5,000 and costs, on July 17, 1943.

William C. Steffy, individually and trading as Atlas Globe China Co., etc., his representatives, etc., had been ordered as of August 2, 1939, in connection with the offer for sale, etc., of silverware, earthenware, chinaware, radios, or sales-promotional plans, including premium certificates, coupons, cards, and similar devices redeemable in such merchandise, to cease and desist from:

1. Representing through the use of the term "Rogers Silverware" either alone or in connection with any other term or terms in a corporate or trade name, or in any other manner, that respondents have an interest in, form a part of, or have any connection with, the manufacturers of Simon L. and George H. Rogers Silverware, or from representing in any manner that respondents have an interest in, form a part of, or have any connection with the International Silverware Co., the Atlas Globe China Co. or any other manufacturer or manufacturers of silverware, chinaware, or earthenware.

2. Representing through the use of the term "Rogers Silverware" either alone or in connection with any other term or terms or in any other manner, that premium certificates, cards, coupons, or other and similar devices can be redeemed in silverware manufactured by the manufacturers of Simon L. and George H. Rogers Silverware, or can be redeemed in any other silverware or other merchandise, unless and until such are the facts and unless all the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with said offer and there is no deception as to the price, quality, character, or any other feature of such silverware or other merchandise or as to the services or other actions to be performed or the price to be paid in connection with obtaining such silverware or other merchandise.

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<sup>1</sup> Action brought by the Government in the United States District Court for the Northern District of Illinois to recover penalties against Standard Education Society for violation of the Commission's modified order of March 28, 1940, D. 1574, was held in abeyance by that court on October 20, 1943, pending the Commission's report as a Master to the Circuit Court of Appeals for the Second Circuit on the question of the company's compliance with the provisions of the Commission's cease and desist order. See, for opinion of the District Court, ante at p. 810.

3. Representing that respondents are conducting any special campaign or advertising campaign to introduce, advertise, or sell any article or articles of merchandise on behalf of a manufacturer or manufacturers of silverware, earthenware, or chinaware, 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 or concern.

4. Representing that respondents sell premium certificates, cards, coupons, or other and similar devices or other merchandise in any territory or locality exclusively to any purchaser therein unless and until such is the fact.

5. Representing that respondents will refund the sum of \$4.50 or any other sum to the purchasers of premium certificates, cards, coupons, or other and similar devices or that the respondents will supply to their customers without charge display sets of silverware or other merchandise to become the property of such customers 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 in 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 such purchasers or customers in connection with obtaining such refund and display set of silverware or other merchandise.

6. Representing that the retail price of radios is \$24.90 or \$39.99 or any other amount or amounts unless and until said radios are customarily and ordinarily sold at retail at such amount or amounts.

7. Supplying to, or placing in the hands of, others said radios or other merchandise together with a padlock and a number of keys which said padlock and keys are to be used or may be used to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of said radios or other merchandise to the general public.

8. Selling or otherwise disposing of any merchandise by means of a lottery, game of chance, or a gift enterprise.

9. Supplying to, or placing in the hands of, others any lottery device, game of chance, or a gift enterprise so as to enable such persons to dispose of or sell any merchandise by the use thereof (D. 3238, 29 F. T. C. 465, 487).

*United States v. Gellman Brothers*; United States District Court for the Fourth Division of Minnesota; judgment for \$1,500 entered November 2, 1943.

The Commission had ordered Mike Gellman and Nate Gellman, trading as Gellman Bros., as of January 13, 1938, in connection with the offer for sale, etc., of various articles of merchandise, to cease and desist from:

1. Supplying to or placing in the hands of retail dealers or others punchboards, push cards, fortune boards, or similar devices so as to

enable such retail dealers and others to dispose of or sell by the use thereof such articles of merchandise;

2. Mailing, shipping, or transporting to retail dealers or others punchboards, push cards, fortune boards, or similar devices so prepared or printed as to enable such retail dealers or others to sell or distribute merchandise by the use thereof;

3. Selling or otherwise disposing of various articles of merchandise by the use of punchboards, push cards, fortune boards, or similar devices (D. 1880, 26 F. T. C. 344, 351).

*United States v. Certane Co., et al.*; United States District Court for the Southern District of California; Judgment for \$750 and costs, entered December 13, 1943.

Rosemarie Lewis, individually, and trading as Certane Co., her representatives, etc., in connection with the offer for sale, etc. of feminine hygiene preparations known as "Certane Ointment," "Certane Jelly," "Certane Antiseptic Powder," "Certane Douche Powder," and "Certane Cones," and various appliances known as "Douche Shields," "Applicators," "Dia-Caps," and "Dia-Domes," was ordered as of March 19, 1941 to cease and desist from representing directly or indirectly:

1. That any of said preparations or appliances, whether used alone or in conjunction with any other of said preparations or appliances, will prevent conception or prevent pregnancy, or that said preparations or appliances are safe, competent, or effective preventatives against conception.

2. That any of said preparations or appliances, whether used alone or in connection with any other of said preparations or appliances, possess any therapeutic value in the treatment of delayed menstruation, or that such use will prevent female irregularities in menstruation or will correct suppressed menstruation.

3. That any of said preparations or appliances have any therapeutic value in the treatment of subnormal or unhealthful conditions of the uterus or vagina, nervousness, pain, discomfort, or mental depression.

4. That the use of any of respondent's preparations or appliances, whether used alone or in connection with any other of said preparations or appliances, will prevent disease, cause the rapid elimination of bacteria, including leucorrhea and disagreeable discharges, or will heal the delicate membranes and tissues of the vaginal tract.

5. That the use of respondent's preparations or appliances, whether used alone or in connection with any other of said preparations or appliances, will be effective in insuring health.

6. That respondent's appliance known as "Douche Shield" may be used as directed by the respondent in ballooning the vaginal cavity without possible harmful effects (D. 3486, 32 F. T. C. 927, 939).



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<sup>1</sup> 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, e. g., "01", "02", etc.

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